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1.0	18/03/2025	Commercial	Initial draft.



Ministry  
of Defence



# **DRAFT CONTRACT TERMS AND CONDITIONS**

**[Subject to Contract]**



Dated **[insert date]** 20**[xx]**

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**THE SECRETARY OF STATE FOR DEFENCE (1)**

**AND**

**[TO BE UPDATED BY THE AUTHORITY PRIOR TO CONTRACT AWARD] (2)**

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**C17CSAE Delivery Team**

**Contract Reference No: C17CSAE/707083450**

**for**

**Command Support Air Transport (CSAT)**

**Phase 2**

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**Schedules of Contract**

Schedule 1	-	Definitions and Abbreviations
Schedule 2	-	Statement of Requirement
Schedule 3	-	Not Used
Schedule 4	-	Pricing and Payment
Schedule 5	-	Performance Management
Schedule 6	-	Task Authorisation Form
Schedule 7	-	Contract Deliverable Documents
Schedule 8	-	Regulatory Article Compliance Matrix
Schedule 9	-	Authority Obligations GFA
Schedule 10	-	Assumptions
Schedule 11	-	Acceptance Plan
Schedule 12	-	Standards and Regulations
Schedule 13	-	Transfer of Undertakings (Protection of Employment) (TUPE)
Schedule 14	-	Design Rights and Patents (Subcontractors) Agreement (DEFFORM 177)
Schedule 15	-	Notification of IPR Restrictions (DEFFORM 711)
Schedule 16	-	Contractor's Sensitive Information (DEFFORM 539A)
Schedule 17	-	Supply Chain Resilience and Risk Awareness Mapping Template (DEFFORM 565)
Schedule 18	-	Contractor's Transition and Delivery Plan
Schedule 19	-	Contractor's Exit Management Plan
Schedule 20	-	Required Insurances
Schedule 21	-	Not Used
Schedule 22	-	Security Aspects Letter (SAL)
Schedule 23	-	Contractor's Cyber Implementation Plan [if required]
Schedule 24	-	Parent Company Bank Guarantee [if required]
Schedule 25	-	Contractor On Deployed Operations (CONDO)

**THIS CONTRACT** is dated **[insert date]** 202**[●]**

## **PARTIES**

- (1) **THE SECRETARY OF STATE FOR DEFENCE** at Ministry of Defence, Whitehall, London SW1A 2HB (the "**Authority**"); and
- (2) **[●]**, a company registered in **[●]** with company registration number **[●]**, whose registered office is at **[●]** (the "**Contractor**").

## **BACKGROUND**

- (A) The Authority advertised this Contract (as defined in Schedule 1 (Definitions and Abbreviations)) in the Find a Tender Service (Notice reference: 2023/S 000-036566), and on the Defence Sourcing Portal (reference **707083450**), on 12 December 2023, inviting prospective suppliers to submit proposals in accordance with the published Statement of Requirement.
- (B) On or around **[insert date]**, the Authority issued an Invitation to Negotiate seeking tenders from providers of such services in connection with this Contract.
- (C) Following a competitive procurement under the Defence and Security Public Contracts Regulations 2011, and in response to the ITN, the Contractor submitted a tender to the Authority on **[insert date]** through which it represented to the Authority that it is capable of delivering the Services in accordance with the Authority's requirements as set out in the ITN and, in particular, the Contractor made representations to the Authority in its tender response in relation to its competence, professionalism and ability to provide the Services in an efficient and cost effective manner.
- (D) On the basis of the Contractor's tender response, the Authority now wishes to engage the Contractor to provide the Command Support Air Transport Phase 2 Provision of In-Service Support and Embodiment of a Suite of Military equipment, in accordance with, and subject to, the agreed terms and conditions set out in this Contract.

**SCHEDULE OF REQUIREMENTS**  
**CONTRACT No. 707083450**

The Contractor shall provide the following Goods and Services in accordance with the Terms and Conditions of this Contract and the Contractor's Transition and Delivery Plan.

Line-Item No.	Description	Total Price exc. VAT and iaw Schedule 4
1.	Set up of Operations at RAF Northolt: I. Site physical set up RAF Northolt. II. Operational Equipment. III. TUPE cost (if applicable)	£ iaw Pricing Table 1
2.	Provision of Aircraft In-Service Support from 1 <sup>st</sup> October 26 to 31 <sup>st</sup> March 27 in accordance with Statement of Requirement (Schedule 2).	£ iaw Pricing Table 2
3.	Provision of Aircraft In-Service Support from 1 <sup>st</sup> April 27 to Expiry in accordance with Statement of Requirement (Schedule 2).	£ iaw Pricing Table 2
4.	Design of Core Military Modifications Spiral 1 (DAS) in accordance with Statement of Requirement (Schedule 2).  I. Aircraft 1 II. Aircraft 2  Embodiment of Core Military Modifications Spiral 1 (DAS) in accordance with Statement of Requirement (Schedule 2).  III. Aircraft 1 IV. Aircraft 2	£ iaw Pricing Table 3
5.	Provision of Core Military Modifications Spiral 1: Military Global Positioning System (Mil GPS) in accordance with Statement of Requirement (Schedule 2). I. Aircraft 1 a. Procurement of Equipment. b. Design & Embodiment. c. Provision of In-Service Support to Equipment d. Provision of Training. II. Aircraft 2 a. Procurement of Equipment. b. Design & Embodiment. c. Provision of In-Service Support to Equipment d. Provision of Training.	£ iaw Pricing Table 3 and 4
6.	OPTION 1: Extend the Contract Period and scope in accordance with Statement of Requirement (Schedule 2).	Items 6 and 7
7.	OPTION 2: Extend the Contract Period and scope in accordance with Statement of Requirement (Schedule 2).	



Line-Item No.	Description	Total Price exc. VAT and iaw Schedule 4
8.	OPTION 3: Flight Deck Armour (FDA) in accordance with Statement of Requirement (Schedule 2). I. Procurement of Equipment. II. Embodiment Design. III. Embodiment of Equipment. IV. Provision of In-Service Support to Equipment (including spares).	Items 8, 9 and 10  £ iaw Pricing Table 5
9.	OPTION 4: IFF MODE 5 in accordance with Statement of Requirement (Schedule 2). I. Procurement of Equipment. II. Embodiment Design. III. Embodiment of Equipment. IV. Provision of In-Service Support to Equipment (including spares). V. Provision of Training.	
10.	OPTION 5: Secure UHF Communications in accordance with Statement of Requirement (Schedule 2).  I. Procurement of Equipment. II. Embodiment Design. III. Embodiment of Equipment IV. Provision of In-Service Support to Equipment (Including spares). V. Provision of Training.	
11.	Provision of Training in accordance with Statement of Requirement (Schedule 2).  I. Training Aids. II. Initial Training. III. Currency Training. IV. Train the Trainer Course. V. Aircraft General Familiarisation. VI. Simulator. VII. Awareness Training.	£ iaw Pricing Table 6
12.	Emergent Work (Ad hoc Requirements) Rates	£ iaw Pricing Table 7

**AGREED TERMS****PRELIMINARIES.****1. DEFENCE CONDITIONS (DEFCONS)**

The Defence Conditions (DEFCONS) listed in the table below shall apply to the Contract:

DEFCON	Edition	Description
5J	18/11/16	Unique Identifiers
14	11/22	Inventions and Designs Crown Rights and Ownership of Patents and Registered Designs
23	06/21	Special Jigs, Tooling and Test Equipment
68	10/22	Supply of Data for Hazardous Substances, Mixtures and Articles
76	11/22	Contractor's Personnel at Government Establishments
82	06/21	Special Procedure for Initial Spares
91	06/21	Intellectual Property Rights in Software
113	02/17	Diversions Orders
117	09/24	Supply Of Information for NATO Codification and Defence Inventory Introduction
126	06/21	International Collaboration
129	02/22	Packaging (For Articles other than Munitions)
129J	18/11/16	The Use of the Electronic Business Delivery Form
501	10/21	Definitions and Interpretations
503	06/22	Formal Amendments to the Contract
507	07/21	Delivery
513	07/24	Value Added Tax (VAT) and Other Taxes
514	08/15	Material Breach
515	06/21	Bankruptcy and Insolvency

DEFCON	Edition	Description
516	04/12	Equality
518	02/17	Transfer
520	10/23	Corrupt Gifts and Payments Of Commission
522	02/25	Payment and Recovery of Sums Due
524	12/21	Rejection
524A	12/22	Counterfeit Materiel
525	10/98	Acceptance
526	08/02	Notices
527	09/97	Waiver
528	10/24	Import and Export Licences
529	09/97	Law (English)
530	12/14	Dispute Resolution (English Law)
531	09/21	Disclosure of Information
532A	05/22	Protection of Personal Data (Where Personal Data is not Being Processed on Behalf of the Authority)
534	02/25	Subcontracting and Prompt Payment
537	12/21	Rights of Third Parties
538	06/02	Severability

DEFCON	Edition	Description
539	02/25	Transparency
540	05/23	Conflicts of Interest
550	02/14	Child labour and Employment Law
565	12/24	Supply Chain Resilience and Risk Awareness
566	04/24	Change of Control of Contractor
595	03/19	Automatic Test Equipment Data Requirements
600	11/22	Guided Weapon Trials and Indemnity
601	04/14	Redundant Materiel
602C	04/23	Quality Assurance (With Deliverable Quality Plan and QA Information)
603	10/04	Aircraft Integration and Clearance Procedure
604	06/14	Progress Reports
605	06/14	Financial Reports
606	07/21	Change and Configuration Control Procedure
607	05/08	Radio Transmissions
608	07/21	Access and Facilities to be Provided by the Contractor
609	07/21	Contractor's Records
611	12/22	Issued Property

DEFCON	Edition	Description
612	06/21	Loss of or Damage to the Articles
620	06/22	Contract Change Control Procedure
621B	10/04	Transport (If the Contractor is Responsible for Transport)
624	08/22	Use Of Asbestos
625	06/21	Co-Operation on Expiry of Contract
627	04/24	Quality Assurance - Requirement for a Certificate of Conformity
632	11/21	Third Party Intellectual Property - Rights and Restrictions
637	05/17	Defect Investigation and Liability
638	11/22	Flights Liability and Indemnity
642	07/21	Progress Meetings
644	10/24	Marking of Articles
645	12/21	Export Potential
646	10/98	Law and Jurisdiction (Foreign Suppliers)
647	03/24	Financial Management Information
649	12/21	Vesting
656B	08/16	Termination for Convenience – (Contracts £5M <u>and over</u> )
658	10/22	Cyber Note: The Cyber Risk Profile for this Contract is 'Low' (Risk Assessment Reference RAR-303384308).
659A	02/24	Security Measures
660	12/15	Official-Sensitive Security Requirements
670	02/17	Tax Compliance
671	10/22	Plastic Packaging Tax

DEFCON	Edition	Description
675	03/21	Advertising Subcontracts (Defence and Security Public Contracts Regulations 2011 Only)
678	09/19	SME Spend Data Collection
684	01/04	Limitation Upon Claims in Respect of Aviation Products
691	03/15	Timber and Wood - Derived Products
694	07/21	Accounting for Property of the Authority
707	10/23	Rights in Technical Data

## 2. DEFINITIONS AND INTERPRETATION

- 2.1. In this Contract, unless otherwise provided or the context otherwise requires, capitalised expressions shall have the meanings set out in Schedule 1 (Definitions and Abbreviations) or the relevant Schedule in which that capitalised expression appears.
- 2.2. In this Contract, unless the context otherwise requires:
- 2.2.1. references to a person include an individual, company, body corporate, corporation, unincorporated association, firm, partnership or other legal entity or Central Government Body;
  - 2.2.2. a reference to any Law includes a reference to that Law as amended, extended, consolidated or re-enacted from time to time;
  - 2.2.3. the words "**including**", "**other**", "**in particular**", "**for example**" and similar words shall not limit the generality of the preceding words and shall be construed as if they were immediately followed by the words "**without limitation**";
  - 2.2.4. references to "**writing**" include typing, printing, lithography, photography, display on a screen, electronic and facsimile transmission and other modes of representing or reproducing words in a visible form, and expressions referring to writing shall be construed accordingly;
  - 2.2.5. unless otherwise provided, references to Sections, Clauses and Schedules are references to the Sections, Clauses and Schedules of these Contract terms and conditions and unless otherwise provided, references to paragraphs, Parts, Annexes and Appendices are references to the paragraphs, Parts, Annexes and Appendices of the Contract Schedules; and
  - 2.2.6. references to this Contract are references to this Contract as amended from time to time.
- 2.3. Where a standard, policy or document is referred to in this Contract by reference to a hyperlink, then if the hyperlink is changed or no longer provides access to the relevant standard, policy or document, the Contractor shall notify the Authority and the Parties shall update this Contract with a reference to the replacement hyperlink.
- 2.4. The Schedules and their Annexes form part of this Contract.
- 2.5. In entering into this Contract, the Authority is acting as part of the Crown.

