



**Maritime Combat Systems**

**Reference: MCS3B/3503**

**TERMS AND CONDITIONS**

**FOR**

**IN-SERVICE SUPPORT FOR TRANSPORTABLE  
MANNED COMPRESSION CHAMBERS**

|                                                |                                                                 |    |
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# 1 Schedule of Requirements

|                                                                                      |                                                                                                                            |                                                                                        |
|--------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------|
| DEFCON 110                                                                           |                                                                                                                            |                                                                                        |
| <b>MINISTRY OF DEFENCE</b>                                                           |                                                                                                                            |                                                                                        |
| <b>CONTRACTOR:</b><br>MSI Defence Systems Ltd<br>Salhouse Road<br>Norwich<br>NR7 9AY | <b>SCHEDULE OF REQUIREMENTS<br/>FOR:<br/><br/>IN-SERVICE SUPPORT FOR<br/>TRANSPORTABLE MANNED<br/>COMPRESSION CHAMBERS</b> | <b>CONTRACT No:</b><br><br>MCS3B/3503                                                  |
| Contract Issued : 30<br>November 2017                                                |                                                                                                                            | Previous Contract No<br>(Renewal Ctts):<br>UWSCom2a/0276<br>NWE22C/0110<br>NUW83A/2051 |

## Table of Requirements

| Item No | Description                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         | Firm Price                                     |
|---------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------|
| 1       | <p>The Contractor is to provide In-Service Support to the Transportable Manned Compression Chambers during the period 02 December 2017 to 30 November 2020 in accordance with the Terms and Conditions of the Contract:</p> <p><b>Core Activities:</b><br/>Core Activities for the above mentioned equipment in accordance with Statement of Work (Annex A) and the Terms and Conditions of Contract attached hereto shall include:</p> <ul style="list-style-type: none"> <li>1.1 Project Management &amp; Documentation</li> <li>1.2 Data and Configuration Management</li> <li>1.3 Technical Support</li> <li>1.4 Customer Meetings/Progress Reports</li> <li>1.5 Safety Management</li> <li>1.6 Quality Management</li> <li>1.7 Obsolescence Management</li> <li>1.8 Risk Management</li> </ul> | [REDACTED]                                     |
| 2       | <p><b>Provision of Spares:</b><br/>To supply the articles detailed at Annex C to Contract, as and when required by the Authority and in accordance with Clause 31 of the Contract.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              | See Annex C                                    |
| 3       | <p><b>Repair Services:</b><br/>To repair the articles detailed at Annex D to Contract, as and when required by the Authority and in accordance with Clause 31 of the Contract.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  | See Annex D                                    |
| 4       | <p><b>Programmed Refurbishment:</b><br/>To undertake the refurbishments of the TMCC in accordance with Annex A (including appendices) and in accordance with Clause 32 of the Contract.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         | See Annex E                                    |
| 5       | <p><b>Non Core Tasking:</b><br/>Undertake specific Tasks, including CONDO as and when required by the Authority in accordance with Annex A and the procedures detailed at Clause 20 of the Contract.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            | See Annex B                                    |
| 6       | <p><b>OPTION: Development of ACBS and CCBS system</b></p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           | To be priced in accordance with Condition 36.3 |

## SECTION 1 – GENERAL CONDITIONS

### 2 DEFCONs

2.1 The following General Conditions shall apply to the Contract:

| DEFCON | Edition  | Description                                                                                                                                                                                                        |
|--------|----------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 5J     | 18/11/16 | Unique Identifiers<br><br>Note: For the purposes of the Contract, Clause 2 of DEFCON 5J shall only apply to SoR Item 2, i.e. this Clause shall not apply where used in conjunction with contract for services.     |
| 23     | 08/09    | Special Jigs, Tooling and Test Equipment                                                                                                                                                                           |
| 68     | 02/17    | Supply of Data for Hazardous Articles, Materials and Substances<br><br>Note: Reference to Material Breach under Condition 9 shall be Contractor Default as defined.                                                |
| 76     | 12/06    | Contractor's Personnel at Government Establishments                                                                                                                                                                |
| 113    | 02/17    | Diversion Orders                                                                                                                                                                                                   |
| 117    | 10/13    | Supply of Information for NATO Codification and Defence Inventory Introduction                                                                                                                                     |
| 129    | 18/11/16 | Packaging (for articles other than munitions)                                                                                                                                                                      |
| 129J   | 18/11/16 | The use of Electronic Business Delivery Form                                                                                                                                                                       |
| 501    | 11/17    | Definitions and Interpretations<br><br>Note: For the purposes of the Contract further Definitions and Interpretations are provided at Condition 4 and Annex A (Statement of Work) to the Contract.                 |
| 502    | 05/17    | Specifications                                                                                                                                                                                                     |
| 503    | 12/14    | Formal Amendments to Contract<br><br>Note: For the purposes of Condition 1 of DEFCON 503 the Authority's duly authorised representative shall be the Commercial Branch named at Box 1 of DEFFORM 111 (Appendix 1). |
| 507    | 10/98    | Delivery                                                                                                                                                                                                           |
| 513    | 11/16    | Value Added Tax                                                                                                                                                                                                    |
| 515    | 02/17    | Bankruptcy and Insolvency                                                                                                                                                                                          |
| 516    | 04/12    | Equality                                                                                                                                                                                                           |
| 518    | 02/17    | Transfer                                                                                                                                                                                                           |
| 520    | 02/17    | Corrupt Gifts and Payments of Commission                                                                                                                                                                           |
| 522    | 18/11/16 | Payment and Recovery of Sums Due                                                                                                                                                                                   |
| 524    | 10/98    | Rejection                                                                                                                                                                                                          |
| 525    | 10/98    | Acceptance<br><br>Note: For the purposes of Condition 1a of DEFCON 525, the period of notice shall be 30 (thirty) business days unless otherwise specified within the Contract.                                    |
| 526    | 08/02    | Notices                                                                                                                                                                                                            |
| 527    | 09/97    | Waiver                                                                                                                                                                                                             |
| 528    | 07/17    | Overseas Expenditure Import and Export Licenses                                                                                                                                                                    |
| 529    | 09/97    | Law (English)                                                                                                                                                                                                      |
| 530    | 12/14    | Dispute Resolution (English Law)                                                                                                                                                                                   |
| 531    | 11/14    | Disclosure of Information                                                                                                                                                                                          |
| 532A   | 06/10    | Protection of Personal Data (Where Personal Data is not being processed on behalf of the Authority)                                                                                                                |
| 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    | 10/16    | Change of Control of Contractor                                                                                                                                                                                    |
| 601    | 04/14    | Redundant Materiel                                                                                                                                                                                                 |
| 602A   | 12/06    | Deliverable Quality Plan                                                                                                                                                                                           |
| 604    | 06/14    | Progress Reports                                                                                                                                                                                                   |
| 606    | 06/14    | Change and Configuration Control Procedure                                                                                                                                                                         |

|      |       |                                                                                                                                                                                            |
|------|-------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 608  | 10/14 | Access and Facilities to be Provided by the Contractor                                                                                                                                     |
| 609  | 06/14 | Contractor's Records                                                                                                                                                                       |
| 611  | 07/10 | Issued Property<br><br>Note: For the purposes of the Contract all Issued Property is specified at Annex H (Government Furnished Assets) to the Contract.                                   |
| 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)<br><br>The Authority is responsible for the delivery of articles for contract line items 2 and 3 of the Schedule of Requirements |
| 621B | 10/04 | Transport (If the Contractor is responsible for Transport)<br><br>The Contractor is responsible for the delivery of articles for contract line items 4 of the Schedule of Requirements     |
| 624  | 11/13 | Use of Asbestos                                                                                                                                                                            |
| 627  | 12/10 | Quality Assurance - Requirement for a Certificate of Conformity                                                                                                                            |
| 630  | 03/15 | Framework Agreements                                                                                                                                                                       |
| 637  | 05/17 | Defect Investigation and Liability                                                                                                                                                         |
| 642  | 06/14 | Progress Meetings                                                                                                                                                                          |
| 644  | 05/17 | Marking of Articles                                                                                                                                                                        |
| 647  | 09/13 | Financial Management Information                                                                                                                                                           |
| 649  | 12/16 | Vesting                                                                                                                                                                                    |
| 658  | 10/17 | Cyber<br><br>The Cyber Risk Level of the Contract is as assessed as Very Low, as defined in Def Stan 05-138.                                                                               |
| 660  | 12/15 | Official-Sensitive Security Requirements                                                                                                                                                   |
| 670  | 02/17 | Tax Compliance                                                                                                                                                                             |
| 681  | 06/02 | Decoupling Condition                                                                                                                                                                       |
| 694  | 03/16 | Accounting for the Property of the Authority                                                                                                                                               |
| 697  | 07/13 | Contractors on Deployed Operations                                                                                                                                                         |
| 800  | 12/14 | Qualifying Defence Contract                                                                                                                                                                |
| 801  | 12/14 | Amendments to Qualifying Defence Contracts                                                                                                                                                 |
| 802  | 12/14 | Open Book on Sub-contracts that are not Qualifying Sub-contracts                                                                                                                           |
| 804  | 03/15 | QDC: Confidentiality of Single Source Contract Regulations Information                                                                                                                     |

**Table 1 – DEFCONs (General Conditions)**

### **3 IPR DEFCONS**

3.1 The following IPR DEFCONs shall apply to the Contract:

| <b>DEFCON</b> | <b>Edition</b> | <b>Description</b>                                                                                                                                                                                                                                       |
|---------------|----------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 14            | 11/05          | Inventions And Designs Crown Rights And Ownership Of Patents And Registered Designs                                                                                                                                                                      |
| 15            | 08/74          | Design Rights and Rights to Use Design Information<br><br>Note: DEFCON 15 shall be applicable to design and development including modifications funded under the Contract and previous Contracts.                                                        |
| 21            | 01/58          | Drawings, Specifications and Manufacturing Data.                                                                                                                                                                                                         |
| 90            | 11/06          | Copyright<br><br>Note: For the purposes of Condition 4c of DEFCON 90, the nations prescribed in the Contract shall be any NATO state or any other nation chosen at the discretion of the Authority or with whom the Authority has any form of reciprocal |

|     |       |                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
|-----|-------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|     |       | defence arrangement. The Authority undertakes to provide written notice to the Contractor before information is issued to any NATO state or any other nation.                                                                                                                                                                                                                                                                                         |
| 91  | 11/06 | Intellectual Property Rights in Software<br><br>Note: For the purposes of Condition 3e of DEFCON 91, the nations prescribed in the Contract shall be any NATO state or any other nation chosen at the discretion of the Authority or with whom the Authority has any form of reciprocal defence arrangement. The Authority undertakes to provide written notice to the Contractor before information is issued to any NATO state or any other nation. |
| 126 | 11/06 | International Collaboration<br><br>Note: For the purposes of Conditions 2 and 3 of DEFCON 126, the period prescribed shall be fifteen (15) years from the completion of the Contract.                                                                                                                                                                                                                                                                 |
| 632 | 08/12 | Third Party Intellectual Property Rights – Rights and Restrictions                                                                                                                                                                                                                                                                                                                                                                                    |

**Table 2 – DEFCONs (IPR)**

The Contractor shall maintain a register of all foreground IPR licences including licences enjoyed by the Contractor and the Authority as well as the identity of all third party IPR owners with respect to any equipment including software designed and developed under the Contract with Authority funding. The IPR register shall be sufficiently detailed to enable the Authority (or third party providing future support to the equipment), after termination of the Contract, to renew any such licence if required for the continued provision of the service (if acceptable). The IPR register shall be maintained by the Contractor and a copy of the register shall be delivered to the Authority annually as part of a Progress Report or otherwise upon request of the Authority.

#### **4 Definitions, Assumptions and Exclusions**

- 4.1 In addition to the provisions of DEFCON 501 (Definitions and Interpretations), the following words and expressions shall apply to this Contract unless the context requires otherwise:

|                                              |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
|----------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Amendment                                    | Means a change or amendment to the Contract in accordance with DEFCON 503                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
| Assets                                       | Means a resource that has a financial value.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
| Assignee or transferee                       | Means a person to whom responsibility is transferred.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
| Authorised Demander                          | The person detailed at Box 2 of the DEFFORM 111 at Appendix 1 to the Contract.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
| Authority's Commercial Officer               | Means the person specified within Box 1 of DEFFORM 111 or its authorised representative.                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
| Authority's Operating Centre Commercial Head | Means DES Ships Comrcl-Hd.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
| Authority's Project Manager (APM)            | Means the person specified within Box 2 of DEFFORM 111 or its authorised representative.                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
| Authorisation to Proceed                     | Means approval given by the Authority for the Contractor to commence work.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
| Contract Term                                | Means the period between the Contract Effective Date and the Expiry Date or Termination Date, whichever is the earlier.                                                                                                                                                                                                                                                                                                                                                                                                                                             |
| Contractor Default                           | Means any one or more of the following:<br>a) A breach by the Contractor of any of its obligations under this Contract which materially affects the performance of the Services and/or the Contractor's other obligations under this Contract (other than any other breaches listed in this definition);<br>b) The occurrence of a Persistent Breach;<br>c) The occurrence of the circumstances referred to in DEFCON 515 (Bankruptcy and Insolvency)<br>d) The occurrence of the circumstances referred to in DEFCON 520 (Corrupt Gifts and Payment of Commission) |

|                                   |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
|-----------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                                   | <p>e) a breach by the Contractor of Clause 18 (Security Aspects);</p> <p>f) a breach by the Contractor of Clause 48 (Sub-Contracts)</p> <p>g) a breach by the Contractor of DEFCON 566 (Change of Control of Contractor)</p> <p>h) the Contractor commits a breach of this Contract which results in the criminal investigation, prosecution and conviction of the Contractor or any subcontractor under the health and safety Legislation;</p> <p>the occurrence of the circumstances referred to in Unsatisfactory Performance within Key Performance Indicator Clause 22.</p> |
| Contractor's works                | Means the Contractors place of business which it will use to complete the appropriate work required by the Authority.                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
| Effective Date                    | Means the date of Contract Award.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
| Exit Plan                         | Means the plan to be provided by the Contractor pursuant to Clause 44.3                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
| Expiry Date                       | Means the Contract end date as defined under Clause 6.1.1                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
| Good Industry Practice            | Means 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 its 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.                                        |
| Government Furnished Assets (GFA) | <p>Means equipment and other MOD assets that are provided to industry in support of contracts, consisting of the following as defined within DEFCON 501(Definitions and Interpretations) and 611 (Issued Property):</p> <p>Government Furnished Equipment (GFE)</p> <p>Government Furnished Resource (GFR)</p> <p>Government Furnished Information (GFI)</p> <p>Government Furnished Facilities (GFF)</p> <p>Government Furnished Supplies (GFS)</p>                                                                                                                             |
| Information                       | Means 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.                                                                                                                                                                                                                                                                                                                                             |
| Intellectual Property or IP       | Means 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.                                                                                                                                                                                                                                         |
| Necessary Consents                | Means all permits, licences, permissions, consents, approvals, certificates and authorisations (whether statutory or otherwise) which are required for the purposes of the Contractor's obligations under this Contract, whether required in order to comply with Legislation or as a result of the rights of any third party.                                                                                                                                                                                                                                                   |

|                                      |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
|--------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Obsolescence Concern                 | As a result of a proactive approach, a future Obsolescence Issue has been identified. A resolution needs to be developed and implemented to minimise the impact on future availability, and cost to, the project.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
| Obsolescence Issue                   | An item within a project has been declared obsolescent. A resolution needs to be identified and implemented to minimise the impact on availability, and cost to, a project.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
| Obsolescence Resolution              | A resolution type that, as a result of an Obsolescence Concern or Obsolescence Issue, is required to be implemented.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
| Parties                              | Means the Authority and Contractor collectively and excluding any other third party.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
| Performance Levels                   | Means the performance criteria, parameters and requirements standards to which the Contractor shall complete the work, as set out at Annex A (Statement of Work) and Annex G (KPIs)                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
| Persistent Breach                    | Means 3 (three) or more breaches (the Subsequent Breaches) by the Contractor of the same one of its obligations under this Contract, provided: <ul style="list-style-type: none"> <li>a) that the Authority has previously served on the Contractor a notice in writing (Warning Notice) correctly stating that the Contractor has, in the 6 (six) month period prior to the service of such Warning Notice, breached such obligation under this Contract on 3 (three) or more occasions; and</li> <li>b) that the Contractor's Subsequent Breaches on such obligation take place during the 6 (six) month period following the service of such Warning Notice; and</li> </ul> no service of a Warning Notice may be based on any breaches of such obligation that have already been the subject of a Warning Notice |
| Quality Assurance                    | Means the systematic activities implemented in a quality system so that quality requirements for a product or service will be fulfilled.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
| Quality Assurance Focal Point (QAFP) | Means the person specified within Box 7 of DEFFORM 111.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
| Replacement Contractor               | Means any third party contractor providing Replacement Work appointed by, or which may be appointed by, the Authority from time to time and/or, where Replacement Work is to be provided by the Authority.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
| Risk Register                        | Means a list of all associated project risks                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
| Sub-Contractor                       | Means those persons who may enter into a Sub-Contract with the Contractor.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
| Termination Date                     | Means a date prior to the Expiry Date on which the Contract is terminated in accordance with the terms of this Contract.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
| UEW                                  | Underwater Electronic Warfare                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
| Working day                          | Means any day excluding Saturdays and Sundays, Public and statutory holidays in the jurisdiction of either party, privilege days notified in writing by the Authority to the Contractor at least 10 (ten) Working Days in advance and such periods of holiday closure of the Contractor's premises of which the Authority is given notice by the Contractor at least 10 (ten) Working Days in advance.                                                                                                                                                                                                                                                                                                                                                                                                               |

**Table 3 – Definitions**

4.2 Notwithstanding the provisions of DEFCON 501 (Definitions and Interpretations), for the purposes of

[REDACTED]

the Contract, except where the context otherwise requires:

- 4.2.1 a reference in this Contract to any Condition, Clause, Paragraph, Schedule, Part, Appendix or Attachment is, except where it is expressly stated to the contrary, a reference to such Condition, Clause, paragraph, Schedule, Part, Appendix or Attachment of this Contract
- 4.2.2 references to any documents being “in the agreed form” shall mean such documents have been accepted by the Authority pursuant to Clause 10 (Deliverable Documentation);
- 4.2.3 a reference to a person includes firms, partnerships and corporations and their successors and permitted assignees or transferees and references to a public organisation (other than the Authority) shall be deemed to include a reference to any successor to such public organisation or any organisation or entity which has taken over either or both the functions and responsibilities of such public organisation;
- 4.2.4 headings are for convenience only;
- 4.2.5 words preceding “include”, “includes”, “including” and “included” shall be construed without limitation by the words which follow those words;
- 4.2.6 the word “shall” is used exclusively to indicate that the associated requirement is mandatory;
- 4.2.7 the word “will” is used to indicate that the associated statement is explanatory material provided in support of the specified provisions or actions, or an assumption, or desirable or indicates a philosophy to be adopted the fulfilment of which is outside the scope of the Contract;
- 4.2.8 the General Conditions, Special Conditions, and Schedules, Parts, Appendices and Attachments to this Contract form part of this Contract and shall be taken into account in the interpretation of this Contract;
- 4.2.9 any decision, act, or thing which the Authority is required or authorised to take or do under the Contract may be taken or done only by any person authorised, either generally or specifically, by the Authority to take or do that decision, act, or thing on behalf of the Authority; and
- 4.2.10 unless otherwise excluded within the terms of this Contract or where required by law:
- 4.2.11 references to submission of documents in writing shall include electronic submission;
- 4.2.12 any requirement for a document to be signed or references to signatures shall be construed to include electronic signature. The formal method of authentication in relation to electronic signature as agreed between the Parties and to be employed under the Contract shall be email correspondence between the Authority’s representatives as defined at DEFFORM 111 or as otherwise explicitly nominated under any provision of the Contract or such authorised representative as is mutually agreed between the Parties.

## **5 Order of Precedence**

- 5.1 In the event of any inconsistency between the provisions of the Contract and/or between this Contract and any other document referred to in the Contract, then the following order of precedence shall apply:
- 5.2 Special Conditions
  - 5.2.1 General Conditions
  - 5.2.2 Statement of Work (Annex A)
  - 5.2.3 All other Annexes (including all Appendices and Attachments)

[REDACTED]

5.2.4 Contractor's Technical Solution proposal at Annex A; appendix 3.

5.3 Where there is a conflict or inconsistency between any of the Standards included in the Contract the order of precedence shall be:

5.3.1 Allied Publications and NATO Standards

5.3.2 Defence Standards

5.3.3 British Standards and International Standards

5.3.4 All remaining reference standards

5.4 If a Party becomes aware of any inconsistency within or between the documents referred to in Clause 5.2 such Party's Representative shall notify the other Party's Representative forthwith and the Parties will seek to resolve such inconsistency, and if either Party considers the inconsistency material, then the matter shall be determined in accordance with Clause 43 (Dispute Resolution).

## **6 Duration**

6.1 This Contract and the rights and obligations of the Parties to this Contract shall take effect on the 2 December 2017 and, shall terminate on the earlier of:

6.1.1 30 November 2020; or

6.1.2 The Termination Date.

6.2 Any work authorised during the Contract Term shall be completed under the Terms and Conditions of this Contract, even where completion takes place beyond the end of the Contract. The Contractor is required to notify the Authority's Commercial Branch of any and all work outstanding at the end of the Contract Term.

## **SECTION 2 – OBLIGATIONS**

### **7 General Obligations**

7.1 The Contractor shall perform all work and provide the Contract Deliverables from the Effective Date in accordance with all the obligations of the Contractor in the Contract, including:

7.1.1 those requirements contained within:

7.1.1.1 Statement of Work, including the performance levels stipulated therein;

7.1.1.2 Annex L (Deliverable Documentation);

7.2 The Contractor undertakes to the Authority that he shall perform all work and provide the Contract Deliverables:

7.2.1 in accordance with the Terms and Conditions of this Contract;

7.2.2 in accordance with Good Industry Practice;

7.2.3 in accordance with all relevant Legislation;

7.2.4 in accordance with all Necessary Consents; and

7.2.5 to the Authority or the Authority's Nominated Representative.