## 3. PRECEDENCE

- 3.1. Without prejudice to DEFCON 501 (Definitions and Interpretations), in the event of a contradiction between any parts of this Contract, the order of precedence shall be as stated in Clause 3.2.
- 3.2. If there is any inconsistency between the provisions of the main body of this Contract and the Schedules, or between any of the Schedules, the conflict shall be resolved according to the following order of priority:
- 3.2.1. the main body of this Contract (including the Schedule of Requirements set out at the beginning of this Contract), Schedule 1 (Definitions and Abbreviations), DEFCONs, and Schedule 16 (Contractor's Sensitive Information (DEFFORM 539A));
  - 3.2.2. the Schedules;

- 3.2.3. any other associated document pertinent to this Contract.
- 3.3. Should the Contractor or the Authority become aware of any discrepancy, conflict, inconsistency, divergence, or anomaly between or within the documents referred to in Clause 3.2, the Party shall immediately notify the other Party in writing accordingly.
- 3.4. The notice issued pursuant to Clause 3.3 shall set out in precise detail any discrepancy, conflicts, inconsistency, divergence or anomaly between or within the documents referred to in Clause 3.2 and propose any amendments that may be required to such documents to resolve such discrepancy, conflict, inconsistency, divergence or anomaly.
- 3.5. The Parties shall seek to resolve such discrepancy, conflict, inconsistency, divergence or anomaly jointly as soon as reasonably practicable and, upon resolution, the Parties shall confirm in writing, and make an amendment to the Contract if appropriate. Where the Authority and the Contractor fail to do so within ten (10) Business Days of notice (or such other time period as deemed appropriate by the Parties), then the matter will be referred to the Dispute Resolution Procedure in accordance with DEFCON 530 (Dispute Resolution (English Law)) and Clause 33 (Dispute Resolution).

#### **4. WARRANTIES**

4.1. The Contractor represents and warrants that:

- 4.1.1. it is validly incorporated, organised and subsisting in accordance with the Laws of its place of incorporation and has the corporate power to own its assets and to carry on its business as it is now being conducted;
- 4.1.2. it has full capacity and authority to enter into and to perform this Contract;
- 4.1.3. this Contract is executed by its duly authorised representative;
- 4.1.4. it has all necessary consents and regulatory approvals to enter into this Contract;
- 4.1.5. no claim is presently being assessed and no litigation, arbitration or administrative proceedings are presently in progress or, to the best of the knowledge of the Contractor (having made all due enquiry), pending or threatened against it or any of its assets which shall or might have a material adverse effect on the ability of the Contractor to perform its obligations under this Contract;
- 4.1.6. its execution, delivery and performance of its obligations under this Contract will not constitute a breach of any Law or obligation applicable to it, the memorandum and articles of association of the Contractor, any order or decree of any court or arbitrator which is binding on the Contractor or any obligation which is binding upon the Contractor or upon any of its assets or revenues and will not cause or result in a default under any contract by which it is bound;
- 4.1.7. its obligations under this Contract constitute its legal, valid and binding obligations, enforceable in accordance with their respective terms subject to applicable bankruptcy, reorganisation, insolvency, moratorium or similar Laws affecting creditors' rights generally and subject, as to enforceability, to equitable principles of general application (regardless of whether enforcement is sought in a proceeding in equity or law);
- 4.1.8. all written statements and representations in any written submissions made by the Contractor as part of the procurement process, including without limitation its response to the Pre-Qualification Questionnaire (PQQ) and Invitation to Negotiate (ITN), its tender and any other documents submitted, remain true and accurate, except to the extent that such statements and representations have been superseded or varied by this Contract, or to the



extent that the Contractor has otherwise disclosed to the Authority in writing prior to the date of this Contract;

- 4.1.9. it has notified the Authority in writing of any Occasion of Tax Non-Compliance and any litigation in which it is involved that is in connection with any Occasion of Tax Non-Compliance in accordance with DEFCON 670 (Tax Compliance);
  - 4.1.10. it has all necessary rights in and to the Third Party IPR, the Contractor Background IPR and any other materials made available by the Contractor (and/or any Subcontractor) to the Authority which are necessary for the performance of the Contractor's obligations under this Contract and/or the receipt of the Services by the Authority;
  - 4.1.11. it is not subject to any contractual obligation, compliance with which is likely to have a material adverse effect on its ability to perform its obligations under this Contract;
  - 4.1.12. in entering into this Contract, it has not committed any prohibited acts in accordance with DEFCON 520 (Corrupt Gifts and Payments of Commission);
  - 4.1.13. no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, are threatened) for the winding up of the Contractor or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Contractor's assets or revenue;
  - 4.1.14. within the 12 (twelve) months prior to the date of this Contract, no financial distress events have occurred or are subsisting (or any events that would be deemed to be financial distress events under this Contract had this Contract been in force) and there are currently no matters that it is aware of that could cause a financial distress event to occur or subsist; and
  - 4.1.15. all personnel engaged by the Contractor in the provisions of the Services are vetted in accordance with Good Industry Practice and the security requirements in the Statement of Requirement (Schedule 2).
- 4.2. The representations and warranties set out in Clause 4.1 shall be deemed to be repeated by the Contractor on the Effective Date by reference to the facts then existing.
  - 4.3. Each of the representations and warranties set out in Clause 4.1 shall be construed as a separate representation and warranty and shall not be limited or restricted by reference to, or inference from, the terms of any other representation, warranty or any other undertaking in this Contract.
  - 4.4. If at any time the Contractor becomes aware that a representation or warranty given by it under Clause 4.1 has been breached, is untrue or is misleading, it shall immediately notify the Authority of the relevant occurrence in sufficient detail to enable the Authority to make an accurate assessment of the situation.
  - 4.5. For the avoidance of doubt, the fact that any provision within this Contract is expressed as a warranty shall not preclude any right of termination which the Authority may have in respect of breach of that provision by the Contractor.
  - 4.6. Except as expressly stated in this Contract, all warranties and conditions whether express or implied by statute, common law or otherwise are hereby excluded to the extent permitted by Law.
  - 4.7. The Contractor indemnifies the Authority against wilful misconduct of the Contractor, Subcontractor and Contractor Personnel that impacts the Contract.

## SERVICES AND CONTRACTOR DELIVERABLES

### 5. CONTRACT DURATION

- 5.1. This Contract shall come into force on the Effective Date and shall terminate automatically without notice on the Expiry Date unless:
- 5.1.1. extended in accordance with Clause 6 (Contract Extension Options); or
  - 5.1.2. terminated at an earlier date by operation of Law or in accordance with the terms of this Contract.
- 5.2. The Authority may, by giving the Contractor not less than three (3) months' written notice prior to the Expiry Date, extend this Contract by activating a Contract extension option in accordance with Clause 6, provided that:
- 5.2.1. [unless the Authority requires otherwise, the Contractor procures a reciprocal extension to the expiry date of the Parent Company [Bank] Guarantee so that the Bank Guarantee is co-terminus with this Contract.]
  - 5.2.2. the total duration of all such Extension Period(s) does not extend the duration of this Contract beyond midnight on 31 March 2037.
- 5.3. If the Authority serves a written notice in accordance with Clause 5.2 above, the Contractor shall continue to provide the Services and Contractor Deliverables for the period stated in the notice(s) on the terms and conditions of this Contract.
- 5.4. The Parties acknowledge that on the date of this Contract the Contractor has delivered to the Authority an original, duly executed Parent Company [Bank] Guarantee in the form set out in Schedule 24 (*Parent Company [Bank] Guarantee*) together with a certified copy of the board minutes under which the Parent Company [Bank] Guarantee is executed and a legal opinion (confirming that the Parent Company [Bank] Guarantee is validly executed and enforceable).

### 6. CONTRACT EXTENSION OPTIONS

- 6.1. The Contractor hereby grants to the Authority the following irrevocable Options to extend the Contract Period in accordance with the terms and conditions set out in this Contract, it being agreed that the Authority has no obligation to exercise such options:
- 6.1.1. Option 1: Amend the Contract Expiry Date to 31 March 2034, at the prices detailed within the Pricing Tables within Schedule 4 (Pricing and Payment), provided that the Authority exercises such an option by no later than 30 September 2030.
  - 6.1.2. Option 2: Amend the Contract Expiry Date to 31 March 2037, at the prices detailed within the Pricing Tables within Schedule 4 (Pricing and Payment), provided that the Authority exercises such an option by no later than 30 September 2033.
- 6.2. The Authority shall have the right to exercise the options by the specified dates or within such further period as corresponds to the aggregate of any period(s):
- 6.2.1. of delay in the delivery programme whether constituting any breach of the Contract or resulting from any Force Majeure Event; or
  - 6.2.2. for the duration of which the Authority is prevented from exercising any such option by reason of any other breach of the Contract by the Contractor.
- 6.3. The Authority shall not be obliged to exercise the options.

- 6.4. The provisions of Schedule 5 (Performance Management) shall apply in relation to the exercise of Option 1 and/or Option 2.
- 6.5. If the Authority elects to exercise one or more of the options, the Authority shall issue a notice to the Contractor by the Commercial Officer at Box 1 of the DEFFORM 111 (such notice confirming that the Authority is considering exercising the relevant identified option (an "Option Notice").
- 6.6. The terms (including the scope of the Contractor Deliverables) which the Parties intend shall govern each option are those set out within this Contract and the Parties agree that where an option is exercised by the Authority in accordance with this Clause 6, the following provisions in Clauses 6.6 to 6.9 (inclusive) shall apply.
- 6.7. Within ten (10) Business Days (or such other period as the Parties may agree) from the date of receipt of the Option Notice from the Authority in accordance with Clause 6.5, the Contractor shall notify the Authority's Representative (together with all supporting detail as is deemed necessary by the Authority) of:
- 6.7.1. the details of any proposed Subcontractors (as applicable) to carry out any elements of the works, Articles and/or Services relating to the Contractor Deliverables which would be the subject of the relevant option; and
  - 6.7.2. any other information which the Contractor considers is relevant relating to the relevant option; and
  - 6.7.3. any other information reasonably requested by the Authority, where the Authority considers it relevant relating to the relevant option.
- 6.8. In the event of any Dispute in relation to any option which is the subject of an Option Notice, either Party shall be entitled to refer the matter for resolution in accordance with DEFCON 530 (Dispute Resolution (English Law)).
- 6.9. Following the agreement (including agreement to the terms of any option as set out in this Contract at the Effective Date, without amendment) or determination of the option price in accordance with Schedule 4 (Pricing and Payment), then:
- 6.9.1. the Parties shall proceed as if the agreed (or determined) terms of the relevant option were confirmed by the Authority in accordance with the Change Procedure and the Parties shall enter into any documents required to give effect to the relevant option and commence the implementation of the relevant option as set out in the Change Procedure; and
  - 6.9.2. the rights and obligations of the Parties in respect of the relevant option, shall take effect from the date specified in the documents referred to in Clause 6.5 above, (when such documents have been duly executed by the Parties and consequently the option then becomes an Exercised Option) and shall form rights and obligations under this Contract.
- 6.10. Following the exercise of any of the options pursuant to this Clause 6, any rights and obligations of the Parties existing under this Contract prior to the exercise of such option shall continue to apply.

## **7. CONTRACT OPTIONS**

- 7.1. In consideration of the Authority agreeing to enter into this Contract, the Contractor hereby grants to the Authority the right to exercise the following irrevocable discretionary options, throughout the Contract Period, including any Contract extension periods:

- 7.1.1. Option 3: Procurement, design, embodiment and ISS of Flight Deck Armour (FDA) in accordance with Schedule of Requirements Line-Item No. 8, at the price detailed within the Pricing Tables within Schedule 4 (Pricing and Payment).
- 7.1.2. Option 4: Procurement, design, embodiment and ISS of Identification Friend or Foe Mode 5 (IFF) in accordance with Schedule of Requirements Line-Item No. 9, at the price detailed within the Pricing Tables within Schedule 4 (Pricing and Payment).
- 7.1.3. Option 5: Procurement, design, embodiment and ISS of Secure Ultra High Frequency (UHF) Communications in accordance with Schedule of Requirements Line-Item No. 10, at the price detailed within the Pricing Tables within Schedule 4 (Pricing and Payment).
- 7.2. The above options, should they be exercised by the Authority, are to be delivered in accordance with the Contractor's Transition and Delivery Plan (Schedule 18).
- 7.3. The Authority shall not be obliged to exercise the options.
- 7.4. The provisions of Schedule 5 (Performance Management) shall apply in relation to the exercise of Option 3, Option 4 and/or Option 5.
- 7.5. If the Authority elects to exercise one or more of the options, the Authority shall issue a notice to the Contractor by the Commercial Officer at Box 1 of the DEFFORM 111 (such notice confirming that the Authority is considering exercising the relevant identified option (an "Option Notice").
- 7.6. The terms (including the scope of the Contractor Deliverables) which the Parties intend shall govern each option are those set out within this Contract and the Parties agree that where an option is exercised by the Authority in accordance with this Clause 7, the following provisions in Clauses 7.7 to 7.10 (inclusive) shall apply.
- 7.7. Within ten (10) Business Days (or such other period as the Parties may agree) from the date of receipt of the Option Notice from the Authority in accordance with Clause 7.5, the Contractor shall notify the Authority's Representative (together with all supporting detail as is deemed necessary by the Authority) of:
- 7.7.1. the details of any proposed Subcontractors (as applicable) to carry out any elements of the works, Articles and/or Services relating to the Contractor Deliverables which would be the subject of the relevant option; and
- 7.7.2. any other information which the Contractor considers is relevant relating to the relevant option; and
- 7.7.3. any other information reasonably requested by the Authority, where the Authority considers it relevant relating to the relevant option.
- 7.8. In the event of any Dispute in relation to any option which is the subject of an Option Notice, either Party shall be entitled to refer the matter for resolution in accordance with DEFCON 530 (Dispute Resolution (English Law)).
- 7.9. Following the agreement (including agreement to the terms of any option as set out in this Contract at the Effective Date, without amendment) or determination of the option price in accordance with Schedule 4 (Pricing and Payment), then:
- 7.9.1. the Parties shall proceed as if the agreed (or determined) terms of the relevant option were confirmed by the Authority in accordance with the Change Procedure and the Parties shall enter into any documents required to give effect to the relevant option and commence the implementation of the relevant option as set out in the Change Procedure; and

7.9.2. the rights and obligations of the Parties in respect of the relevant option, shall take effect from the date specified in the documents referred to in Clause 7.5 above, (when such documents have been duly executed by the Parties and consequently the option then becomes an Exercised Option) and shall form rights and obligations under this Contract.

7.10. Following the exercise of any of the options pursuant to this Clause 7, any rights and obligations of the Parties existing under this Contract prior to the exercise of such option shall continue to apply.

## **8. CONTRACTOR DELIVERABLE SERVICES**

### **Commencement and Provision of Transition Services**

8.1. The Parties shall comply with the provisions of Schedule 18 (Contractor's Transition and Delivery Plan) in relation to the Authority approving the final transition plan.

8.2. The Contractor shall provide the transition services stated in the final transition plan during the Transition Period.

### **Commencement and Provision of the Operational Services**

8.3. The Contractor shall provide the Operational Services from the date on which the Authority confirms the Contractor has achieved the Contractor Operations Set Up Milestone in accordance with Schedule 11 (Acceptance Plan).

8.4. The Contractor shall perform the Operational Services in accordance with Schedule 2 (Statement of Requirement) and Schedule 18 (Contractor's Transition and Delivery Plan) and subject to the Assumptions listed in Schedule 10 (Assumptions).

8.5. The Contractor shall continue to provide the Operational Services until the Contract Expiry Date or earlier termination of this Contract.

### **Standard of Services**

8.6. The Contractor shall:

8.6.1. ensure that the Services comply in all respects with the following:

8.6.1.1. Schedule 2 (Statement of Requirement); and

8.6.1.2. the Contractor Deliverable Documentation as detailed within Schedule 7 (Contract Deliverable Documents); and

8.6.1.3. Schedule 18 (Contractor's Transition and Delivery Plan),

and are supplied in accordance with the provisions of this Contract;

8.6.2. perform its obligations under this Contract in accordance with the following (without limitation):

8.6.2.1. all applicable Law, including Health and Safety Legislation;

8.6.2.2. Good Industry Practice;

8.6.2.3. the Standards; and

8.6.2.4. all necessary consents.

- 8.7. If the Contractor becomes aware of any inconsistency between the requirements of Clause 8.6, the Contractor shall immediately notify the Authority Representative in writing of such inconsistency and the Authority Representative shall, as soon as practicable, notify the Contractor with which requirement the Contractor shall comply.

### **Contractor Undertakings**

8.8. The Contractor shall:

- 8.8.1. allocate sufficient resources at all times in compliance with Clause 34 (Contractor Personnel) to supply the Contractor Deliverables and to satisfy the requirements of Schedule 2 (Statement of Requirement).
- 8.8.2. perform the Services in a manner that is not injurious to health and does not cause a nuisance or damage to property;
- 8.8.3. ensure that it acts at all times in such a manner as not to detract from or damage the image and reputation of the Authority;
- 8.8.4. save to the extent that obtaining and maintaining the same are Authority Dependencies, obtain, and maintain throughout the Contract Period, all necessary consents;
- 8.8.5. ensure that the Contractor's assets used in the performance of the Services will be free of all encumbrances (except as agreed in writing by the Authority);
- 8.8.6. to the extent it is legally able to do so, hold on trust for the sole benefit of the Authority, all warranties and indemnities provided by third parties or any Subcontractor in respect of any Contractor Deliverables and/or the Services and, where any such warranties are held on trust, at its cost enforce such warranties in accordance with any reasonable directions that the Authority may notify from time to time to the Contractor;
- 8.8.7. unless it is unable to do so, assign to the Authority on the Authority's written request and at the cost of the Contractor any such warranties and/or indemnities as are referred to in Clause 8.8.6;
- 8.8.8. minimise any disruption to the Services and/or the Authority's operations when carrying out its obligations under this Contract;
- 8.8.9. ensure that any Contractor Deliverables and training provided by the Contractor to the Authority are comprehensive, accurate and prepared in accordance with Good Industry Practice;
- 8.8.10. provide the Authority with such assistance as the Authority may reasonably require during the Contract Period in respect of the supply of the Services;
- 8.8.11. gather, collate and provide such information and co-operation as the Authority may reasonably request for the purposes of ascertaining the Contractor's compliance with its obligations under this Contract;
- 8.8.12. ensure that it neither embarrasses the Authority or otherwise brings the Authority into disrepute by engaging in any act or omission in relation to this Contract which is reasonably likely to diminish the trust that the public places in the Authority; and
- 8.8.13. notify the Authority in writing immediately, but in any event within five (5) Business Days, of their occurrence, of any actions, suits or proceedings or regulatory investigations before any court or administrative body or arbitration tribunal pending or, to its knowledge,

threatened against it that might affect its ability to perform its obligations under this Contract.

8.9. Without prejudice to any other rights and remedies of the Authority howsoever arising, the Contractor shall:

8.9.1. remedy any breach of its obligations in Clause 8.8 within five (5) Business Days of becoming aware of the breach or being notified of the breach by the Authority or within such other time period as may be agreed with the Authority (taking into account the nature of the breach that has occurred); and

8.9.2. meet all the costs of, and incidental to, the performance of any such remedial work,

and any failure of the Contractor to comply with its obligations under this Clause 8.8 within the specified or agreed timeframe shall constitute a Default.

8.10. The Contractor shall ensure on a continuing basis that, at all times, its maintenance and operating procedures are sufficient to ensure that the Services are continuously available.

8.11. The Contractor shall continue to perform all of its obligations under this Contract and shall not suspend the supply of the Services, notwithstanding:

8.11.1. the existence of an unresolved Dispute; and/or

8.11.2. any failure by the Authority to pay any Charges.

#### **Notification of non-compliance**

8.12. The Contractor shall immediately notify the Authority in writing if the Contractor becomes aware of any allegation of non-compliance with any Law from time to time by itself or any Subcontractor in relation to this Contract.

8.13. If the Authority informs the Contractor in writing that the Authority reasonably believes that any part of the Services does not meet the requirements of this Contract or differ in any way from those requirements and this is other than as a result of a Default by the Authority, the Contractor shall at its own expense re-schedule and carry out the Services in accordance with the requirements of this Contract within such reasonable time as may be specified by the Authority.

### **9. AIRCRAFT AVAILABILITY**

9.1. Availability shall be defined in accordance with the definition in the Schedule 2 (Statement of Requirement) and Schedule 1 (Definitions and Abbreviations).

9.2. The Contractor shall achieve the Availability stated below from the Operational Service Commencement Date until the Contract Expiry Date:

9.2.1. Monday to Sunday – One (1) Aircraft Task Line available (with twenty-four (24) hours' notice to move) including all bank holidays.

9.2.2. Monday to Friday – In addition to Clause 9.2.1, one (1) Aircraft Task Line available (with twenty-four (24) hours notice to move) excluding all bank holidays.

9.3. In the event that Aircraft are not Available wholly due to:

9.3.1. a Relief Event as detailed at Schedule 5 (Performance Management),

they shall be accounted for under this Clause 9 as Available unless notified otherwise, provided the Contractor has demonstrably made all reasonable endeavours to mitigate the impact.

9.4. For the ATL at Clause 9.2.2 only and in accordance with Schedule 5 (Performance Management), the Contractor shall be alleviated up to twenty (20) percent of the contracted ATLs per calendar month.

9.5. For the period that only one Aircraft is Available due to embodiment and testing of Spiral 1 and/or Spiral 2 military modifications, the Contractor shall maintain the Aircraft Task Line at Clause 9.2.2.

9.6. At all times, the Availability that the Authority can request is limited to the maximum Annual Flying Target (AFT) which is:

9.6.1. for the period commencing 1 October 2026: one thousand four hundred and forty (1440) hours per year.

9.6.2. to request AFT above one thousand four hundred and forty (1,440) hours the Authority must give a minimum of three (3) months' notice with the period of increased AFT lasting for a minimum of twelve (12) months.

## 10. EMERGENT WORK TASKING PROCESS

10.1. Contractual authority for any additional work shall be raised in accordance with this Clause 10. The Authority shall have the right to raise an Emergent Work Request for any other work within the scope of the Contract for agreement with the Contractor.

10.2. All tasks shall be priced on a case-by-case basis using the agreed rates at Schedule 4 (Pricing and Payment). The Authority shall not be liable for any work undertaken by the Contractor without obtaining written authorisation of the Emergent Work Authorisation Form from the Authority's Operations Manager and Commercial Officer.

10.3. Emergent Work authorisation forms (the "**Task Authorisation Form**") shall be raised and placed using the proforma at Schedule 6 (Task Authorisation Form) in accordance with the following procedure:

10.3.1. **Part A** – Task definition (completed by the Authority), including Availability target(s) specific to the Task Authorisation Form for Emergent Work Tasking. The Emergent Work Task Authorisation Form for Emergent Work shall specify whether Availability for an Aircraft shall be to the Availability performance stated in either Clause 9 (Aircraft Availability) or an alternative target specific to the Task Authorisation Form for Emergent Work.

10.3.2. **Part B** – Contractor's quotation (completed by the Contractor and submitted to the Authority by the requested quotation due date).

10.3.3. **Part C** – Task authorisation (completed by the Authority on acceptance of quotation) permitting the Emergent Work to start.

10.3.3.1. In the event that the Task Authorisation Form for Emergent Work is not authorised, Part C will not be completed by the Authority and the Contractor will be advised in writing of the reason for not proceeding.

10.3.4. **Part D** – Task completion (completed by the Contractor and the Authority) permits payment for the Emergent Work to be requested by the Contractor.



- 10.4. The Authority shall have the right to cancel an individual task by applying DEFCON 656B (Termination for Convenience – Contracts £5M and Over).

## **11. CONTRACTOR DELIVERABLES**

- 11.1. The Contractor shall provide and update the Contractor Deliverables in accordance with the requirements of Schedule 7 (Contract Deliverable Documents) for the Authority's approval in accordance with Schedule 11 (Acceptance Plan).
- 11.2. The Authority may reject a Contractor Deliverable which does not comply with the requirements of Schedule 7 (Contract Deliverable Documents). Where the Authority rejects any Contractor Deliverable, the Contractor shall resubmit it until it is approved by the Authority in accordance with Schedule 11 (Acceptance Plan).

## **12. PERFORMANCE**

- 12.1. The Parties shall comply with the provisions of Schedule 5 (Performance Management) in relation to the Contractor's performance of the Services.
- 12.2. The performance of the Contractor shall be monitored throughout the Contract Period through the use of the Key Performance Indicators (KPIs), as set out in Schedule 5 (Performance Management). Each KPI should be read in conjunction with Schedule 2 (Statement of Requirement) to ensure that the performance of the Contractor fully meets the requirements of this Contract.
- 12.3. In accordance with Schedule 5 (Performance Management), and in preparation for the monthly Contract Management Meeting, the Contractor shall provide the relevant performance management information two (2) weeks before the meeting date.
- 12.4. Should any of the following events occur, then the Contractor shall be considered to have failed all KPIs until such issue has been resolved to the satisfaction of the Authority:
- 12.4.1. The Contractor failing to obtain and maintain MAOS accreditation within the Contractor's organisation within fifteen (15) months from the Effective Date;
  - 12.4.2. The Contractor failing to obtain and maintain DAOS accreditation within the Contractor's organisation within fifteen (15) months from the Effective Date;
  - 12.4.3. The Contractor failing to comply with the requirements of the MAA Regulatory Publications (MRP) in accordance with Schedule 8 (Regulatory Article Compliance Matrix);
  - 12.4.4. An occurrence of a Rectification Plan Failure; or
  - 12.4.5. A failure by the Contractor to engage with the Rectification Plan Process.
- 12.5. This shall not limit the Authority's rights to apply any other contractual remedies available.