7.3 The Contractor shall at all times act in good faith towards and co-operate fully with the Authority, its

[REDACTED]

agents, representatives, and contractors.

- 7.4 The Contractor shall in consultation with the Authority and where appropriate develop such policies and procedures which are likely to improve performance of its obligations under this Contract and shall comply with such policies and procedures once they have been agreed with the Authority through a formal contract amendment.
- 7.5 If the Contractor fails to perform the work or otherwise comply with its obligations in accordance with the Contract the Authority may, in addition to its other rights and remedies, require the Contractor to re-perform the relevant work or obligations.

## **8 Contractor Warranties and Undertakings**

### **Contractor Warranties**

- 8.1 The Contractor warrants to the Authority that as at the Contract Effective Date:
- 8.1.1 it has the corporate power to enter into and to exercise its rights and perform its obligations under this Contract and any Sub-Contracts;
  - 8.1.2 it is not subject to any claim, litigation, arbitration, proceedings or any other obligation which shall or is likely to have a material adverse effect on the ability of the Contractor to perform its obligations under this Contract;
  - 8.1.3 in entering into this Contract it has not committed any Prohibited Act and for this purpose only the words “or any of its employees, agents or Sub-Contractors (or anyone acting on behalf of such persons), with or without the knowledge or authority of the Contractor” in the introduction of the definition of Prohibited Act shall be deleted; and
  - 8.1.4 so far as it is aware, there is not, nor has there been, any infringement or alleged infringement of any third party’s IPR in connection with this Contract and the Authority relies upon such warranties.

### **Contractor Undertakings**

- 8.2 The Contractor undertakes that for so long as this Contract remains in full force:
- 8.2.1 it shall give the Authority notice of any litigation, arbitration, administrative or adjudication or mediation proceedings before or of any court, arbitrator, administrator or adjudicator or mediator or Relevant Authority (“Dispute Forum”) against itself or a Sub-Contractor which would adversely affect, to an extent which is material in the context of this Contract, the Contractor’s ability to perform its obligations under this Contract, unless such notice is precluded by the rules of the Dispute Forum, provided that notice shall be given within 20 (twenty) Working Days of the Contractor becoming aware such proceedings may be threatened or pending, and immediately after the commencement thereof;
  - 8.2.2 it shall not undertake the performance of its obligations under this Contract otherwise than through itself or a Sub-Contractor; and
  - 8.2.3 it shall not commit any Prohibited Act and for this purpose only the words “or any of its employees, agents or Sub-Contractors (or anyone acting on behalf of such persons), with or without the knowledge or authority of the Contractor” in the introduction of the definition of Prohibited Act shall be deleted.

### **Status of Contractor Warranties and Undertakings**

- 8.3 None of the warranties, undertakings, indemnities and other obligations made, given or undertaken

[REDACTED]

by the Contractor in this Contract shall be given a limited constructions by reference to another.

## **9 Standards**

- 9.1 In performing its obligations under the Contract, the Contractor shall ensure that the work is delivered in accordance with the Codes, Standards and Specifications contained within the Statement of Work.
- 9.2 During the Contract Term, the Contractor shall review all Standards which are re-issued, updated or amended in order to report the Authority any potential changes to delivering the Contract.
- 9.3 Any update to or amendment to the Standards after the Effective Date shall be agreed through a formal contract amendment.

## **10 Deliverable Documentation**

- 10.1 All Deliverable Documentation is detailed at Annex L (Deliverable Documentation).
- 10.2 The following provisions for Acceptance or Rejection for all Deliverable Documentation shall apply:
  - 10.2.1 Deliverable Documentation shall be submitted to the Authority, in the format, medium and to the timescales detailed at Annex A (Statement of Work) and Annex L (Deliverable Documentation).
  - 10.2.2 If a period is not otherwise specified at Annex A (Statement of Work) and Annex L (Deliverable Documentation), the Authority shall respond within 20 (twenty) working days of receipt of Deliverable Documentation, or an alternative timescale agreed between the Parties, either;
    - 10.2.2.1 accepting the Deliverable Documentation in accordance with the criteria detailed at Annex A (Statement of Work) and Annex L (Deliverable Documentation); or
    - 10.2.2.2 rejecting the Deliverable Documentation giving details in writing for the rejection.
- 10.3 Where the Authority rejects any Deliverable Documentation the Contractor shall resubmit the Deliverable Documentation within 20 (twenty) Working Days of the date of rejection, or such an alternative timescale as is specified on the Statement of Work or is otherwise agreed between the Parties, and the Acceptance/Rejection process shall restart from the beginning.
- 10.4 Where the Authority rejects any Deliverable Documentation resubmitted under Clause 10.3 Resolution of the Deliverable Documentation shall be in accordance with Clause 43 (Dispute Resolution)

## **11 Export Licences**

- 11.1 It shall be the sole responsibility of the Contractor to obtain in a timely manner any import licence(s), export licence(s) and/or customs clearance(s) into the UK, or elsewhere, required in order to perform any of its obligations under the Contract. The Contractor shall be responsible for all duties, taxes, levies and imposts charged in connection with any import and/or export.
- 11.2 The Contractor shall be responsible for issuing in a timely manner any End User Certificate(s) required in order to perform any of its obligations under the Contract.
- 11.3 In the event that the Contractor fails to deliver any of the requirements under the Contract by reason of a failure to obtain or maintain the necessary import licence(s), export licence(s), customs clearance(s) and/or End User Certificate(s), then without prejudice to any other Terms and Conditions of the Contract, the Authority shall be entitled to deem this as a Material Breach.
- 11.4 The Contractor shall inform the Authority at the earliest opportunity of the route by which he intends to

[REDACTED]

obtain export licence approval in order to satisfy delivery requirements under the Contract. In particular, where the Contractor chooses to use a Technical Assistance Agreement (TAA) or Manufacturing Licence Agreement (MLA), the Contractor shall promptly notify the Authority and shall not seek approval for the TAA or MLA from the Government concerned without first negotiating its contents with the Authority.

## **12 Export Licences (United States)**

- 12.1 It shall be the sole responsibility of the Contractor to obtain in a timely manner any export licences from the USA including those required under the International Traffic in Arms Regulations (or any similar US Government law or regulation) as are needed to perform any of its obligations under the Contract.
- 12.2 The Contractor shall inform the Authority at the earliest opportunity of the route by which he intends to obtain export licence approval from the US Government in order to satisfy delivery requirements under the Contract in particular, where the Contractor chooses to use a Technical Assistance Agreement or Manufacturing Licence Agreement, he shall promptly notify the Authority and shall not seek US Government approval for the Agreement until first negotiating its contents with the Authority.
- 12.3 Where a contract deliverable requires US export controlled equipment or information the Contractor may not cite failure to achieve an export licence as a reason for default, unless a course of action requiring export licences from the USA has been approved by the Authority in writing in advance of the date of contract signature.

## **13 Compliance with the Electronic Transactions Agreement**

- 13.1 The Authority and the Contractor shall comply with the Electronic Transactions Agreement comprised in the completed DEFFORM 30 Edn 01/07, dated 21 September 2007. The meaning of Purchase Order and Order Acknowledgement messages shall be as defined in the Contract and the terms and conditions of the Contract shall take precedence in all circumstances.

## **14 Contractor's Responsibility**

- 14.1 Notwithstanding any official approval of, or expression of satisfaction with, any Drawings, Specifications, Schedules, or any other relevant technical, administrative documents or data by the Authority, the Contractor shall be wholly responsible for the efficient and proper functioning as required by the Contract of all Articles supplied under it and for ensuring that any Design is wholly complete, accurate and meets the specifications of the Contract, such that Articles manufactured to such Design shall similarly meet the Technical Specifications and other requirements of the Contract.
- 14.2 The Contractor shall ensure that all Items which shall, as a result of work under the Contract, be incorporated into the operational equipment are fully interchangeable with those in the operational equipment. Any item that is later found not to be interchangeable shall be replaced by the Contractor at no cost to the Authority, including any further redesign work deemed necessary.

## **15 Drawings and Specifications**

- 15.1 Any minor part or parts not shown on the drawings or mentioned in the specifications but which are clearly necessary for the satisfactory completion of the work shall be deemed to be included in the Contract price and no additional costs shall be allowed on account of such omission except when a suspected error is found on a drawing supplied by or on behalf of the Authority.
- 15.2 No addition to or correction of the drawings or specifications shall be made without the prior approval of the Authority.

## **16 The Contractor's Key Personnel**

- 16.1 The Contractor's key personnel shall be identified in the Contractor's Project Management Plan (PMP), and shall be Suitably Qualified and Experienced Personnel (SQEP) who have appropriate qualifications and competence to perform the requirements of the Contract. The Contractor shall be responsible for ensuring that the required SQEP is maintained throughout the duration of the Contract and shall notify the Authority immediately they become aware of any shortcomings and planned changes to SQEP. The

[REDACTED]

Contractor shall provide evidence to the Authority that the necessary steps are being taken to mitigate any risk to their performance of the Contract.

16.2 The Contractor shall take all reasonable steps to avoid changes of key personnel assigned to work under the Contract.

16.3 The Contractor shall:

16.3.1 Advise the Authority prior to the removal from the performance of the Contractor Deliverables or replacement of any of the Key Personnel;

16.3.2 In the event of resignation or redeployment of any of the Key Personnel, inform the Authority of the proposed replacement of such Key Personnel, and supply the curriculum vitae of such replacement who shall have the status, skills and experience at least equivalent to the individual they are employed to replace;

16.3.3 Allow the Authority to make representations to the Contractor where the Authority is not in agreement with the replacement of Key Personnel or with the replacement proposed by the Contractor. The Contractor shall give reasonable consideration to such representation but the decision of the Contractor shall be final.

16.4 In the event of any redeployment of resignation of any of the Key Personnel, the Contractor shall reasonably enforce the contractual requirement of the Key Personnel to work their designated notice period(s), to ensure appropriate knowledge transfer to his or her replacement(s) and shall demonstrate to the Authority that an appropriate knowledge transfer plan has been implemented.

16.5 The Contractor shall issue a revised PMP to the Authority within 20 (twenty) working days of any and all proposed change(s) of key personnel reflecting such change(s).

## **17 Employment of Private Security Companies**

17.1 The Contractor's attention is drawn to the Official Secrets Act 1911 to 1989. The Contractor shall take all reasonable steps necessary to ensure that all persons employed on any work in connection with the Contract have notice:

17.2 that the said Acts and Regulations apply to them and will continue so to apply after the execution of the Contract,

17.3 of the following provisions of this Condition.

17.4 Any information obtained in the course of the execution of the Contract by the Contractor, its servants or agents, or any person so employed, as to any matter whatsoever which would, or might be directly or indirectly useful to an enemy, must be treated as secret and shall not at any time be communicated except to such persons and to such extent as may be necessary for the execution of the Contract.