## **13. AUTHORITY DEPENDENCIES**

- 13.1. The Authority shall provide the Authority Dependencies set out in Schedule 10 (Assumptions).

**14. ASSETS**

- 14.1. The Parties shall comply with the provisions set out in Schedule 9 (Authority Obligations GFA) in relation to Government Furnished Assets (GFA) and, where applicable, other Assets.

**15. PURCHASE OF SPARES AND CONSUMABLES**

- 15.1. The Contractor shall be responsible for the purchase of all spares and Consumables that are required to support delivery of In-Service Support under the MAR from the Operational Service Commencement Date.

**16. ACCEPTANCE CRITERIA**

- 16.1. Without prejudice to Clause 10 (Emergent Work Tasking Process), the Contractor Deliverables shall be accepted in accordance with Schedule 11 (Acceptance Plan).

**17. STANDARDS AND REGULATIONS**

- 17.1. The Contractor shall comply with the applied Defence Standards (DEF STANs) and regulations in accordance with Schedule 12 (Standards and Regulations).

**18. QUALITY ASSURANCE REQUIREMENTS**

- 18.1. The Contractor shall comply with North Atlantic Organisation (NATO) Allied Quality Assurance Publications (AQAPs) and Defence Standards in accordance with Schedule 12 (Standards and Regulations).
- 18.2. The Contractor shall provide a Quality Plan in accordance with NATO AQAP-2105 Edition C Version 1 (Jan 2019).

**Quality Management System Certification**

- 18.3. The Contractor shall maintain an accredited Quality Management System (QMS) certification to ISO 9001:2015, or suitable alternative, with the appropriate scope to deliver the Contractor Deliverables in accordance with DEFCON 602C (Quality Assurance (With Deliverable Quality Plan and QA Information)).
- 18.4. The required QMS certification pursuant to Schedule 7 (Contract Deliverable Documents) shall be issued by a third party NACB for the Contract Period and submitted to the Authority for review and approval in accordance with Schedule 11 (Acceptance Plan).
- 18.5. The Contractor shall inform the Authority of any changes to their QMS certification status.
- 18.6. In the event the Contractor is unable to achieve or maintain QMS certification to the Authority's satisfaction, the Authority reserves the right to terminate the Contract in accordance with Clause 50 (Termination for Contractor Default).

**19. SECOND HAND MATERIAL**

- 19.1. No second hand or previously used material not owned by the Authority shall be supplied in furtherance of this Contract without the authority of the Operations Manager designated in Box 2 of 0 (Addresses and Other Information (DEFFORM 111)).

## 20. MILITARY AVIATION AUTHORITY REGULATORY PUBLICATIONS (MRP)

20.1. The Contractor shall comply with the following MAA Regulatory Publications (MRP) issued by the Military Aviation Authority (the Regulator):

20.1.1. Overarching documents:

20.1.1.1. MAA01: MAA Regulatory Policy;

20.1.1.2. MAA02: MAA Master Glossary.

20.2. The Contractor shall comply with the Regulations set out within Schedule 8 (Regulatory Article Compliance Matrix) by following:

20.2.1. the acceptable means of compliance (AMC) prescribed therein;

20.2.2. where there is more than one AMC, an AMC or alternative AMC (AAMC) agreed by the Contractor with the Regulator; or

20.2.3. other alternative means as may be agreed by the Contractor with the Regulator.

20.3. Complying with the MRP does not reduce or limit any statutory or legal obligation of the Contractor.

20.4. The Contractor shall comply with the latest edition of all Regulatory Articles (RAs) shown in Schedule 8 (Regulatory Article Compliance Matrix) of the Contract. The Contractor shall assess whether any changes made to the RAs will impact upon cost and shall request a Contract amendment evidencing that cost. The Authority shall notify the Contractor of any alterations to RAs that require a change in Contractor requirement or compliance statements within Schedule 8 (Regulatory Article Compliance Matrix) of the Contract.

## 21. SAFETY AND AIRWORTHINESS

21.1. Should the Contractor (or the Contractor's defined supply chain) fail to attain Maintenance Approved Organisation Scheme (MAOS) accreditation within fifteen (15) months of the Effective Date or fail to retain it thereafter, or fail to comply with the requirements of MAA Regulatory Publications (MRP) and Regulatory Articles (RA), then the Authority shall have the right to terminate the Contract, in part or in full, in accordance with Clause **Error! Reference source not found.** (Termination for Contractor Default).

## 22. ENVIRONMENTAL MANAGEMENT

22.1. The Contractor shall be required to operate an effective Environmental Management System in accordance with DID 9 (Environmental Document Pack) of Schedule 7 (Contract Deliverable Documents).

## 23. ASSISTANCE WITH SERVICE INQUIRIES

23.1. If an Accident or other incident occurs and a service inquiry is convened, the Contractor shall make available (within a 5-day period) to the officer in charge of that service inquiry all relevant information and access to facilities, including access to any Subcontractor for the purpose of immediate and detailed investigations. If so requested by the officer in charge of the service inquiry, the Contractor shall undertake its own investigation and shall submit written reports to that officer at no additional cost to the Authority.

23.2. In connection with any such service inquiry, the Contractor shall use its best endeavours to ensure that any Subcontractor, whose evidence may assist the service inquiry

in reaching its findings, attends and gives evidence to the service inquiry when called upon to do so.

23.3. The Contractor shall include a condition in each Subcontract that the Subcontractor shall use its best endeavours to ensure that any employee of such Subcontractor whose evidence may assist any service inquiry in reaching its findings shall attend and give evidence to that Inquiry when called upon to do so.

23.4. Nothing in this Clause 23 shall require the Contractor or any Contractor related party to provide evidence where it is prohibited from doing so by any Law.

## **24. EMERGENCY, WAR AND HOSTILITIES**

24.1. The Contractor shall continue to carry out all tasks and provide all Services covered under this Contract during periods of emergency, tension, in transition to war, and during hostilities, unless directed otherwise by the Authority pursuant to Clause 24.2.

24.2. The Contractor shall provide any additional support required in the event that the Authority is directed to respond to any national or international emergency, disaster, or other unforeseen emergency.

24.3. The Contractor shall have the right to request equitable adjustment or relief of its obligations under this Contract including but not limited to Schedule 4 (Pricing and Payment) and Schedule 5 (Performance Management). Any such adjustment or relief being determined and agreed by the Parties through a Change.

## **25. OPERATING FROM ALTERNATIVE SITES**

25.1. In the event that the Authority determines that the sites or facilities (or part thereof) are:

25.1.1. unfit for use (regardless of the cause); and/or

25.1.2. unable to perform the Services to the required service level performance measure,

for a period longer than ten (10) Business Days, then the Authority may instruct the Contractor to relocate the Key Personnel to temporary Authority sites to undertake the Services by completing Part A of the Task Authorisation Form.

25.2. Subject to Clause 25.1, Part B and Part C of the Task Authorisation Form shall be used and the Contractor must relocate to the temporary Authority sites within the timeframe specified in Part 1 of the Task Authorisation Form.

25.3. The Authority shall, as a minimum, set out the following information in Part A of the Task Authorisation Form at Schedule 6 (Task Authorisation Form):

25.3.1. the deadline by which the relocation to the temporary Authority sites must take place;

25.3.2. the maximum duration of the relocation;

25.3.3. any Contractor equipment or Assets necessary for the performance of work that must be relocated; and

25.3.4. the impact on the performance management arrangements set out in Schedule 5 (Performance Management).

## **26. MANAGEMENT PLANS**

- 26.1. The Contractor shall be required to perform and deliver the Services in accordance with the management plans as defined in Schedule 7 (Contract Deliverable Documents).

## **PRICING AND PAYMENT**

### **27. PRICING**

- 27.1. The Contract Prices for Schedule of Requirements Line Items 1 to 12 shall be as stated within the Schedule of Requirements and as defined within Schedule 4 (Pricing and Payment) of the Contract.

### **28. PAYMENT**

- 28.1. All payments to be made by the Authority to the Contractor under the Contract shall be subject DEFCON 522 (Payment and Recovery of Sums Due) and this Clause 28, as well as Schedule 4 (Pricing and Payment) of this Contract.
- 28.2. The Contractor shall ensure that all claims for payment reflect the Contract Prices as detailed in the Schedule of Requirements and sub-detailed in Schedule 4 (Pricing and Payment). Any claim for payment that does not accord with this Clause shall not be regarded as valid claim for payment. Further, if the Authority considers that the Contractor has failed to perform any of its obligations under the Contract, the Authority may, wholly or in part, withhold any payment due under the Contract or recover from the Contractor any payment already made, or both. The making of any payment to the Contractor by the Authority shall in no way reduce the liability of the Contractor to carry out its obligations under the Contract.
- 28.3. Specific payment conditions relating to Schedule of Requirements Line Items 1 to 12 shall be in accordance with Schedule 4 (Pricing and Payment).
- 28.4. Payment to the Contractor shall not be construed as acceptance by the Authority of the performance of the Contractor's obligations nor as a waiver of its rights and remedies under the Contract. The acceptance arrangements that shall apply to the services and deliverables to be provided by the Contractor under the Contract shall be as detailed in Clause 16 (Acceptance Criteria) and Schedule 11 (Acceptance Plan) of this Contract.
- 28.5. The Contractor shall submit claims for payment in accordance with DEFCON 522 (Payment and Recovery of Sums Due) and the Authority's Contracting, Purchasing and Finance (CP&F) electronic procurement tool.

## **CONTRACT GOVERNANCE**

### **29. GOVERNANCE AND CONTRACT MANAGEMENT**

- 29.1. The Parties shall comply with the provisions of Schedule 2 (Statement of Requirement) in relation to the management and governance of this Contract.

### **30. AUDIT, ACCESS AND SURVEILLANCE RIGHTS**

#### **Independent Safety Auditors, Advisors and Assessors**

- 30.1. The Contractor shall provide the Authority's appointed independent safety auditor access to records (including databases and information technology systems) and the sites, including procuring access to Subcontractor records and sites, to enable safety audits and other assessment activities to be undertaken to verify and meet the Authority's safety

requirements. The Authority shall endeavour to (but is not obliged to) provide at least ten (10) Business Days' notice of its intention to conduct such audit.

### **Audit**

30.2. The Authority may at any time during the Contract Period and for a period of eighteen (18) months thereafter conduct audits for the following purposes:

30.2.1. to verify the accuracy of the Contractor's claims for payment (and proposed or actual variations to the payments in accordance with this Contract) and/or the costs of all Services;

30.2.2. to review the integrity, confidentiality and security of Authority Data;

30.2.3. to review the Contractor's and/or Contractor Personnel compliance with the Data Protection Legislation and/or the Freedom of Information Act 2000 in accordance with DEFCON 531 - (Disclosure of Information);

30.2.4. and any other legislation applicable to the Services;

30.2.5. to review the Contractor's compliance with this Contract;

30.2.6. to support the audit and certification of the Authority's internal accounts;

30.2.7. to carry out an examination of the economy, efficiency and effectiveness with which the Contractor has used its resources;

30.2.8. to verify the accuracy and completeness of any management information delivered or required by this Contract;

30.2.9. to inspect any Assets, including the Authority's equipment, facilities, and assets, for the purposes of ensuring that they are secure and that the Public Store Account (as defined in DEFCON 694 (Accounting for Property of the Authority)) are up to date;

30.2.10. to inspect the Contractor's sites for the purposes of ensuring that the Assets are secure, that the Public Store Account(s) are up to date, and/or /or Contractor Personnel is complying with the standards for the Contract; and

30.2.11. to identify or investigate actual or suspected fraud, impropriety or accounting mistakes or any breach or threatened breach of security and in these circumstances the Authority shall have no obligation to inform the Contractor of the purpose or objective of its investigations;

30.2.12. to identify or investigate any circumstances which may impact upon the financial stability of the Contractor or their ability to perform the Services;

30.2.13. to obtain such information as is necessary to fulfil the Authority's obligations to supply information for parliamentary, ministerial, judicial or administrative purposes including the supply of information to the Comptroller and Auditor General;

30.2.14. to carry out the Authority's internal and statutory audits and to prepare, examine and/or certify the Authority's annual and interim reports and accounts;

30.2.15. to review any performance monitoring reports and/or other records relating to the Contractor's performance of the Services and to verify that these reflect the Contractor's own internal reports and records;

- 30.2.16. to enable the National Audit Office to carry out an examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Authority has used its resources;
- 30.2.17. to review the Contractor's quality management systems (including all relevant quality plans and any quality manuals and procedures);
- 30.2.18. to review the Contractor's compliance with the Standards;
- 30.2.19. any other audit that may be required by any relevant authority.
- 30.3. The Authority shall endeavour to (but is not obliged to) provide at least ten (10) Business Days' notice] of its intention to conduct an audit.
- 30.4. The Authority shall endeavour to ensure that the conduct of each audit does not unreasonably disrupt the Contractor or delay the provision of the Services.
- 30.5. Subject to the Authority's obligations of confidentiality, the Contractor and/or a member of Contractor Personnel shall on demand provide the Authority (and/or its agents or representatives) with all reasonable co-operation and assistance in relation to each audit including:
- 30.5.1. all information requested by the Authority within the permitted scope of the audit;
- 30.5.2. reasonable access to any premises and any equipment in each case used (whether exclusively or non-exclusively) in the performance of the Services;
- 30.5.3. access to the Contractor's and/or Contractor Personnel systems; and
- 30.5.4. access to Contractor Personnel.
- 30.6. The Contractor shall implement all measurement and monitoring tools and procedures necessary to measure and report on the Contractor's and/or Contractor Personnel's performance of the Services against the applicable service levels.
- 30.7. The Authority shall endeavour to (but is not obliged to) provide at least fifteen (15) Business Days' notice of its intention to conduct an audit.