## **18 Security Aspects**

18.1 For the purpose of DEFCON 660 (Official-Sensitive Security Requirements) the classification of the Contract is defined in the Department's letter reference dated 01 December 2016 and attached at Annex J to this Contract. Changes in these classifications will be notified by the Authority's Project Manager as per Box 2 of DEFFORM 111, to whom enquiries about the Security Aspects Letter should be addressed

## **19 Continuous Improvement**

19.1 Throughout the duration of the Contract the Contractor shall continuously look to improve the equipment and performance of the Contract. The Contractor shall therefore propose improvements throughout the duration of the Contract as part of the Quarterly Progress Report. Such improvements may constitute utilising innovative solutions, to include but not limited to use of COTS equipment, by taking advantage of new technology, or by improving sustainability, etc. The Authority is under no obligation to pursue such proposals. If the Authority considers a proposal offers Value for Money, the task shall be contract

[REDACTED]

through the Non-Core Tasking procedure.

## **20 Non-Core Tasking**

- 20.1 The Authority reserves the right under Line Item 5 of the Schedule of Requirements to instruct the Contractor to undertake tasks that are additional to the requirements specified within the Statement of Work (Annex A). Non-Core tasking may include, but is not limited to; investigations, studies, modifications, upgrades, technical support etc. The tasking procedure detailed below will be employed by the Authority to initiate such tasks.
- 20.2 Each task will be initiated and defined by the use of a Task Authorisation Form (TAF) as at Annex F to the Contract. No work shall be undertaken on the proposed task until the order has been authorised by the Authority.
- 20.3 Tasks may be proposed by the Authority or the Contractor. Tasks shall be identified by the TAF sequential serial number allocated by the Authority. The Contractor shall use this reference number, where known, in all communications with the Authority.
- 20.4 The Authority and the Contractor shall define and agree a specific package of work to be undertaken against each task prior to commencement of work.
- 20.5 The Contractor shall, upon agreement with the Authority's Project Manager submit Part 1 and Part 2 of the TAF with a Firm Price, utilising the rates identified as stated under Annex B to this Contract, and propose a timescale/completion date which shall remain achievable throughout the validity of the quotation.
- 20.6 In the event that a stage payment plan is deemed appropriate for a specific Task, the Contractor may propose a stage payment plan as part of its quotation. Stage payments shall be tied to deliverables and the achievement of key milestones, the value of each payment shall be commensurate with the effort undertaken to meet that milestone with a retention of at least 20% of the total value of the task payable upon final completion of all requirements under that task. Should no payment plan be agreed, payment shall be made upon completion of the task. The Authority is under no obligations to agree to a stage payment plan.
- 20.7 When a Firm Price has been agreed the Authority shall authorise the task by placing an order on the CP&F system and by returning a signed Part 3 TAF. The CP&F order details shall quote the TAF reference number and title, target completion date and Firm Price. The Contractor shall acknowledge receipt of the Tasking order by email.
- 20.8 Upon completion of the Task the Contractor shall submit a DEFFORM 129J to the Authority's designated Project Manager stating in the Special Instructions Box that the Services have been delivered in accordance with the Contract and the relevant TAF. The Contractor shall submit a valid invoice for the relevant stage of the Task as agreed in the Stage Payment Plan for that Task via CP&F. Once the Authority's Project Manager is satisfied that the stage of the Task has been completed in accordance with the terms of the Contract then the order shall be 'received' on CP&F which provides authority for DBS Finance to pay the invoice.
- 20.9 The Contractor shall maintain a register of all TAFs that have been raised throughout the duration of the Contract. The register shall contain key information including; task number, description, value, purchase order number and status. The Contractor shall report against this register as part of the quarterly progress reports. A copy of the register shall be made available to the Authority upon request.
- 20.10 Claims for Travel and Subsistence claims in support of Line Item 5 shall be calculated in accordance with the actual limits listed under Annex B:
- 20.11 For Air, Sea and Rail travel, if possible the Contractor shall use any benefits obtained as a direct consequence of the Contractor's performance under the Contract (e.g. Air Miles) to offset the costs of further travel required in performance of tasking(s) placed under this Contract.
- 20.12 For Air, Sea and Rail travel, whenever possible the Contractor shall pre book tickets to take advantage of reduced advanced fares. The Contractor may only book first class tickets where value for money can

[REDACTED]

be demonstrated, for example where first class tickets are cheaper than standard fare tickets.

20.13 The Contractor shall retain copies of receipts to support claims for T&S. Copies of receipts shall be provided upon request. The Contractor shall retain receipts in accordance with DEFCON 609 (Contractor's Records).

## **SECTION 3 – PERFORMANCE AND REMEDIES**

### **21 Performance Levels**

21.1 The Contractor shall carry out all work so as to meet the Performance Levels in accordance with Clause 22 and Annex G (Key Performance Indicators)

21.2 Without limiting any other obligation under this Contract, the Contractor shall implement and use appropriate measurement, monitoring and management tools and procedures to enable it to:

21.2.1 detect all Performance Failures as soon as reasonably practicable and, to the extent reasonably practicable, detect any potential Performance Failures;

21.2.2 minimise the impact of Performance Failures on the continued performance of its obligations under the Contract; and

21.2.3 report all Performance Failures and potential Performance Failures to the Authority as soon as soon as they are identified.

### **22 Key Performance Indicators**

22.1 Payments for the Core requirement defined under Line Item 1 to the Schedule of Requirements to this Contract shall be made in accordance with the payment plan at Annex B to this Contract. Payment for a period shall be made in arrears of the Service provided and the amounts paid shall be tied to performance against the Contract KPIs (as defined at Annex G) and in accordance with the Payment Mechanism set out below.

#### **Payment Mechanism**

22.2 Performance against the Contract KPIs shall be measured and monitored as part of the Quarterly Progress Reports defined under the Statement of Requirements. Payment for Line Item 1 shall be subject to deferrals if the Contractor fails to achieve the performance requirements of the Contract unless the Contractor has claimed relief in accordance with Clause 23. A deferral is an amount of money which is deducted from the Core payment and withheld until the relevant KPI is returned to Green assessment in accordance with Annex G of this Contract. The deferrals under this Clause constitute a remedy for performance that is measured as below the required standard as set out in Annex G of this Contract.

22.3 The Contractor may claim relief, in accordance with the procedure detailed at Clause 23.4 below, from any deferrals to the Service charge if a relief event occurs in accordance with the provisions of Clause 23 of this Contract and is agreed by the Authority.

22.4 Where performance against a KPI is assessed as being at the AMBER level in a reporting period, then the Authority shall apply a withhold to the Core payment for that period of 2.5% for each KPI that is assessed at AMBER.

22.5 Where performance against a KPI is assessed as being at the RED level in a reporting period, then the Authority shall apply a withhold to the Core payment for that period of 5% for each KPI that is assessed at RED.

22.6 Where performance against a KPI shows a GREEN level of performance and the previous payment period's performance against KPI was AMBER or RED then the Contractor may claim payment of the withhold made by the Authority in the previous payment period.

22.7 Where a KPI shows an AMBER or RED level of performance and the previous quarter's KPI performance was AMBER or RED then the amount withheld by the Authority in the previous quarter will cease to be available for payment and the value of the payment withheld in the previous quarter shall be removed from the total Contract Price.

22.8 The maximum withhold in any reporting period shall be 25% of the total value of the payment due in that period.

22.9 The tables below illustrate the differing scenarios that can occur over a 12 month period as detailed under this schedule. This table is for illustrative purposes only.

| Indicator for latest reported quarter | Effect on Performance Payment for latest reported quarter                                                                         | Indicator for previous quarter | Effect of this quarter's performance on previous quarters withheld performance payment.                                         |
|---------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------|--------------------------------|---------------------------------------------------------------------------------------------------------------------------------|
| <b>GREEN</b>                          | Full payment of Performance payment element for the KPI                                                                           | <b>G</b>                       | Performance payment was paid in full last quarter                                                                               |
|                                       |                                                                                                                                   | <b>A</b>                       | Deferral for Amber performance held last quarter is now released and claimed by Contractor                                      |
|                                       |                                                                                                                                   | <b>R</b>                       | Deferral for Red performance held last quarter is now released and claimed by Contractor                                        |
| <b>AMBER</b>                          | MoD retains deferral for "Amber" performance (set out in Contract Payment Plan) pending assessment of next quarter's performance. | <b>G</b>                       | Performance payment was paid in full last quarter                                                                               |
|                                       |                                                                                                                                   | <b>A</b>                       | Deferral for Amber performance held last quarter is now deducted from Contract Price and permanently retained by the Authority. |
|                                       |                                                                                                                                   | <b>R</b>                       | Deferral for Red performance held last quarter is now deducted from Contract Price and permanently retained by the Authority.   |
| <b>RED</b>                            | MoD retains deferral for "Red" performance (set out in Contract Payment Plan) pending assessment of next quarter's performance.   | <b>G</b>                       | Performance payment was paid in full last quarter                                                                               |
|                                       |                                                                                                                                   | <b>A</b>                       | Deferral for Amber performance held last quarter is now deducted from Contract Price and permanently retained by the Authority. |
|                                       |                                                                                                                                   | <b>R</b>                       | Deferral for Red performance held last quarter is now deducted from Contract Price and permanently retained by the Authority.   |

**PERFORMANCE MEASUREMENT AND MONITORING**

**EXAMPLE ONLY**

| Quarter | KPI 1 | KPI 2 | KPI 3 | KPI 4 | KPI 5 | Quarter for which KPIs apply | KPI Payment | Retain by MOD | Deducted from Contract Price |
|---------|-------|-------|-------|-------|-------|------------------------------|-------------|---------------|------------------------------|
| 1       | GREEN | GREEN | GREEN | GREEN | GREEN |                              |             |               |                              |
| 2       | AMBER | GREEN | GREEN | GREEN | GREEN | 1                            | 25%         | 0%            | 0%                           |
| 3       | AMBER | GREEN | GREEN | GREEN | GREEN | 2                            | 22.5%       | 2.5%          | 0%                           |
| 4       | GREEN | GREEN | GREEN | GREEN | GREEN | 3                            | 22.5%       | 2.5%          | 2.5%                         |
| 5       | GREEN | RED   | GREEN | RED   | GREEN | 4                            | 27.5%       | 0%            | 0%                           |
| 6       | AMBER | GREEN | AMBER | GREEN | GREEN | 5                            | 15%         | 10%           | 0%                           |
| 7       | GREEN | GREEN | RED   | GREEN | GREEN | 6                            | 30%         | 5%            | 0%                           |
| 8       |       |       |       |       |       | 7                            | 22.5%       | 5%            | 2.5%                         |

**KPIs – Failure of Performance**

22.10 The Contractor’s performance shall be judged unsatisfactory where:

22.10.1 performance indication against any one KPI is assessed as being RED for a period of 3 consecutive quarters; or

22.10.2 performance indication against any one KPI is assessed as being RED on 3 or more occasions in a rolling 12 month period; or

22.10.3 performance indication against over 50 percent (fifty) of the KPIs in any one quarter is assessed as being RED or AMBER.

22.11 When the Contractor’s performance is deemed to be unsatisfactory in accordance with the above principles then the Authority may, on giving written notice to the Contractor, terminate this Contract with immediate effect unless the Contractor shall have claimed relief under the provisions of Clause 23 below.

**23 Relief**

23.1 Where performance against a KPI is assessed as AMBER or RED, in accordance with Clause 22 and it is agreed by the Authority that the circumstances giving rise to the failure in performance are not within the reasonable control of the Contractor, then deductions against the quarterly payment shall not be made by the Authority for that KPI.

23.2 Examples of events against which the Contractor may claim relief are limited to:

23.2.1 By reason of an act or omission of the Authority, its agents or employees, including delay in the supply of GFX, the Contractor has been prevented from performing the service.

23.2.2 Where the Authority has pre-approved a course of action with the Contractor that knowingly leads directly to a KPI being recorded as AMBER or RED.

23.3 For avoidance of doubt, the Contractor may not claim relief where an article is identified as obsolete. In accordance with the Statement of Work, the Contractor shall undertake proactive Obsolescence Management and therefore Obsolescence Issues shall be mitigated prior to articles being ordered by the Authority.

23.4 To obtain relief from any rights of the Authority under this Contract, the Contractor shall:

23.4.1 as soon as practicable , and in any event within 10 (ten) working days after becoming aware that the event has caused, or is likely to cause, delay and/or adversely affect the ability of the Contractor to perform his obligations under this Contract, give the Authority:

23.4.1.1 a notice of the claim for relief from his obligations under the Contract, including full details of the nature of the event, the date of the occurrence and its likely duration;

23.4.1.2 full details for the relief claimed demonstrate to the reasonable satisfaction of the Authority that:

23.4.1.2.1 the Contractor and its subcontractors could not have reasonably avoided such occurrence or consequences of such occurrence, by steps which may have been reasonably been expected to have taken;

23.4.1.2.2 the event directly caused the delay to the support of the equipment covered under this Contract and/or service commencement date or the need for relief from other obligations;

23.4.1.2.3 the time lost and/or details of why the relief claimed could not have been reasonably been expected to be mitigated or recovered by the Contractor acting on good industry practice; and

23.4.1.2.4 the Contractor is using reasonable endeavours to perform his obligations under the Contract

## 24 Termination for Contractor Default

### Right to terminate

24.1 If a Contractor Default has occurred, the Authority shall be entitled to terminate the whole or, subject to Clause 24.8 (Partial Termination) any part of this Contract in accordance with the provisions of Clause 24.2 and subject to the provisions of Clauses 24.3 to 24.6 (Rectification) (inclusive).

24.2 If a Contractor Default has occurred and the Authority wishes to terminate this Contract pursuant to Clause 24.1, it must serve a notice (the "**Termination Notice**") on the Contractor stating:

24.2.1 that the Authority is terminating this Contract or part thereof for Contractor Default;

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

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

24.2.4 that this Contract or part thereof shall (subject to Clauses 24.3 to 24.6 (Rectification) (inclusive)) terminate on the day (the "**Contractor Default Termination Date**") falling 20 (twenty) Working Days after the date the Contractor receives the Termination Notice.

### Rectification

24.3 Where a Termination Notice cites a Contractor Default of the type and nature falling under limb (a) of the definition of "Contractor Default", the Contractor shall, in consultation with the Authority, have the opportunity to set out within 10 (ten) Working Days how it intends to remedy such Contractor Default.

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

24.5 Where the Authority agrees with such proposed remedy, and the remedy is not implemented as agreed, the Contractor Default Termination Date shall be the day falling 20 (twenty) Working Days after the date

[REDACTED]

by which the remedy was agreed to be implemented.

- 24.6 If by the day falling 20 (twenty) Working Days after the date the Contractor receives the Termination Notice (or such later date as the Authority, acting reasonably, may agree) the Authority reasonably considers that such proposed remedy will not restore the provision of the Services or any portion thereof in accordance with the terms of this Contract, and/or that such proposed remedy will not rectify the Contractor Default, the Authority may terminate the whole or the relevant part of this Contract forthwith (and the Contractor Default Termination Date shall be the day falling 20 (twenty) Working Days after the date the Contractor receives the Termination Notice (or such later date as the Authority, acting reasonably)) has agreed in accordance with this Clause 24.6.

#### **Termination Date for Contractor Default**

- 24.7 Following the issue of a Termination Notice pursuant to Clause 24.2 and where the Authority is terminating the whole of this Contract, this Contract shall (subject to Clauses 24.3 to 24.6) terminate on the Contractor Default Termination Date.

#### **Partial Termination**

- 24.8 Where the Authority is terminating part of this Contract, the Parties shall, owe each other no further obligations in respect of such part of this Contract as is specified in the Termination Notice from the Contractor Default Termination Date.
- 24.9 For the avoidance of doubt, where Clause 24.8 applies, the Parties shall continue to fulfil their respective obligations in respect of those parts of this Contract that are not identified in the Termination Notice as being terminated.

#### **Financial Consequences of Termination for Contractor Default**

- 24.10 Where the Authority has determined this Contract in whole or in part under Clause 24 and without prejudice to the aforesaid the Authority may appoint an alternative contractor to perform, or itself perform all or any of the Services as respects which this Contract is so determined.
- 24.11 Where Clause 24.10 applies, the Authority shall be entitled to recover from the Contractor the amount by which the aggregate of the cost of performing the Services in this way and of any value of any undelivered Contractor Deliverables exceeds the amount which would have been payable to the Contractor in respect of all the Services or Contractor Deliverables so replaced if they had been delivered or performed in accordance with the Contract.
- 24.12 Where this Contract is terminated pursuant to this Clause 24, the provisions of Clauses 24.13 to 24.15 shall apply, except where such termination arises as a result of the circumstances referred to in paragraph (c) of the definition of Contractor Default, in which case the Contractor shall not be entitled to any further payment from the Authority.
- 24.13 Where Clause 24.12 applies, the Contractor shall not be entitled to payment of any amount by way of compensation or otherwise in respect of such termination, or in respect of any part of the Contractor Deliverables which has not been performed, or which had been performed prior to such termination which is contrary to any direction in writing by the Authority's Representative or to any specific provision of this Contract.
- 24.14 Subject to the provisions of Clause 24.13, where Clause 24.12 applies, the Contractor shall be entitled to be paid (subject to any other provision of this Contract affecting the level of such payment) for the Services and the Contract Deliverables provided to the Authority up to the date of termination as set out in Clause 38 (Payment) and in accordance with Annex G (Key Performance Indicators).
- 24.15 During the relevant exit period for Termination, the Parties shall comply with their respective obligations pursuant to Clause 44 (Exit Strategy).

### **25 Break**

- 25.1 The Authority shall, in addition to its power under any other of the Conditions of this Contract, have the

[REDACTED]

power to determine this Contract at any time by giving to the Contractor at least 3 (three) months' written notice and upon the date of expiration of such notice (the "Termination Date"), this Contract shall be determined without prejudice to the rights of the Parties accrued to the date of determination but subject to the operation of the following provisions of this Clause 25.

- 25.2 In the event of such notice being given, the Authority shall, at any time before the expiration of the notice, be entitled to exercise and shall, as soon as may be reasonably practicable within that period, exercise such of the following powers as it considers expedient:
- 25.2.1 to direct the Contractor, where performance of any Service has not been commenced, to refrain from commencing performance of that Service;
  - 25.2.2 to direct the Contractor to complete in accordance with this Contract all or any of the Services;
  - 25.2.3 to direct that the Contractor shall, as soon as may be reasonably practicable after the receipt of such notice;
    - (a) take such steps as will ensure that the performance rate of the Services and parts thereof is reduced as rapidly as possible;
    - (b) as far as possible, consistent with Clause 25.2.3(a), concentrate work on the completion of parts of the Services already in a partly completed state;
    - (c) determine on the best possible terms any subcontracts observing in this connection any direction given under Clauses 25.2.2, 25.2.3(a) and 25.2.3(b) as far as may be possible.
- 25.3 In the event of such notice being given:
- 25.3.1 the Authority shall pay the Contractor fair and reasonable prices for each Service performed or partially performed in accordance with this Contract;
  - 25.3.2 the Authority shall indemnify the Contractor against any commitments, liabilities or expenditure which are reasonable and properly chargeable by the Contractor in connection with this Contract to the extent to which the said commitments, liabilities or expenditure would otherwise represent an unavoidable loss by the Contractor by reason of the determination of this Contract. Such payments shall not include any allowance for profit.
- 25.4 Provided that in the event of the Contractor not having observed any direction given to him under Clause 25.2, the Authority shall not under this Clause 25 pay any sums in excess of those which the Authority would have paid had the Contractor observed that direction.
- 25.5 If in any particular case hardship to the Contractor should arise from the operation of this Condition it shall be open to the Contractor to refer the circumstances to the Authority who, on being satisfied that such hardship exists shall make such allowance, if any, as in its opinion is reasonable and the decision of the Authority on any matter or thing arising out of this condition shall be final and conclusive.
- 25.6 The Authority shall not in any case be liable to pay under the provisions of this Clause 25 any sum which, when taken together with any sums paid or due or becoming due to the Contractor under this Contract, shall exceed the total price of the Services which may otherwise have become payable to the Contractor.
- 25.7 The Contractor shall in any subcontract or order, the value of which is £50,000 (fifty thousand pounds) or over made or placed by it with any one subcontractor or supplier in connection with or for the purpose of this Contract, take power to determine such subcontract or order under this Clause 25 upon the terms of Clauses 25.1 to 25.3 (inclusive) save only that:
- 25.7.1 the name of the Contractor shall be substituted for the Authority and the name of the subcontractor or supplier shall be substituted for the Contractor throughout, except in Clause 25.3.1 where it last occurs; and
  - 25.7.2 the period of the notice of determination shall not exceed two (2) months; and
  - 25.7.3 the Contractor shall not exercise the power taken in those subcontracts until the Authority has exercised its power under Clause 25.1; each of those subcontracts shall restrict the

[REDACTED]

Contractor's right to exercise that power in the manner described in this Clause 25.7.3 by including in the power "Provided that this power is not exercised unless the main contract has been determined by the Secretary of State pursuant to the provisions of Clause 25 of that Contract".

## **26 Authority Step-In**

### **Interpretation**

26.1 In this Clause 26, references to the Authority taking action shall be deemed to include references to the Authority procuring the taking of action by others on behalf of the Authority.

### **Grounds for step in**

26.2 If the Authority reasonably believes that it needs to take action in connection with the Services:

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

26.2.2 to discharge a statutory duty; and/or

26.2.3 on the occurrence of an urgent operational requirement,

then the Authority shall be entitled to take action in accordance with this Clause 26 (*Authority Step-In*).

### **Procedure for Authority Step-In**

26.3 If Clause 26.2 applies and the Authority wishes to take action, the Authority's Representative shall notify (the "**Step-In Notice**") the Contractor's Representative of the following:

26.3.1 the action it wishes to take;

26.3.2 the reason for such action;

26.3.3 the date it wishes to commence such action;

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

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

26.4 Following service of the Step-In Notice, the Authority shall take such action as notified under Clause 26.3 (the "**Required Action**") and the Contractor shall give all reasonable assistance to the Authority while it is taking the Required Action.

### **Effects of Step-In without Contractor Breach**

26.5 If the Contractor is not in breach of its obligations under this Contract and the Authority exercises its right to take action in connection with the Services pursuant to Clause 26.2:

26.5.1 then for so long as and to the extent that the Required Action is taken, and this prevents the Contractor from providing all or any part of the Services, the Contractor shall be relieved from its obligations to provide such part of the Services; and

26.5.2 in respect of the period in which the Authority is taking the Required Action and provided that the Contractor provides the Authority with reasonable assistance (such assistance to be at the expense of the Authority to the extent incremental costs are incurred), the amount due from the Authority to the Contractor shall equal the amount the Contractor would receive if it were satisfying all its obligations and providing the Services affected by the Required Action in full over that period.