### **Contractor Facilities**

- 30.8. The Contractor shall not admit anyone other than the Authority or anyone authorised by the Authority in writing to any Site (or the dedicated part(s) thereof).
- 30.9. The Contractor shall provide the Authority with access to all sites, at any time, following reasonable notice, throughout the Contract Period of the Contract, to enable the Authority to conduct any surveillance and/or audit assessments in order to verify that the Services are being performed in accordance with Schedule 2 (Statement of Requirement).
- 30.10. As far as reasonably practical, the Contractor shall ensure that the provisions in this Clause 30 are included in their Subcontracts with those Subcontractors identified in Schedule 17 (DEFFORM 565 Supply Chain Resilience and Risk Awareness Mapping Template). The Authority, through the Contractor, shall arrange access to such Subcontractors.

**31. CHANGE IN LAW**

- 31.1. The Contractor shall neither be relieved of its obligations to supply the Services in accordance with the terms and conditions of this Contract nor be entitled to an increase in the Charges as a result of:
- 31.1.1. a General Change in Law; or
  - 31.1.2. a Specific Change in Law where the effect of that Specific Change in Law on the Services is reasonably foreseeable at the Effective Date.
- 31.2. If a Specific Change in Law occurs or will occur during the Contract Period (other than as referred to in Clause 31.1.2), the Contractor shall:
- 31.2.1. notify the Authority as soon as is reasonably practicable of the likely effects of that Specific Change in Law, including:
    - 31.2.1.1. whether a Change is required, including to the Services, the Charges and/or any other part of this Contract; and
    - 31.2.1.2. whether any relief from compliance with the Contractor's obligations is required, including an obligation to meet a service level and/or a Key Performance Indicator; and
    - 31.2.1.3. provide the Authority with evidence:
      - 31.2.1.3.1. that the Contractor has minimised any increase in costs or maximised any reduction in costs, including in respect of the costs of its Subcontractors;
      - 31.2.1.3.2. as to how the Specific Change in Law has affected the cost of providing the Services;
      - 31.2.1.3.3. demonstrating that any expenditure that has been avoided has been taken into account in amending the Charges.
- 31.3. Any Change to this Contract including, for the avoidance of doubt, the Charges or relief from the Contractor's obligations resulting from a Specific Change in Law (other than as referred to in Clause 31.1.2) shall be implemented in accordance with the Change Procedure.

**32. RISK MANAGEMENT**

- 32.1. The process of risk management, including without limitation, the identification of (or failure to identify):
- 32.1.1. particular risks and their impacts; or
  - 32.1.2. risk reduction measures, contingency plans and remedial actions;
- shall not in any way limit or exclude the Contractor's obligations under this Contract and shall be entirely without prejudice to the Authority's rights under the Contract.
- 32.2. The Contractor shall notify the Authority of all key risks in accordance with the Risk Management Plan in Schedule 7 (Contract Deliverable Documents).



### 33. DISPUTE RESOLUTION

33.1. In addition to DEFCON 530 (Dispute Resolution (English Law)), should a dispute arise regarding any aspect of the Contract and its performance, the dispute shall be resolved in the following manner:

33.1.1. Stage 1 – In the first instance, the Authority's and Contractor's Project Managers, and where appropriate the Authority's Commercial Officers and Contractor's Commercial Officers, shall resolve any disputes. If agreement is not reached, then the dispute shall be referred to the next Contract Management Meeting for resolution. The Parties will endeavour to resolve the dispute within thirty (30) calendar days or agree a reasonable timeframe in which the dispute is to be resolved.

33.1.2. Stage 2 - Should the dispute not have been resolved by the QPM or CRM deadline, or where the Parties agree that the matter cannot be resolved at Project Manager and/or Commercial Officer level, the matter shall be referred to both the Authority's and the Contractor's senior project management hierarchy (this shall be Authority and Contractor equivalents with equal numbers of personnel representing each of the parties).

33.1.3. Should the dispute remain unresolved after a further thirty (30) calendar days (or such period as mutually agreed by the Authority and the Contractor), or where the Parties agree that the matter cannot be resolved at senior project management level, the Authority or the Contractor may resort to Arbitration or Alternative Dispute Resolution (ADR) in accordance with DEFCON 530.

33.1.4. The Authority and the Contractor shall continue to comply with, observe and perform all of their obligations in this Contract regardless of the nature of any Dispute which arises and notwithstanding referral of any such Dispute to the Dispute Resolution Procedure under this Clause and shall give effect forthwith to any decision of the arbitrator delivered under this Clause.

### CONTRACTOR PERSONNEL AND SUPPLY CHAIN

#### 34. CONTRACTOR PERSONNEL

34.1. The Contractor shall:

34.1.1. provide in advance of any admission to a Government Establishment a list of the names of all Contractor Personnel requiring such admission, specifying the capacity in which they require admission and giving such other particulars as the Authority may reasonably require;

34.1.2. comply at all times with its undertaking in Clause 8.8 (Contractor Undertakings);

34.1.3. ensure that all Contractor Personnel:

34.1.3.1. are appropriately qualified, trained and experienced to provide the Services with all reasonable skill, care and diligence;

34.1.3.2. are vetted in accordance with Good Industry Practice and, where applicable, the security requirements set out in this Contract;

34.1.3.3. comply with all reasonable requirements of the Authority concerning conduct at the Government Establishments, including the security requirements as set out in the Specification;

- 34.1.3.4. retain overall control of the Contractor Personnel at all times so that the Contractor Personnel shall not be deemed to be employees, agents or contractors of the Authority;
  - 34.1.3.5. be liable at all times for all acts or omissions of Contractor Personnel, so that any act or omission of a member of any Contractor Personnel which results in a Default under this Contract shall be a Default by the Contractor;
  - 34.1.3.6. use all reasonable endeavours to minimise the number of changes in Contractor Personnel;
  - 34.1.3.7. replace (temporarily or permanently, as appropriate) any Contractor Personnel as soon as practicable if any Contractor Personnel have been removed or are unavailable for any reason whatsoever;
  - 34.1.3.8. bear the programme familiarisation and other costs associated with any replacement of any Contractor Personnel; and
  - 34.1.3.9. procure that the Contractor Personnel shall vacate the Government Establishments immediately on the Contract Expiry Date.
- 34.2. If the Authority reasonably believes that any of the Contractor Personnel are unsuitable to undertake work in respect of this Contract, it may:
- 34.2.1. refuse admission to the relevant person(s) to the Government Establishments; and/or
  - 34.2.2. direct the Contractor to end the involvement in the provision of the Services of the relevant person(s).

### **Key Personnel**

- 34.3. The Contractor shall ensure that the Key Personnel fulfil the Key Roles at all times during the Contract Period, in accordance with Schedule 18 (Contractor's Transition and Delivery Plan).
- 34.4. The Authority may identify any further roles as being Key Roles and, following agreement to the same by the Contractor, the relevant person selected to fill those Key Roles shall be included on the list of Key Personnel.
- 34.5. The Contractor shall not remove or replace any Key Personnel (including when carrying out exit services) unless:
- 34.5.1. requested to do so by the Authority;
  - 34.5.2. the person concerned resigns, retires or dies or is on maternity leave, paternity leave or shared parental leave or long-term sick leave;
  - 34.5.3. the person's employment or contractual arrangement with the Contractor or a Subcontractor is terminated for material breach of contract by the employee; or
  - 34.5.4. the Contractor obtains the Authority's Approval (such Approval not to be unreasonably withheld or delayed).
- 34.6. The Contractor shall:

- 34.6.1. notify the Authority promptly of the absence of any Key Personnel (other than for short-term sickness or holidays of 2 weeks or less, in which case the Contractor shall ensure appropriate temporary cover for that Key Role);
- 34.6.2. ensure that any Key Role is not vacant for any longer than ten (10) Business Days;
- 34.6.3. give as much notice as is reasonably practicable of its intention to remove or replace any member of Key Personnel and, except in the cases of death, unexpected ill health or a material breach of the Key Personnel's employment contract, this will mean at least sixty (60) Business Days' notice;
- 34.6.4. ensure that all arrangements for planned changes in Key Personnel provide adequate periods during which incoming and outgoing personnel work together to transfer responsibilities and ensure that such change does not have an adverse impact on the performance of the Services; and
- 34.6.5. ensure that any replacement for a Key Role:
  - 34.6.5.1. has a level of qualifications and experience appropriate to the relevant Key Role; and
  - 34.6.5.2. is fully competent to carry out the tasks assigned to the Key Personnel whom they have replaced.

### **Employment Indemnity**

34.7. The Parties agree that:

- 34.7.1. the Contractor shall both during and after the Contract Period indemnify the Authority against all employee liabilities that may arise as a result of any claims brought against the Authority by any person where such claim arises from any act or omission of the Contractor or any Contractor Personnel; and
- 34.7.2. the Authority shall both during and after the Contract Period indemnify the Contractor against all employee liabilities that may arise as a result of any claims brought against the Contractor by any person where such claim arises from any act or omission of the Authority or any of the Authority's employees, agents, consultants and contractors.

### **Income Tax and National Insurance Contributions**

- 34.7.3. Where the Contractor or any Contractor Personnel are liable to be taxed in the UK or to pay national insurance contributions in respect of consideration received under this Contract, the Contractor shall:
  - 34.7.3.1. at all times comply with the Income Tax (Earnings and Pensions) Act 2003 and all other statutes and regulations relating to income tax, and the Social Security Contributions and Benefits Act 1992 and all other statutes and regulations relating to national insurance contributions, in respect of that consideration; and
  - 34.7.3.2. indemnify the Authority against any income tax, national insurance and social security contributions and any other liability, deduction, contribution, assessment or claim arising from or made in connection with the provision of the Services by the Contractor or any Contractor Personnel.

### 35. TRANSFER REGULATIONS

- 35.1. The Contractor shall comply with the terms and conditions in Schedule 13 (Transfer of Undertakings (Protection of Employment) (TUPE)).

### 36. PLACING OF SUBCONTRACTS

- 36.1. The Contractor shall furnish the Authority as soon as reasonably practicable with a copy of any Subcontract if requested.
- 36.2. The Contractor shall ensure that in respect of the DEFCONs that are included in this Contract and which require the Contractor to include equivalent terms in Subcontracts, such terms have been so included.
- 36.3. The Contractor shall not place any Subcontract or order which may reasonably be expected to create any Intellectual Property required under the Contract without the prior written consent of the Authority.
- 36.3.1. Unless otherwise agreed, the Authority's consent referred to in Clause 36.3 will be conditional on the proposed Subcontractor concluding a direct agreement with the Authority in the form of Schedule 14 (Design Rights and Patents (Subcontractors) Agreement (DEFFORM 177)). The request for approval should be accompanied by two (2) copies of the agreement signed by the Subcontractor. If in any case the Contractor is unable to comply with this Condition, it shall report the matter to the Authority's Commercial Officer and await further instructions before placing the Subcontract or order.