## Effects of Step-In following Contractor Breach

- 26.6 If the Contractor is in breach of its obligations under this Contract and in consequence the Authority exercises its right to take action in connection with the Services pursuant to this Clause 26:
- 26.6.1 then for so long as and to the extent that the Required Action is taken, and this prevents the Contractor from providing the Services, the Contractor shall be relieved from its obligations to provide such part of the Services; and
- 26.6.2 in respect of the period in which the Authority is taking the Required Action, the amount due from the Authority to the Contractor shall equal the amount the Contractor would receive if it were satisfying all its obligations and providing the Services affected by the Required Action in full over that period, less an amount equal to all the Authority's reasonable costs in taking the Required Action.

## Authority Step-Out

- 26.7 The Authority's Representative shall provide the Contractor's Representative with reasonable notice of the Authority's intention to cease performance of the Required Action ("**Step-Out**") and the date on which it intends to do so.
- 26.8 On receipt of the notice referred to in Clause 26.7, the Parties shall consult with each other as to the method by which the Authority shall Step-Out and a step out plan (a "**Step-Out Plan**") which shall include the actual date that the Authority shall step out and the Contractor shall resume performance of the Services.
- 26.9 On the date on which the obligations contained in the Step-Out Plan have been achieved:
- 26.9.1 the Authority will be released from all of its obligations and liabilities in relation to the Required Action and the Step-Out Plan other than its obligations to pay the Contractor as required in this Clause 26; and
- 26.9.2 the Contractor shall resume all or any part of the Services which were the subject of the Required Action.

## SECTION 4 – SPECIFICATIONS AND PLANS

### 27 Plans

- 27.1 The Contractor shall produce the following Plans in accordance with clauses and standards set out at Annex A (Statement of Work) and Annex L (Contract Deliverables);
- (a) Project Management Plan (PMP)
  - (b) Quality Management Plan in accordance with DEFCON 602A (Deliverable Quality Plan)
  - (c) Obsolescence Management Plan (OMP)
  - (d) Risk Management Plan (Inclusive of Risk Register)
  - (e) Configuration Control Management Plan in accordance with DEFCON 606
  - (f) Safety Case and Environmental Case in accordance with UEW SEMS
  - (g) Business Continuity Plan

### 28 Concessions

- 28.1 Failure to satisfy the specified technical requirements will result in rejection of the Articles by the Authority. Exceptionally, if the Contractor believes that the granting of a concession is of benefit to the Authority, applications should be completed and presented to the Authority's Representative in accordance with the requirements of DEF STAN 05-61 (Part 1).
- 28.2 If the Contractor proposes to deliver, or embody, a non-conforming product, no such delivery or embodiment is to take place until such time as the Authority's Representative has received and agreed

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a Concession in accordance with the requirements of DEF STAN 05-61 (Part 1).

- 28.3 Any concession applications raised under the Contract shall be routed through the Authority's Commercial Officer.
- 28.4 The Authority is under no obligation to approve a concession and will not accept liability for any work done in anticipation of the approval of a concession.

## **29 Quality Records**

- 29.1 Unless otherwise directed in the Contract, the Contractor shall retain Quality Control/Inspection Records or such of those records as may be agreed by the Authority, for a period of 7 (seven) years from completion of all work under the Contract and shall make them accessible to the Authority on request. At the end of the retention period the Contractor shall seek advice from the Authority regarding the disposal/continued retention of the Quality Control/Inspection Records, and the Contractor shall not dispose of such records without the written authority of the Authority. Exceptionally, when requested by the Contractor, earlier disposal may be authorised in writing by the Authority.

## **SECTION 5 – DELIVERY AND ACCEPTANCE**

### **30 Authorisation and Performance of Work**

- 30.1 Authorisation to Proceed (ATP) with the Provision of ISS Core Activities under SOR Item 1, in accordance with the Statement of Work (Annex A) to the Contract, shall be concurrent with Contract placement.
- 30.2 A CP&F Purchase Order raised by the Authority shall be the ATP with the Provision of Spares under SOR Item 2, in accordance with the Statement of Work (Annex A) to the Contract.
- 30.3 A CP&F Purchase Order raised by the Authority shall be the ATP with the Provision of Repairs under SOR Item 3, in accordance with the Statement of Work (Annex A) to the Contract.
- 30.4 If a requirement under SOR Item 2 & 3 is reduced or cancelled the Contractor shall notify the Authorised Demander if the reduction or cancellation cannot be accepted. If the amendment / cancellation cannot be accepted Clause 43 shall apply (Dispute Resolution)
- 30.5 A CP&F Purchase Order raised by the Authority shall be the ATP with the Refurbishment under SOR Item 4, in accordance with the Statement of Work (Annex A) to the Contract.
- 30.6 A certified and approved TAF, signed by the APM, Authority's Finance Officer (AFO) and Authority's Contract Officer (ACO), shall be the ATP with the Provision of Supplementary Tasks under SoR Item 5, in accordance with the SOW at Annex A to the Contract.

### **31 Spares and Repairs**

- 31.1 In respect of SoR Item 2 (Spares):
- 31.1.1 A CP&F Purchase Order shall be issued to the Contractor by the Authorised Demander;
- 31.1.2 The Contractor shall acknowledge receipt of the CP&F Purchase Order raised under the Contract within 3 (three) Working Days. If the Contractor is unable to accept the CP&F Purchase Order, either wholly or in part, he shall notify the APM giving reasons for non-acceptance and, where appropriate, a recommendation for amendment (If an amendment cannot be agreed Clause 43 shall apply (Dispute Resolution)); and
- 31.1.3 A revised CP&F Purchase Order shall be used to notify reductions, cancellations and changes, and these shall constitute amendments to the Contract provided they comply with Clause 31.1.1

31.2 In respect of SOR Item 3 (repairs):

- 31.2.1 Equipment shall be forwarded to the Contractor's works in accordance with arrangements to be made with the Contractor by the APM;
- 31.2.2 A CP&F Purchase Order shall be issued to the Contractor by the Authorised Demander;
- 31.2.3 The Contractor shall acknowledge receipt of the CP&F Purchase Order raised under the Contract within 3 (three) Working Days. If the Contractor is unable to accept the CP&F Purchase Order, either wholly or in part, he shall notify the APM giving reasons for non-acceptance and, where appropriate, a recommendation for amendment (If an amendment cannot be agreed Clause 43 shall apply (Dispute Resolution)); and
- 31.2.4 A revised CP&F Purchase Order shall be used to notify reductions, cancellations, and changes, and these shall constitute amendments to the Contract provided they comply with Clause 31.2.1.
- 31.2.5 Projected repair times will be measured from the point at which MSI has confirmed receipt of the article(s) for repair.

### **Additional Spares and Repairs**

31.3 Throughout the term of the Contract the Authority may identify additional spares and repairs which are not covered by the Firm prices under Annexes C & D of the Contract. In these circumstances the Authority shall instruct the Contractor to provide a Firm price quotation and scope of work. If acceptable, the additional spare(s)/repair(s) shall be added to the Contract through a formal contract amendment. Thereafter, the authorisation procedure shall continue in accordance with the spares and repairs processes detailed under Clause 31

### **Non-Arrival of Equipment at the Contractor's Premises**

31.4 The Contractor is required to ensure that:

- 31.4.1 non-receipt of Article(s) sent for repair;
- 31.4.2 incomplete Article(s) received;
- 31.4.3 wrong Article(s) received; and/or
- 31.4.4 wrong quantity of Article(s) received

are recognised and reported to the Authority's Project Manager (AOM), as detailed in Box 2 of DEFFORM 111 at Appendix 1 to the Contract within 5 (five) Working Days in the form of a discrepancy report. Discrepancy reports shall be raised no later than 20 (twenty) Working Days from receipt of consignment.

31.5 The AOM shall record the discrepancy report and forward it to the issuing base for investigation. The Service required by Authority which has the Non-Arrival of Equipment issue shall not commence until resolved by the Authority.

## **32 Refurbishment**

32.1 In respect of SOR Item 4 (Refurbishment):

- 32.1.1 Equipment shall be forwarded to the Contractor's works in accordance with arrangements to be made with the Contractor by the APM;
- 32.1.2 A CP&F Purchase Order specifying a required delivery date shall be issued to the Contractor by the Authorised Demander;
- 32.1.3 The Contractor shall acknowledge receipt of the CP&F Purchase Order raised under the

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Contract within 3 (three) Working Days. If the Contractor is unable to accept the CP&F Purchase Order, either wholly or in part, he shall notify the APM giving reasons for non-acceptance and, where appropriate, a recommendation for amendment (If an amendment cannot be agreed Clause 43 (Dispute Resolution) shall apply); and

- 32.1.4 A revised CP&F Purchase Order shall be used to notify reductions, cancellations and changes, and these shall constitute amendments to the Contract provided they comply with Clause 32.1.1.
- 32.1.5 Contractor obligations are in accordance with section 4 of the Statement of Work (Annex A)
- 32.1.6 In the event that the Contractor is not contracted to provide support to II/IT and it has been found that the equipment has been altered or damaged, the Contractor shall not be found liable. Any defects/discrepancies shall be dealt with in accordance with the provisions of Annex A SOW 4.13

### **33 Delivery of Articles**

- 33.1 The consignee delivery address shall be detailed on the CP&F Order including Self-to-Self Delivery. All Articles shall be despatched in appropriate packaging, clearly marked with the correct NATO Stock Number (NSN).
- 33.2 All Articles shall be handled, stored, packaged and labelled in accordance with DEFCON 129, DEFCON 129J, DEFCON 644 and Def Stan 81-041 (Commercial Packaging for Military Use) where appropriate, unless otherwise specified by the Authority.
- 33.3 All Articles under Line Item 1 and identified at Annex L (Deliverable Documentation) shall be delivered to the APM.
- 33.4 All articles under Line Items 2 & 3 shall be delivered duty paid to- [REDACTED] unless otherwise directed by the Authorised Demander.
- 33.5 All articles under Line Item 4 shall be Delivered Duty Paid unless otherwise directed by the Authorised Demander.
- 33.6 In the event of the Contractor becoming aware that a delivery date is unachievable, the Contractor shall notify the APM with immediate effect. For the avoidance of doubt, the notification by the Contractor of an unachievable delivery date shall not obviate it from its contractual obligations for on-time delivery.
- 33.7 In the event that the Contractor fails to deliver any of the requirements as detailed in the Statement Of Work at Annex A to the Contract, including any and all Order(s) and Non Core Task(s), then without prejudice to any other Terms and Conditions of the Contract, the Authority shall be entitled to deem this to be a Contractor Default.

### **34 Acceptance**

- 34.1 Unless otherwise agreed, delivery of an Article shall occur upon acceptance of that Article in accordance with the provisions of DEFCON 525 (Acceptance) and DEFCON 649 (Vesting).
- 34.2 Where any Article(s) to be supplied under the Contract is to be delivered otherwise than being handed over by the Contractor to the Authority or to the Representative of the Authority, as where an Article is to be delivered by the Contractor to its own premises or to those of a Sub-Contractor ('self-to-self delivery'), the risk in such Article(s) shall (notwithstanding the provision of DEFCON 612 (Loss of or Damage to the Articles)) be vested in the Contractor until such time as the Article is handed over to the Authority.
- 34.3 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 remain with the Contractor unless a notice of objection to the

Authority's rejection has been issued to the Authority in accordance with Clause 7 of that Condition.

- 34.4 The Contractor shall undertake testing in accordance with data packs to demonstrate that all repaired items delivered under SOR Item 3 meet the quality requirements of the Contract and are fit for purpose.

### **35 Magnetic Procedures and Discipline**

- 35.1 As part of the acceptance process all Articles ordered under the Contract that require magnetic testing, shall be magnetically tested in accordance with DEFSTAN 02-617 and Statement of Work (SOW) items 1.6.5-1.6.6.

### **36 Options**

- 36.1 The Authority reserves the right to exercise the irrevocable Contract Option as specified at SOR item 6 and Section 6 of the Statement of Work (Annex A).
- 36.2 To enable the contractor to correctly price the ACBS Option Item 6 of the SOR the Authority shall provide feedback on the proposal (AC/BS Concept and Analysis Report for TMCC – dated 2 August 2017) prior to 30/04/2018.

## **SECTION 6 – PRICE AND PAYMENT**

### **37 Pricing**

- 37.1 The prices payable under the Contract shall be as detailed on the Schedule of Requirements.
- 37.2 The price of all Articles to be delivered and Services performed under the Contract shall be Firm (i.e. not subject to variation) and fully inclusive of all royalties, licences, labour, material, packaging, delivery and expenses required to carry out all work under the Contract in accordance with the terms and conditions but exclusive of VAT.
- 37.3 The Price for the Option at Line Item 6 – *Development of ACBS and CCBS System* shall be agreed prior to the Authority exercising the Option. The Contractor shall provide a full price breakdown in accordance with the Single Source Pricing Regulations 2014 (SSPR). The Contractor shall produce an Interim Contract Report as defined under SSPR by 30/06/2018.
- 37.4 All prices are Pounds Sterling (£).

### **38 Payment**

- 38.1 The value of each payment made against Line Item 1 shall be in accordance with the Key Performance Indicators at Clause 22 and Annex G. Line Item 1 shall be paid quarterly in arrears in accordance with Annex B (Core Payments and Rates) to the Contract.
- 38.2 For items delivered under Line Items 2, 3, 4 & 6 of the Schedule of Requirements payment shall be made on completion of the order and accordance with DEFCON 522J.
- 38.3 The Authority shall make payment of each task completed under Line Item 5 of the Schedule of Requirements in accordance with Clause 20 (Non-Core Tasking) and DEFCON 522J.
- 38.4 Payment will be authorised by the Authority's Project Manager and made through the Defence Electronic

## **SECTION 7 – INTELLECTUAL PROPERTY RIGHTS**

### **39 Governing Provisions (IPR)**

39.1 The Intellectual Property Rights (IPR) provisions applicable to the Contract are at Clause 3 of the General Conditions.

#### **Technical Publication Condition**

39.2 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 any item of 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.

39.3 All Intellectual Property, including licenses, created under the provisions of this contract shall be recorded in the IPR Register and in sufficient detail to enable the Authority (or third party providing future support to the equipment), after termination of the Contract, to renew any such licence if required for the continued provision of the service (if acceptable).

### **40 Retention of Records**

40.1 Notwithstanding the provisions of DEFCON 21 (Retention of Records), during the currency of the Contract and thereafter for not less than 2 (two) years, the Contractor shall maintain a copy of all information supplied under the Contract. The copy of the information shall be maintained in media and formats agreed to by the Authority and the Contractor and shall be deemed to be the property of the Authority, and the Authority may take possession of it notwithstanding any administration, receivership, winding-up or liquidation of the Contractor or any transfer of their assets to any third party, and copies of such information so maintained shall be supplied as required from time to time to the Authority. The Contractor shall be entitled to the reasonable costs of compilation and delivery for information supplied beyond any Contract deliverables.

## **SECTION 8 – LOANS**

### **41 Government Furnished Assets**

41.1 The Authority shall be responsible for providing the Government Furnished Assets (GFA) to be supplied under the Contract as detailed at Annex H (Government Furnished Assets).

41.2 The GFA shall at all times remain the property of the Authority; it shall be used in the execution of the Contract and for no other purpose, without the prior approval in writing of the Authority.

41.3 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).

41.4 At expiry or earlier termination of the Contract, in accordance with DEFCON 611 (Issued Property), the Contractor shall provide to the Authority a list of all GFA holdings under the Contract. The Authority's Commercial Officer shall issue directions for the transfer, disposal or return to stores of all listed items detailed at Annex H (Government Furnished Assets).

41.5 The Contractor shall immediately notify the Authority's Commercial Officer in writing of any additional request(s) for GFA required to perform the obligations of the Contract that he does not already hold or that has not been made available to him. In respect of Government Furnished Information (GFI), the Contractor shall submit any such requests in the form of a DEFFORM 316. The Authority is under no obligation to agree to any such request(s). In respect of any requests for Government Furnished

[REDACTED]

Information (GFI) the Contractor shall complete a DEFFORM 316

- 41.6 In addition to the requirements of DEFCON 611 (Issued Property) and DEFCON 612 (Loss of or Damage to Articles), the following shall apply:
- 41.6.1 the right of the Authority to reject Article(s) under the Contract shall in no way be prejudiced by or through the fact that the Article(s) in question may have been made from or include material supplied by the Authority;
  - 41.6.2 Material which is normally available from commercial sources will not be issued from Government stocks unless the circumstances are exceptional. There will be a charge for the use of such Government Articles;
  - 41.6.3 Material which is only available from Government sources, and which is necessary for the performance of this Contract, should be requested from the Authority's Project Manager; and
  - 41.6.4 Any Authority owned documentation issued to the Contractor will also be covered by Contract Loan terms.
- 41.7 Failure by the Authority to supply the GFA at Annex H (Government Furnished Assets) shall not be used by the Contractor as a reason for not fulfilling its obligations under the Contract. However, if it is accepted by both Parties that in the event that the Authority has failed to supply any of the GFA requirements by the date(s) specified at Annex H (Government Furnished Supplies) for the provision thereof, the Authority shall only be responsible for those additional costs that have been properly incurred by the Contractor and for any appropriate extension of time for completion of the Contract, provided that:
- 41.8 the Authority is satisfied such additional costs and/or effect on execution of the Contract are directly and solely the result of the failure of the Authority to make available the GFA on the date(s) stipulated and for the duration specified;
- 41.8.1 the Contractor has taken all reasonable steps to minimise the effect of such failure on execution of the Contract; and
  - 41.8.2 the Contractor has taken all reasonable steps to minimise the inclusion of additional costs.
- 41.9 The Authority shall not be responsible for any additional costs and/or effect on the execution of the Contract for late provision of GFA, if it is demonstrated that such late provision is solely due to the Contractor's late delivery of items or information against the Contract which are subsequently issued by the Authority to the Contractor as GFA or which are needed by the Authority to supply the GFA. Any late delivery of such items or information may require the re-negotiation of the date(s) specified at Annex H (Government Furnished Assets) and both Parties will assess the consequences to the Contract and shall negotiate a solution in good faith, which shall not preclude schedule amendment and price adjustment as necessary.
- 41.10 Should the Contractor fail to notify the Authority, in a timely manner, of any changes to the GFA dates(s) required and the duration specified and the Authority furnishes the required GFA by the original due date, then the following shall apply:
- 41.10.1 the Authority shall not be liable for any additional costs incurred by the Contractor, if the GFA cannot be provided to the Contractor within its revised timescales; and
  - 41.10.2 the Contractor shall be responsible for any consequential cost incurred by the Authority resulting from any failure by the Contractor to notify the Authority in a timely manner,

provided that:

- 41.10.2.1 the Authority has taken reasonable steps to minimise the inclusion of consequential costs;
- 41.10.2.2 the Authority has taken reasonable steps to provide the GFA within the revised timescales; and
- 41.10.2.3 the Contractor is satisfied that such additional liabilities and/or the effect on execution of the Contract are directly and solely the result of the failure of the Contractor to advise the Authority in a timely manner of the revised GFA timescales.

41.11 Where any Government Furnished Information (GFI) supplied by the Authority contains latent errors, omissions or inaccuracies which could not reasonably have been identified by the Contractor at the time such GFI had been supplied by the Authority, both Parties will assess the consequences under the Contract and shall negotiate a solution in good faith.

## **SECTION 9 – CONTRACT ADMINISTRATION**

### **42 Contract Reference**

42.1 To avoid delays the Contract Number shall be quoted on all correspondence, claims etc. relating to this Contract.

### **43 Dispute Resolution**

43.1 The Parties shall attempt in good faith to resolve any dispute or claim arising out of or relating to this Contract through negotiations between the respective representatives of the Parties having authority to settle the matter, which attempts may include the use of the escalation procedure set out in the following conditions, before referring the matter, if necessary, to Arbitration through the procedures specified in DEFCON 530 (Dispute Resolution (English Law)).

43.2 Should a dispute arise, either Party may inform the other Party in writing of the nature of dispute and the matter in dispute. The Parties agree to try and resolve any dispute arising under this Contract by discussion during the next available Quarterly Progress Meeting. In the event that a meeting is not due within ten (10) working days of written notification of a dispute arising, a meeting shall be convened for the purpose of attempting to resolve the dispute. Any such meeting shall be held at a UK location decided by the Authority. Any cost to the Contractor relating to such ad hoc meetings shall be subsumed by the Contractor.

43.3 In the event that the dispute remains unresolved both Parties shall within ten (10) business days of the meeting, summarise their positions in writing and refer the matter to the Authority's Commercial Officer and the Authority's Project Manager for consideration. A meeting between the Authority's Commercial Officer, the Authority's Project Manager and their counterparts in the Contractor's organisation may be held for further clarification on the dispute. Any such subsequent meeting(s) shall be held at a UK location decided by the Authority and any cost to the Contractor relating to attendance at such meeting(s) shall be subsumed by the Contractor.

43.4 If after referral to the Authority's Commercial Officer and the Authority's Project Manager and any subsequent meeting with the Contractor as detailed at Clause 43.2, the dispute remains unresolved after a further 5 (five) working days, the dispute shall be referred through the functional management chain to the Authority's Operating Centre Commercial Head and the Contractor's counterpart for consideration and possible agreement.

43.5 If the foregoing actions do not resolve the dispute, then the dispute shall, unless the Parties agree to the use of any Alternative Dispute Resolution process in accordance with Condition 1 of DEFCON 530 (Dispute Resolution (English Law)), be referred to arbitration in accordance with Conditions 2 to 6

[REDACTED]  
inclusive of DEFCON 530 (Dispute Resolution (English Law))

## **44 Exit Strategy**

44.1 In the event of expiry or earlier termination of this Contract for any reason, the Contractor shall ensure:

44.1.1 an efficient and effective transition of the work to the Authority or a replacement Contractor, whilst maintaining required Contract outputs; or

44.1.2 an efficient and effective rundown of the work and closure of the Contract whilst maintaining any required Contract outputs during the Exit Period

44.2 This Condition sets out the principles of the exit arrangements that are intended to facilitate such transition or rundown.