### 37. RUSSIAN AND BELARUSIAN EXCLUSION

- 37.1. The Contractor shall, and shall procure that their Subcontractors shall, notify the Authority in writing as soon as they become aware that:
- 37.1.1. the Contractor Deliverables and/or Articles and/or Services contain any Russian/Belarusian products and/or services; or
- 37.1.2. that the Contractor or any part of the Contractor's supply chain is linked to entities who are constituted or organised under the law of Russia or Belarus, or under the control (full or partial) of a Russian/Belarusian person or entity. Please note that this does not include companies:
- 37.1.2.1. registered in the UK or in a country with which the UK has a relevant international agreement providing reciprocal rights of access in the relevant field of public procurement; and/or
- 37.1.2.2. which have significant business operations in the UK or in a country with which the UK has a relevant international agreement providing reciprocal rights of access in the relevant field of public procurement.
- 37.2. The Contractor shall, and shall procure that their Subcontractors shall, include in such notification (or as soon as reasonably practicable following the notification) full details of the Russian/Belarusian products, services and/or entities and shall provide all reasonable assistance to the Authority to understand the nature, scope and impact of any such products, services and/or entities on the provision of the Contractor Deliverables and/or Services.
- 37.3. The Authority shall consider the notification and information provided by the Contractor and advise the Contractor in writing of any concerns the Authority may have and/or any action which the Authority will require the Contractor to take. The Contractor shall be required to submit a response to the concerns raised by the Authority, including any plans to

mitigate those concerns, within fourteen (14) Business Days of receipt of the Authority's written concerns, for the Authority's consideration.

- 37.4. The Contractor shall include provisions equivalent to those set out in this Clause 37 in all Subcontracts.

## **INTELLECTUAL PROPERTY, SECURITY, CONFIDENTIALITY, PUBLICITY AND PERSONAL DATA**

### **38. INTELLECTUAL PROPERTY RIGHTS**

In addition to DEFCONs 14, 91, 632 and 707, the following Intellectual Property (IP) provisions shall apply to the Contract:

#### **Intellectual Property Rights in Technical Publications**

- 38.1. The Contractor shall ensure that the Authority has the right to copy, amend, extend or have copied, amended or extended any technical publication, used in or created as part of carrying out the Services detailed in the Schedule of Requirements 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. For Contractor Deliverables created subject to DEFCON 91 or 707, those DEFCONs shall take precedence.

#### **Third Party Intellectual Property**

- 38.2. The Contractor shall not place any subcontract or order which may reasonably be expected to create any Intellectual Property required under the Contract without the prior written consent of the Authority.
- 38.3. Unless otherwise agreed, the Authority's consent referred to in Clause 38.2 will be conditional on the proposed Subcontractor concluding a direct agreement with the Authority in the form of Schedule 14 (Design Rights and Patents (Subcontractors) Agreement (DEFFORM 177)). The request for approval should be accompanied by two (2) copies of the agreement signed by the Subcontractor. If in any case the Contractor is unable to comply with this Clause, it shall report the matter to the Authority's Commercial Officer and await further instructions before placing the Subcontract or order.

#### **Authorisation by the Crown for Use of Third Party Intellectual Property Rights**

- 38.4. Notwithstanding any other provisions of this Contract and for the avoidance of doubt, award of this Contract by the Authority and placement of any contract task under it does not constitute an authorisation by the Crown under Sections 55 and 56 of the Patents Act 1977 or Section 12 of the Registered Designs Act 1949. The Contractor acknowledges that any such authorisation by the Authority under its statutory powers must be expressly provided in writing, with reference to the acts authorised and the specific intellectual property involved.

#### **Licence of Government Furnished Information**

- 38.5. The Authority hereby grants to the Contractor a non-exclusive, non-transferrable licence to use such Intellectual Property Rights embodied in any UK Government furnished Issued Property or materiel or information solely for the purposes of providing the Services and performing its obligations under this Contract.

#### **Notification of Intellectual Property Rights (IPR) Restrictions**

38.6. The Contractor warrants and confirms that all Intellectual Property Rights restrictions and associated export restrictions relating to the use or disclosure of the Contractor Deliverables that are notifiable under Clause 3.b. of DEFCON 91 (Intellectual Property Rights In Software) or notifications under Clause 1. of DEFCON 632 (Third Party Intellectual Property – Rights and Restrictions), or of which the Contractor is or should reasonably be aware as at the date of the Contract, are disclosed at Schedule 15 (Notification of Intellectual Property Rights (IPR) Restrictions (DEFFORM 711)) to the Contract.

38.7. The Contractor shall promptly notify the Authority in writing if they become aware during the performance of the Contract of any required additions, inaccuracies or omissions to Schedule 15.

38.8. Any amendment to DEFFORM 711 shall be made in accordance with DEFCON 503.

### **39. SELF-TO-SELF DELIVERY**

39.1. Where any Article to be supplied under this Contract is to be delivered (other than being handed over by the Contractor to the Authority) by the Contractor to its own premises or to those of a Subcontractor ('self-to-self delivery'), the risk in such Article shall (notwithstanding the provisions of DEFCON 612 (Loss of or Damage to the Articles)) remain vested in the Contractor until such time as the Article is handed over to the Authority.

### **40. CYBER SECURITY IMPLEMENTATION PLAN**

40.1. In the event that the Contractor cannot meet the level of cyber security controls required, as outlined in DEFCON 658 (Cyber) and DEFSTAN 05-138 (Cyber Security for Defence Suppliers), by the Effective Date the Contractor shall comply with Schedule 23 (Contractor's Cyber Implementation Plan).

### **41. CONTRACTOR'S COMMERCIALLY SENSITIVE INFORMATION**

41.1. All Information belonging to the Contractor that the Authority has acknowledged may be Contractor's Commercially Sensitive Information is set out in Schedule 16 (Contractor's Sensitive Information).

### **42. SECURITY CONDITIONS**

42.1. In addition to the obligations under DEFCON 659A (Security Measures) and DEFCON 660 (Official-Sensitive Security Requirements), the Contractor shall at all times comply with the security conditions within Schedule 22 (Security Aspects Letter).

### **43. PUBLICITY, MEDIA AND OFFICIAL ENQUIRIES**

43.1. The Contractor shall not, and shall procure that its Subcontractors shall not:

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

43.1.2. photograph or film in or upon any Government Establishment;

43.1.3. make any press announcements or publicise this Contract or its contents in any way;

43.1.4. use the Authority's name or brand in any promotion or marketing or announcement;

43.1.5. erect, exhibit or attach on any part of any Government Establishment any signs, trade boards, notice or advertisement; or

43.1.6. allow third-party access to Assets held or stored at the Contractor's premises, without the Authority's Approval, which shall not be unreasonably withheld or delayed.

43.2. Each Party acknowledges to the other that nothing in this Contract either expressly or by implication constitutes an endorsement of any products, goods or services of the other Party and each Party agrees not to conduct itself in such a way as to imply or express any such approval or endorsement.

## **LIABILITY AND INSURANCE**

### **44. LIMITATIONS ON LIABILITY**

#### **Unlimited liabilities**

44.1. Neither Party limits its liability for:

44.1.1. death or personal injury caused by its negligence, or that of its employees, agents or Subcontractors (as applicable);

44.1.2. fraud or fraudulent misrepresentation by it or its employees;

44.1.3. breach of any obligation as to title implied by Section 12 of the Sale of Goods Act 1979 or Section 2 of the Supply of Goods and Services Act 1982; or

44.1.4. any liability to the extent it cannot be limited or excluded by Law.

44.2. The financial caps on liability set out in Clauses 44.3 and 44.4 below shall not apply to the following:

44.2.1. for any indemnity given by the Contractor to the Authority under this Contract, including but not limited to:

44.2.1.1. the Contractor's indemnity in relation to DEFCON 91 (Intellectual Property in Software) and DEFCON 632 (Third Party Intellectual Property – Rights and Restrictions);

44.2.1.2. the Contractor's indemnity in relation to TUPE at Clause 35 (Transfer Regulations) and Schedule 13 (Transfer of Undertakings (Protection of Employment) (TUPE));

44.2.2. for any indemnity given by the Authority to the Contractor under this Contract, including but not limited to:

44.2.2.1. the Authority's indemnity in relation to TUPE under Clause 35 (Transfer Regulations) and Schedule 13 (Transfer of Undertakings (Protection of Employment) (TUPE));

44.2.3. breach by the Contractor of DEFCON 532A (Protection of Personal Data (Where Personal Data is not Being Processed on Behalf of the Authority)) and Data Protection Legislation;

44.2.4. breach by the Contractor of DEFCON 520 (Corrupt Gifts and Payments of Commission); and

44.2.5. to the extent it arises as a result of a Default by either Party, any fine or penalty incurred by the other Party pursuant to Law and any costs incurred by such other Party in defending any proceedings which result in such fine or penalty.

**Financial limits**

44.3. Subject to Clauses 44.1 and 44.2 and to the maximum extent permitted by Law:

44.3.1. throughout the Term the Contractor's total liability in respect of losses that are caused by Defaults of the Contractor shall in no event exceed:

44.3.1.1. in respect of DEFCON 76 (Contractor's Personnel at Government Establishments) fifteen million pounds (£15,000,000) per event and thirty million pounds (£30,000,000) in aggregate;

44.3.1.2. in respect of DEFCON 514 (Material Breach) fifteen million pounds (£15,000,000) per event and fifteen million pounds (£15,000,000) in aggregate; and

44.3.1.3. in respect of DEFCON 611 (Issued Property) thirty-one million pounds (£31,000,000) per event and sixty-two million pounds (£62,000,000) in aggregate;

44.3.2. without limiting Clause 44.3.1 and subject always to Clauses 44.1, 44.2 and 44.3.3, the Contractor's total liability throughout the Term in respect of all other liabilities (but excluding any service credits paid or payable in accordance with Schedule 5 (Performance Management) whether in contract, in tort (including negligence), arising under warranty, under statute or otherwise under or in connection with this Contract shall be thirty million pounds (£30,000,000) in aggregate;

44.3.3. on the exercise of any and, where more than one, each option period or agreed extension to the Term, the limitation of the Contractor's total liability (in aggregate) set out in Clauses 44.3.1 and 44.3.2 above shall be fully replenished such that on and from each such exercise or extension of the Term, the Authority shall be able to claim up to the full value of the limitation set out in Clauses 44.3.1 and 44.3.2 of this Contract.

44.4. Subject to Clauses 44.1, 44.2 and 44.5, and to the maximum extent permitted by Law the Authority's total liability (in aggregate) whether in contract, in tort (including negligence), under warranty, under statute or otherwise under or in connection with this Contract shall in respect of all liabilities (taken together) be limited to the Charges paid by the Authority in the relevant Contract Year in respect of any and all claims in that Contract Year.

44.5. Clause 44.4 shall not exclude or limit the Contractor's right under this Contract to claim for the Charges.

**Consequential loss**

44.6. Subject to Clauses 44.1, 44.2 and 44.7, neither Party shall be liable to the other Party or to any third party, whether in contract (including under any warranty), in tort (including negligence), under statute or otherwise for or in respect of:

44.6.1. indirect loss or damage;

44.6.2. special loss or damage;

44.6.3. consequential loss or damage;

44.6.4. loss of profits (whether direct or indirect);

44.6.5. loss of turnover (whether direct or indirect);

44.6.6. loss of business opportunities (whether direct or indirect); or



44.6.7. damage to goodwill (whether direct or indirect),

even if that Party was aware of the possibility of such loss or damage to the other Party.

44.7. The provisions of Clause 44.6 shall not restrict the Authority's ability to recover any of the following losses incurred by the Authority to the extent that they arise as a result of a Default by the Contractor:

44.7.1. any additional operational and administrative costs and expenses arising from the Contractor's Default, including any costs paid or payable by the Authority:

44.7.1.1. to any third party;

44.7.1.2. for putting in place workarounds for the Contractor Deliverables and other deliverables that are reliant on the Contractor Deliverables; and

44.7.1.3. relating to time spent by or on behalf of the Authority in dealing with the consequences of the Default;

44.7.2. any or all wasted expenditure and losses incurred by the Authority arising from the Contractor's Default, including wasted management time;

44.7.3. the additional cost of procuring and maintaining in place transitional assistance and replacement Services for the remainder of the Term and any option period or agreed extension to the Term (including legal and other consultants' fees, re-procurement project costs, other expenses associated with such exercise and any increase in the fees for the replacement Services over and above the Charges that would have been payable for the relevant Contractor Deliverables);

44.7.4. any losses arising in connection with the loss, destruction, corruption, inaccuracy or degradation of Authority Data, or other data or software, including, to the extent the Authority Data, other data or software can be recovered or reconstituted, the fees, costs and expenses of reconstituting such Authority Data, data or software;

44.7.5. damage to the Authority's physical property and tangible assets, including damage under DEFCONs 76 and 611;

44.7.6. costs, expenses and charges arising from, or any damages, account of profits or other award made for, infringement of any third-party Intellectual Property Rights or breach of any obligations of confidence;

44.7.7. any additional costs incurred by the Authority in relation to the Authority's contracts with a third party (including any compensation or interest paid to a third party by the Authority) as a result of the Default (including the extension or replacement of such contracts);

44.7.8. any fine or penalty incurred by the Authority pursuant to Law and any costs incurred by the Authority in defending any proceedings which result in such fine or penalty; or

44.7.9. any savings, discounts or price reductions during the Term and any option period or agreed extension to the Term committed to by the Contractor pursuant to this Contract.