### **Exit Plan**

44.3 the Parties shall agree an Exit Plan, this document shall include the Contractor's proposed methodology:

44.3.1 for an efficient and effective transition of the work to the Authority or an alternative contractor; and

44.3.2 for the arrangements for the transfer, disposal or retention arrangements for all GFA held in connection with the Contract. All such GFA shall be reconciled with requirements set out in DEFCON 694 (Accounting of Government Property) and associated timescales for action. These arrangements shall include the identification and transfer of any remaining unused spares back to the Authority at no cost to the Authority; and

44.3.3 for the arrangement for the transfer of all Information required solely for the purpose of performing that part of the Contract remaining unperformed. Subject to the pre-existing rights of the Authority, where this includes proprietary IP belonging to the Contractor or a third party to the Contract, the Authority and the Contractor shall agree (as necessary) a royalty free licensing agreement between the Parties. Where the Authority intends to place a contract with an alternative contractor to complete the work remaining to be performed, then the Authority shall disclose the Information provided in confidence and place the recipient contractor under an obligation which restricts copying, disclosure and use of the information to the said purpose;

44.3.4 Details of the major sub-contracts related to the execution of the Contract and any exclusive suppliers or necessary licences and arrangements for the provision of any necessary Information related to the supply chain;

44.3.5 Arrangements for the provision of any training to be provided to the Authority or any Replacement Contractor to enable the efficient transition and operation of the work under Contract and any Management Information.

44.3.6 Details of those assets which would be required to support the operation of an alternative solution to meet the requirement as set out at Statement of Work (Annex A) or continuation of the extant solution, together with the timing and arrangements for their transfer. Such assets shall be categorised as Deliverable Assets or Non Deliverable Assets as below:

44.3.6.1 Deliverable Assets shall, unless otherwise agreed, be subject to the provisions of the Contract.

44.3.6.2 Non Deliverable Assets are those items identified as being used by the Contractor solely for the purpose of administering and managing this Contract and not used for any other contract, services activity or work performed by the Contractor. Such items would be provided to the Authority by the Contractor at book value and sold as seen (i.e. no warranty or implied fitness for purpose).

44.4 The Parties shall review and if appropriate update the Exit Plan on an annual basis.

[REDACTED]

44.5 The Parties shall appoint appropriately qualified and empowered representatives to manage the Exit Plan.

#### **Exit Notice**

44.6 No later than 6 (six) months prior to expiry of this Contract or in the case of termination, as soon as reasonably practicable after service of notice of termination pursuant to Clause 25 (Break) the Authority shall serve a written notice (“the Exit Notice”) on the Contractor.

44.7 The Exit Notice shall specify:

44.7.1 the basis on which the Authority wishes to exit the Contract; and

44.7.2 the Exit Period, being the date from which any Exit Services are required to the date of contract expiry or termination; and

44.7.3 the Exit Services required from the Contractor during the Exit Period.

#### **Exit Services**

44.8 During the Exit Period the Contractor shall:

44.8.1 continue to perform the work (unless otherwise directed by the Authority) and comply with its obligations under the Contract ;and

44.8.2 provide any Exit Services as set out in the Exit Notice; and

44.8.3 use reasonable endeavours to ensure continuity of its management team with responsibility for execution of the Contract.

44.9 During the Exit Period, the Authority will be deemed to have overall responsibility for managing implementation of the Exit Plan and the Exit Services.

### **45 Continuity during Transition**

45.1 In the event that the Authority transfers performance of the work to the Authority or a Replacement Contractor, the Contractor may be required to support an implementation handover period after the date of contract expiry or termination to enable the smooth transition of business to the Authority or Replacement Contractor. The extent of support required of the Contractor will be agreed in the Exit Plan and, where applicable, the Replacement Contractor and will be subject to negotiation of a fair and reasonable price and payment provision.

45.2 Unless otherwise agreed with the Authority, the Contractor shall use reasonable endeavours to ensure that they keep the same team performing the work throughout the transition period.

### **46 Transfer of Undertaking (Protection of Employment) [TUPE]**

46.1 Should TUPE apply at the commencement, expiry or termination (in whole or in part) of this Contract, the provisions at Annex I shall apply.

### **47 Authorisation of Contract Amendments**

47.1 Notwithstanding the provisions of DEFCON 503 (Amendments to Contract), DEFCON (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, but without limitation, any servant or agent of the Authority, shall in any way affect the rights of the Authority, or modify, affect, reduce or extinguish the obligations and liabilities of the Contractor under the Contract, or be deemed to be a waiver of the rights of the Authority, unless stated in writing and signed by the Authority’s Commercial Officer. Only the Authority’s Commercial Officer is authorised to vary the terms and conditions of the Contract and such variation shall only have effect when agreed in writing.

47.2 Any formal notice required to be given by one Party to the other Party shall be in writing in the English

[REDACTED]

language. Such notices shall be sent to or delivered to the persons holding the nominated position, addresses, and/or facsimile numbers notified to the other Party to the Contract from time to time for this purpose and until so notified, and for the purposes of Condition 4 of DEFCON 526 (Notices), all notices hereunder shall be sent or delivered to the persons set out in Appendix 1 below.

- 47.3 It is agreed between the Parties that, without prejudice to any other provisions of the Contract, for the purposes of Condition 2 of DEFCON 526 (Notices) the electronic submission of notices is permitted.

## **SECTION 10 – SUBCONTRACTING**

### **48 Sub-Contracts**

- 48.1 The Contractor shall be responsible for the management and supervision of its sub-contractors. The sub-contracting of any obligation under the Contract shall not relieve or excuse the Contractor from its obligations to the Authority in respect of the due performance of such obligations. The Contractor shall be responsible to the Authority for the acts or omissions of any sub-contractor in relation to such sub-contractor's performance of the Contract and, to this end, any act or omission of that sub-contractor in relation to such sub-contractor's performance of the Contract shall be regarded as an act or omission of the Contractor.
- 48.2 The Contractor shall ensure that the terms and conditions of the Contract are reflected in all sub-contracts, at whatever level, to the extent necessary to enable the Contractor to fully meet its obligations to the Authority under the Contract. The Contractor shall not place any subcontract or order involving the design or development of equipment required under this contract without the prior notification of the Authority.

## **SECTION 11 – GENERAL CONTRACT PROVISIONS**

### **49 Public Relations and Publicity**

- 49.1 Unless the Authority has given its prior written consent or as otherwise required to comply with Legislation, the Contractor (and its Sub-Contractors) shall not by itself:
- 49.1.1 communicate with representatives of the press, television, radio or other communications media on any matter concerning the Contract;
  - 49.1.2 use the Authority's name or brand in any promotion or marketing or announcement of orders.

### **50 Confidentiality**

- 50.1 The provisions of DEFCON 531 (Disclosure of Information) and DEFCON 660 (Reportable Official and Official-Sensitive Security Requirements) shall apply to the Contract.

### **51 Legislative Risk**

- 51.1 The Contractor shall comply with all relevant Legislation from time to time in force and shall pay all fees, charges and costs required to be paid under any Legislation pertaining to the provision of any of the Contractor Deliverables. The Contractor's costs incurred in and in connection with such compliance shall be included in the Contract Price.
- 51.2 If the Contractor believes that a Discriminatory Legislative Change has occurred or is likely to occur it shall notify the Authority in writing as soon as practicable and such notice shall stipulate:

- [REDACTED]
- 51.2.1 the nature of such Discriminatory Legislative Change;
  - 51.2.2 the date such Discriminatory Legislative Change shall come into force;
  - 51.2.3 any necessary change to the Contractor Deliverables;
  - 51.2.4 any fees, charges or costs payable and any adjustment to the Contract Price required as a result of such Discriminatory Legislative Change.

51.3 In the event of a Discriminatory Legislative Change this Contract shall be amended in accordance with the Change procedure at Clause 47 in respect of any changes arising as a result of the Discriminatory Legislative Change provided that the Contractor:

51.3.1 provides evidence that the Contractor has used reasonable endeavours (including (where practicable) the use of competitive quotes) to minimise any increase in costs and maximise any reduction in costs; and

51.3.2 demonstrates that any expenditure that has been avoided, which was anticipated to be incurred, has been taken into account in the amount which in its opinion has resulted or is required under Clause 51.2.4.

51.4 In the event of any dispute as to whether a Discriminatory Legislative Change has occurred, the Parties shall submit to the Dispute Resolution Procedure set out in Clause 43.

51.5 Neither Party shall be entitled to reject any Change proposed by the other Party which is required in order to give effect to any change in Legislation, provided that the Contractor shall not be entitled to any adjustment to the Contract Price arising out of or in connection with such Change, save to the extent that such change in Legislation is a Discriminatory Legislative Change to which the provisions of Clauses 51.2 to 51.4 apply.

## **52 Contractor's Status**

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

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

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

## **53 Place of Manufacture**

53.1 The Contractor shall not change the place of manufacture (including that of any major Sub-Contracts) of the Articles manufactured in execution of the Contract without providing prior notification (not to be unreasonably delayed) to the Authority.

## **54 Sustainable Procurement**

54.1 The Contractor shall take all reasonable steps to procure the observance of the economic, social and environmental legislation related to the subject matter or the execution of the Contract by any servants, employees or agents of the Contractor and any Sub-Contractors engaged in the performance of the Contract.

54.2 The Contractor shall take all reasonable steps to ensure that all activities under this Contract shall comply with certified environmental management standards based on ISO 14001:2004 or equivalent.

54.3 The Contractor is encouraged to bring to the attention of the Authority any measures which might

[REDACTED]

promote sustainability from a social, economic and environmental point of view.

## **55 Cyber**

- 55.1 A Cyber Risk Assessment for this contract has been undertaken and the level of Cyber Risk has been determined as: Very Low.
- 55.2 The Unique Serial Number of the Cyber Risk Assessment for this contract is RAR-9RP78BRR.
- 55.3 The Contractor must comply with DEFCON 658 and DEF STAN 05-138 (Cyber Security for Defence Suppliers).
- 55.4 The Contractor should complete a Cyber Supplier Assurance Questionnaire using the tool at the following link:

<https://suppliercyberprotection.service.xgov.uk/>

This must be completed by the Contractor no less than once in each year of the contract commencing on the first anniversary of completion of the CSM Supplier Assurance Questionnaire

- 55.5 The Contractor must submit a Cyber Implementation Plan (CIP) as part of their tender documentation. The CIP will detail:
- 55.5.1 The steps the Contractor will take to meet the necessary controls
- 55.5.2 Associated Timescales
- 55.5.3 Details of any equivalent standards
- 55.6 If the Contractor is unable to comply then reasons must be provided. The Project Manager will review the CIP in conjunction with Defence Cyber Protection Partnership (DCPP) Cyber Implementation Team, and state agreement.

## **56 Entire Agreement**

- 56.1 This Contract constitutes the entire agreement between the Parties relating to the subject matter of this Contract. This Contract supersedes all prior negotiations, representations, and undertakings, whether written or oral, except that this Clause 56.1 shall not exclude liability in respect of any fraudulent misrepresentation.