#### **Invalidity**

44.8. If any limitation or provision contained or expressly referred to in this Clause 44 is held to be invalid under any Law, it will be deemed to be omitted to that extent, and if any Party becomes liable for loss or damage to which that limitation or provision applied, that liability will be subject to the remaining limitations and provisions set out in this Clause 44.

**Third party claims or losses**

44.9. Without prejudice to any other rights or remedies the Authority may have under this Contract (including but not limited to any indemnity claim under DEFCON 91 (Intellectual Property Rights In Software) and DEFCON 632 (Third Party Intellectual Property - Rights and Restrictions) or at Law), the Authority shall be entitled to make a claim under this Contract against the Contractor in respect of any losses incurred by the Authority which arise out of a claim made against the Authority by a third party under any contract with that third party provided that such third party claim:

44.9.1. arises naturally and ordinarily as a result of the Contractor's failure to provide the Contractor Deliverables or failure to perform any of its obligations under this Contract; and

44.9.2. is a type of claim or loss that would have been recoverable under this Contract if the third party were a party to this Contract (whether as the Authority or the Contractor), such claim to be construed as direct losses for the purpose of this Contract.

**No double recovery**

44.10. Neither Party shall be entitled to employ such rights and remedies available to it so as to seek to recover more than once in respect of the same loss, but the Authority shall be entitled to use (singly or together) such rights and remedies available to the Authority so as to recover the full extent of any recoverable losses suffered or incurred, including any remedies the Authority may have against any guarantor.

**45. INSURANCE REQUIREMENTS**

**Note to Tenderers: This Clause will be updated at Contract award to reflect the successful Tenderer's ROCO. Please see the DEFFORM 47 for further information.**

45.1. Without prejudice to its liability to indemnify or otherwise be liable to the Authority under this Contract, the Contractor shall for the periods specified in Schedule 20 (Required Insurance) take out and maintain or procure the taking out and maintenance of the insurances as set out under this Clause 45 and Schedule 20 (Required Insurance) and any other insurances as may be required by Law, together the "Required Insurances". The Contractor shall ensure that each of these Required Insurances are effective in each case not later than the date on which the relevant risk commences.

45.2. The Required Insurances shall be taken out and maintained with insurers who are of good financial standing and of good repute in the international insurance market.

45.3. Where specified, the Contractor shall ensure that the relevant policy of insurance:

45.3.1. contains an indemnity to principals clause or additional insureds equivalent, under which the Authority shall be indemnified in respect of claims made against the Authority arising from death or bodily injury or third party property damage, and for which the Contractor is legally liable in respect of this Contract;

45.3.2. In respect of the Property Damage "All Risks" Insurance, [Aviation Hull Insurance and Aviation War Risks Insurance] that the policy:

45.3.2.1. Names the Authority as co-insured for its separate interest with attendant non-vitiation, waiver of subrogation and notice of cancellation provisions.

45.3.2.2. Provide for non-vitiation protection in respect of any claims made by the Authority as co-insured.

- 45.3.2.3. Contain a Condition waiving the insurer's subrogation rights against the Authority, its employees and agents.
- 45.3.2.4. Provide for thirty (30) days prior written notice of their cancellation or non-renewal.
- 45.3.2.5. Provide for payment of any proceeds received to be applied in accordance with Clause 45.14.
- 45.4. Where insurances are placed in England and Wales, the Contractor shall discharge in full all duties and obligations in respect of the Insurance Act 2015 when procuring, maintaining or amending any insurance(s) required by this contract, including in circumstances where the Contractor is required to name the Authority on any such insurance policies to protect the Authority's separate interests.
- 45.5. Where the minimum limit of indemnity required in relation to any of the Required Insurances is provided as being "in the aggregate" and the level of insurance cover available falls below that minimum because a claim or claims, the Contractor shall ensure that the insurance cover is reinstated to maintain at all times the minimum limit of indemnity specified Schedule 20 (Required Insurance).
- 45.6. The Contractor shall not take any action or fail to take any action or (insofar as is reasonably within its power) permit anything to occur in relation to it which would entitle any insurer to refuse to pay any claim under any of the Required Insurances.
- 45.7. The Authority may elect (but shall not be obliged to) where notice has been provided to the Contractor to purchase any insurance which the Contractor is required to maintain pursuant to this Contract but has failed to maintain in full force and effect, and the Authority shall be entitled to recover the reasonable premium and other reasonable costs incurred in connection therewith as a debt due from the Contractor.
- 45.8. The Contractor shall from the Effective Date within fifteen (15) Business Days after the renewal of each of the Required Insurances, provide evidence, in a form satisfactory to the Authority, that the Insurances are in full force and effect and meet in full the requirements of this Clause 45 and Schedule 20 (Required Insurances). Receipt of such evidence by the Authority shall not in itself constitute acceptance by the Authority or relieve the Contractor of its liabilities and obligations under this Contract.
- 45.9. The Contractor shall notify the Authority in writing at least ten (10) Business Days prior to the cancellation, suspension, termination or non-renewal of any of the Required Insurances. This Clause 45.9 shall not apply where the termination of any Required Insurances occurs purely as a result of a change of insurer in respect of any of the Required Insurances required to be taken out and maintained in accordance with this Clause 45.
- 45.10. The Contractor shall promptly notify to insurers any matter arising from, or in relation to this Contract for which it may be entitled to claim under any of the Required Insurances. In the event that the Authority receives a claim relating to the Contract, the Contractor shall co-operate with the Authority and assist it in dealing with such claims including without limitation providing information and documentation in a timely manner.
- 45.11. Except where the Authority is the claimant party, the Contractor shall give the Authority notice within twenty (20) Business Days after any insurance claim in excess of fifty thousand pounds (£50,000) relating to this Contract on any of the Required Insurances or which, but for the application of the applicable policy excess, would be made on any of the Required Insurances and (if required by the Authority) full details of the incident giving rise to the claim.

- 45.12. Where any Insurance requires payment of a premium, the Contractor shall be liable for such premium.
- 45.13. Where any insurance referred to in this Clause 45 and Schedule 20 (Required Insurance) is subject to an excess or deductible below which the indemnity from insurers is excluded, the Contractor shall be liable for such excess or deductible and indemnify the Authority against any loss or claims which would otherwise be insured but for excess or deductible. The Contractor shall not be entitled to recover from the Authority any sum paid by way of excess or deductible under the insurances whether under the terms of this Contract or otherwise.
- 45.14. Unless specified by the Authority, all insurance proceeds received in respect of the Property Damage "All Risks" Insurance, [Aviation Hull Insurance and Aviation War Risks Insurance] in Schedule 20 (Required Insurance) shall be used to reinstate, repair or replace the insured property in respect of which the insurance proceeds were received.
- 45.15. The Contractor's liability (as set out in Clause 44 (Limitations of Liability) shall not be eroded or reduced where, and to the extent that, money should be or can be recovered by the Contractor pursuant to insurance policies required to be effected and maintained in accordance with this Clause 45 (Insurance Requirements) and Schedule 20 (Required Insurance).

## REMEDIES AND RELIEF

### 46. CONTRACTOR BREACH AND RECTIFICATION PLAN

- 46.1. The Contractor shall notify the Authority's Representative in writing as soon as practicable but in any event within three (3) Business Days of becoming aware of the Notifiable Default if:
- 46.1.1. there is, or is reasonably likely to be, a delay; and/or
  - 46.1.2. a material breach has occurred; or
  - 46.1.3. it reasonably believes that a material breach may occur,
- (each a "**Notifiable Default**"),
- giving full details of the actual or anticipated effect of the Notifiable Default.
- 46.2. The Authority shall notify the Contractor as soon as reasonably practicable where it considers that a Notifiable Default has occurred (other than a Persistent Breach) and has not been notified of such Notifiable Default in accordance with Clause 46.1, setting out sufficient detail so that it is reasonably clear what the Contractor has to rectify.
- 46.3. If the Notifiable Default is capable of being remedied within twenty (20) Business Days of the earlier of:
- 46.3.1. the Authority giving notice in writing to the Contractor; and
  - 46.3.2. the Contractor becoming aware of the Notifiable Default,
- the Contractor shall remedy such Notifiable Default within the twenty (20) Business Day period.
- 46.4. If the Notifiable Default is not capable of being remedied in accordance with Clause 46.3, but the Authority reasonably believes is capable of remedy by the Contractor, then the Contractor shall submit a draft Rectification Plan to the Authority for review as soon as possible

and in any event within five (5) Business Days (or such longer period as may be agreed by the Authority) from the date of the notice of Notifiable Default.

- 46.5. Where the Authority reasonably believes that the Notifiable Default is irremediable, the Authority may terminate this Contract in accordance with Clause 50.2.8.
- 46.6. The draft Rectification Plan shall set out full details of the Notifiable Default that has occurred, including a root cause analysis, the actual or anticipated effect of the Notifiable Default, and the steps which the Contractor proposes to take to rectify the Notifiable Default and to prevent such Notifiable Default from recurring and the timescales for such steps and for the rectification of the Notifiable Default.
- 46.7. The Contractor shall promptly provide to the Authority any further documentation that the Authority reasonably requires to assess the Contractor's root cause analysis.
- 46.8. The Authority shall notify the Contractor in writing whether it accepts or rejects the draft Rectification Plan within thirty (30) Business Days of receipt of the draft Rectification Plan.
- 46.9. Where the Authority rejects the draft Rectification Plan under Clause 46.8 above, it shall give its reasons for such decision and the Contractor shall submit a revised draft Rectification Plan to the Authority within five (5) Business Days (or such other period as agreed by the Authority) of receipt of the Authority's notice rejecting the first draft. The Parties shall use reasonable endeavours to agree any necessary amendments to the draft Rectification Plan within ten (10) Business Days (or such other period as the Authority may specify in writing) of the Authority's receipt of the revised draft Rectification Plan.
- 46.10. Once the Authority has accepted the draft Rectification Plan pursuant to this Clause 4, the Contractor shall immediately start work on the actions set out in the Rectification Plan.
- 46.11. If the Contractor either rectifies the Notifiable Default pursuant to Clause 46.1 and/or implements the accepted Rectification Plan in accordance with its terms, the notice of Notifiable Default issued pursuant to Clause 46.1 shall be deemed to be revoked and this Contract shall continue.
- 46.12. In the event that:
- 46.12.1. no acceptable Rectification Plan has been put forward by the Contractor pursuant to this Clause 46 (as deemed by the Authority in its sole discretion); and/or
- 46.12.2. the Contractor fails to rectify the Notifiable Default within the time period specified in the Rectification Plan;
- 46.12.3. following successful implementation of a Rectification Plan, the same Notifiable Default recurring within a period of 6 months for the same, or substantially the same, root cause as that of the original Notifiable Default,

(each, a "Rectification Plan Failure"),

then the Authority may serve the Contractor with a Termination Notice stating that this Contract will terminate on the date specified in the Termination Notice.

## **47. STEP-IN RIGHTS**

### **Right to Step-In**

- 47.1. If the Authority reasonably believes that it needs to take action in connection with this Contract and/or the Services:

- 47.1.1. because a serious risk exists to the health or safety of persons or property;
- 47.1.2. because the circumstances constitute an emergency despite the Contractor not being in breach of its obligations under this Contract;
- 47.1.3. in order to discharge a statutory duty;
- 47.1.4. because the Authority is advised by a regulatory body that the exercise by the Authority of its rights under this Clause is necessary;
- 47.1.5. because the Contractor is in material breach of its obligations under this Contract; and/or
- 47.1.6. because the Contractor commits a Contractor Termination Event, then the Authority shall be entitled to take action in accordance with this Clause 47.

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

47.2. If Clause 47.1 (Right to Step-In) applies and the Authority wishes to take action, the Authority Representative shall notify the Contractor Representative in writing of the following:

- 47.2.1. the action it wishes to take and in particular the Services that it wishes to control;
- 47.2.2. the reason for such action and whether the Authority believes that such action is required due to the Contractor's breach;
- 47.2.3. the date it wishes to commence such action;
- 47.2.4. the time period which it believes shall be necessary for such action;
- 47.2.5. any Assets and/or spares or any other item it requires the Contractor to make available to it to perform such action;
- 47.2.6. where the Authority will require access to the Contractor's premises and/or the sites; and
- 47.2.7. to the extent practicable, the effect on the Contractor and its obligation to provide the Services during the period such action is being taken,

the ("**Step-In Notice**").

47.3. Following service of such Step-In Notice, the Authority shall take such action as notified under Clause 47.2 and any consequential additional action as it reasonably believes is necessary (together, the "**Required Action**") and the Contractor shall give all reasonable assistance to the Authority while it is taking the Required Action.

### **Effect of Step-In Without Contractor Breach**

47.4. If the Authority exercises its right to take action pursuant to this Clause 47 (Right to Step-In) and such exercise is not as a consequence of the Contractor's breach of its obligations under this Contract:

- 47.4.1. 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
- 47.4.2. 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), any Charges payments due from the Authority to the Contractor in accordance with Clause 27

(Pricing) shall assume that the Contractor has been providing the Services affected by the Required Action in full over that period.

### **Effects of Step-In Following Contractor Breach**

47.5. If the Contractor is in breach of its obligations under this Contract and as a consequence the Authority exercises its right to take action pursuant to Clause 47.1 (Right to Step-In):

47.5.1. 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

47.5.2. in respect of the period in which the Authority is taking Required Action, the Charges due from the Authority to the Contractor shall assume that the Contractor has been performing the Services affected by the Required Action in full over that period, less an amount equal to all of the Authority's Capital Expenditure and Operating Expenditure in taking the Required Action, and such amount shall be deducted from the amount of the Charges which would otherwise be due from the Authority.

### **Notification of Step-Out**

47.6. The Authority Representative may at any time during the period of the Required Action notify the Contractor Representative that the Authority wishes to cease the Required Action, setting out a reasonable programme for transition of contractual responsibility to the Contractor (the "**Step-Out Plan**") and the date on which it intends to cease the Required Action, and in which event:

47.6.1. as soon as is reasonably practicable but in any case within ten (10) Business Days of receipt of the Authority Representative's notification pursuant to Clause 47.6 (Notification of Step-Out), the Parties shall consult with each other as to, and agree upon, the Step-Out Plan and the method by which the Authority shall cease the Required Action;

47.6.2. unless within fifteen (15) Business Days of the Parties first meeting to agree the Step-Out Plan the Parties are unable to reach agreement, in which case the matter shall be determined in accordance with DEFCON 530 (Dispute Resolution (English Law)); and

47.6.3. upon agreement of a Step-Out Plan pursuant to this Clause 47.6 (Notification of Step-Out) (or determination pursuant to the Dispute Resolution Procedure), the Parties shall comply with their respective obligations in implementing the Step-Out Plan.

47.7. On the date on which the Required Action ceases, in accordance with the Step-Out Plan:

47.7.1. the Authority will be released from all its obligations and liabilities in relation to the Required Action arising prior to the cessation of the Required Action other than its obligations to pay the Contractor pursuant to this Clause 47;

47.7.2. the Authority shall return any Assets to the Contractor which the Contractor provided to it to enable the Authority to perform the Required Action; and

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

47.8. If on or following the date on which the Required Action ceases, the Contractor can demonstrate that:

- 47.8.1. the effect of carrying out the Required Action was to delay, increase the Contractor's costs in providing, or otherwise affect the ability of the Contractor to provide the Services; or
- 47.8.2. there was a deterioration during such period of Required Action in the performance or availability of any Asset which was used by the Authority during such period; and
- 47.8.3. such deterioration was caused by the Authority during such period of Required Action as a result of the Authority using such Asset other than in accordance with Good Industry Practice; and
- 47.8.4. such deterioration in such Asset's performance or availability is in excess of any deterioration that would have arisen if such Asset had continued to be used by the Contractor during such period for the proper performance of its obligations under, and in accordance with the provisions of this Contract, then, provided that the Required Action did not arise in consequence of the Contractor being in breach of its obligations when the Authority exercised its right to step-in pursuant to this Clause 47 (Step-in Rights), such adverse impact pursuant to Clause 47.8.1 or deterioration pursuant to Clause 47.8.2 shall be an Authority Dependency Failure.

#### **48. AUTHORITY DEPENDENCY FAILURE**

- 48.1. For the Contract Period, the Authority shall endeavour to ensure the continued availability to the Contractor of the GFA listed in Schedule 9 (Government Furnished Assets).
- 48.2. In the event of an Authority Dependency Failure, the Contractor shall use reasonable endeavours to continue to perform the Contract (subject to any change agreed with the Authority), and shall, at all times, use its best endeavours and take all practicable measures to mitigate the consequences of the Authority Dependency Failure.
- 48.3. The Contractor shall, as soon as practicable and, in any event, within five (5) Business Days after it becomes aware that an Authority Dependency Failure has caused delay and/or adversely affected the Contractor's ability to perform and/or comply with its obligations in this Contract, the Contractor shall notify the Authority.
- 48.4. The Authority shall have five (5) Business Days to correct the failure during which time such failure shall not be deemed to be an Authority Dependency Failure.
- 48.5. If the Authority subsequently fails to provide or replace the element of GFA in accordance with Clause 48.4 (or such other period of time as agreed between the Parties acting reasonably), then the Contractor shall:
  - 48.5.1. use its best endeavours and take all practicable measures to mitigate the consequences of the Authority Dependency Failure;
  - 48.5.2. serve written notice to the Authority Representative providing:
  - 48.5.3. details of the Authority Dependency Failure;
  - 48.5.4. an explanation of which element of the Services are affected and the service levels and KPIs which may be adversely affected; and
  - 48.5.5. any work around solution that the Contractor is aware of (or reasonably should be aware of);
  - 48.5.6. evidence to demonstrate to the reasonable satisfaction of the Authority that:



- 48.5.6.1. the Authority Dependency Failure was not directly caused by the Contractor's failure to provide the Services or the Contractor's breach;
  - 48.5.6.2. the occurrence of the Authority Dependency Failure is the sole and direct cause of the Contractor's delay or failure to perform and/or comply with its obligations in this Contract;
  - 48.5.6.3. the Authority Dependency Failure could not reasonably be expected to be avoided or mitigated by the Contractor; and
  - 48.5.6.4. the Contractor has continued to perform its obligations under this Contract to the extent such performance is not prevented by the Authority Dependency Failure.
- 48.6. The Authority Representative shall promptly consider a notice provided to it under this Clause 48.1 above and the Parties shall promptly discuss the impact of the Authority Dependency Failure, after which the Authority Representative shall notify the Contractor Representative in writing that it either (in its sole and absolute discretion):
- 48.6.1. disagrees that an Authority Dependency Failure has occurred and, accordingly, no further action is required by the Authority; or
  - 48.6.2. agrees that an Authority Dependency Failure has occurred and the Authority may:
    - 48.6.2.1. take action to mitigate or remedy the Authority Dependency Failure Itself; and/or
    - 48.6.2.2. request that the Contractor provides and shall provide assistance in remedying the Authority Dependency Failure (which may include requiring the Contractor to obtain a replacement for the relevant Government Furnished Asset); and/or
    - 48.6.2.3. vary the Services in accordance with the Change Control Procedure so as to reduce and/or eliminate the impact of the Authority Dependency Failure on the Contractor, the ("**ADF Remedy Notice**").
- 48.7. Provided that the Contractor has complied with Clause 48 and, to the extent that an Authority Dependency Failure has not been directly caused by the Contractor's Default, then from the date of the ADF Remedy Notice until, in the Authority's sole and absolute discretion, the Authority Dependency Failure has been remedied or the Authority Dependency Failure no longer prevents the Contractor from providing the Services:
- 48.7.1. the Authority shall not be entitled to exercise its right to terminate this Contract for Contractor Default pursuant to Clause 50 (Termination for Contractor Default), unless such Contractor Default is not as a direct result of the Authority Dependency Failure; and
  - 48.7.2. the Authority may allow an extension of time for the Contractor to perform its obligations under the Contract;
- provided always that the Contractor has used reasonable endeavours both to mitigate the effects of the Authority Dependency Failure and to facilitate the continued performance of such of its obligations under this Contract as may still be possible wholly or in part.
- 48.8. If the Authority requires the Contractor's assistance to remedy the Authority Dependency Failure pursuant to this Clause 48.2, the Contractor shall be reimbursed any additional costs reasonably and properly incurred in providing such assistance, provided it has provided evidence to demonstrate such costs as having been reasonably and properly incurred.

- 48.9. If the Authority does not agree that an Authority Dependency Failure has occurred in accordance with 48.6.1, then the Contractor shall not be entitled to any relief from any of the Authority's rights set out in this Contract.
- 48.10. Notwithstanding any other provision in the Contract, but save as set out in this Clause 48, the Contractor shall not be entitled to any additional sums and/or relief from its obligations in this Contract as a result of an Authority Dependency Failure.

#### **49. FORCE MAJEURE**

- 49.1. The Contractor shall not be in breach of this Contract, nor liable for late or non-performance of any of its obligations under this Contract, if such delay or failure result from a "Force Majeure Event". For the purposes of this Contract, a Force Majeure Event is defined as one of the following:
- 49.1.1. acts of nature;
  - 49.1.2. war;
  - 49.1.3. hostilities;
  - 49.1.4. fire at any of the Contractor's premises or those of its suppliers except to the extent that the fire was caused by their own negligence;
  - 49.1.5. Foreign Object Damage not attributable to the Contractor.
- 49.2. The Contractor shall immediately notify the Authority in writing on the occurrence of a Force Majeure Event, including details of the Force Majeure Event, its effect on the Contractor's obligations under this Contract, and the actions proposed to mitigate its effect.
- 49.3. Subject to Clause 49.4 below, the Contractor shall be entitled to an appropriate extension of time for performing such obligations provided always that the Contractor has used, to the satisfaction of the Authority, all reasonable endeavours, both to mitigate the effects of the Force Majeure Event, and to facilitate the continued performance of its obligations under this Contract.
- 49.4. The maximum extension of time granted under this clause shall be limited to sixty (60) calendar days, after which time the Authority may, on giving written notice to the Contractor, terminate this Contract, without seeking compensation from the Contractor, with immediate effect.
- 49.5. Where this Clause 49 applies, the Contractor shall only be entitled to be paid (subject to any other provision of this Contract affecting the level of such payment, including any reduction for sums that the Authority is entitled to deduct under or in connection with this Contract (whether arising under any term of this Contract or under any Law or of equity)) for any aspect of the Contractor Services and/or Deliverables that it has, as at the Termination Date, delivered to the Authority in accordance with this Contract, and without prejudice to the foregoing, the Authority may deduct from such payment any charges it has paid to the Contractor in advance in respect of Contractor Services and/or Deliverables not supplied as at the Termination Date.

## 50. TERMINATION FOR CONTRACTOR DEFAULT

### Contractor Termination Events

50.1. Without affecting any other right or remedy available to it, the Authority may terminate this Contract (in whole or in part) by serving a Termination Notice, and this Contract will terminate on the date specified in the Termination Notice, where:

50.1.1. a right of termination is expressly reserved in this Contract, including pursuant to (but not limited to):

50.1.1.1. subject to Clause 46 (Rectification Plan), DEFCON 514 (Material Breach);

50.1.1.2. there is a Rectification Plan Failure in accordance with Clause 46.12 (Rectification Plan);

50.1.1.3. Clause 18.6 (ISO 9001:2015 (Quality Management System));

50.1.1.4. DEFCON 68 (Supply of Data for Hazardous Substances, Mixtures and Articles);

50.1.1.5. DEFCON 670 (Tax Compliance);

50.1.1.6. DEFCON 659A (Security Measures);

50.1.1.7. DEFCON 566 (Change of Control of Contractor);

50.1.1.8. DEFCON 520 (Corrupt Gifts and Payments of Commission);

50.1.1.9. DEFCON 540 (Conflicts of Interest);

50.1.1.10. there is an Insolvency Event in accordance with DEFCON 515 (Bankruptcy and Insolvency);

50.1.1.11. the Contractor commits a Persistent Breach,

each of the above being a ("**Contractor Termination Event**").

50.2. The Contractor acknowledges and agrees that for the purposes of DEFCON 514 (Material Breach), a material breach may be (but is not limited to) one or more of the following:

50.2.1. the Contractor's organisation /or supply chain fails to achieve Maintenance Approved Organisation Scheme (MAOS) accreditation in accordance with RA 4800 within fifteen (15) months of the Effective Date;

50.2.2. the Contractor's organisation /or supply chain materially fails to comply with or be considered to be competent in any material respect under the MAOS, details of which are set out in the Military Regulatory Publications with which the Contractor is required to comply under Clause 20 (Military Aviation Authority Regulatory Publications);

50.2.3. the Contractor's organisation/or supply chain fails to achieve Design Approved Organisation Scheme (DAOS) accreditation in accordance with RA 5850 within fifteen (15) months of the Effective Date;

50.2.4. the Contractor's organisation /or supply chain materially fails to comply with or be considered to be competent in any material respect under the DAOS, details of which are set out in the Military Regulatory Publications with which the Contractor is required to comply under Clause 20 (Military Aviation Authority Regulatory Publications);

- 50.2.5. the Contractor or their organisation /or supply chain has failed to achieve or maintain QMS certification to the Authority's satisfaction in accordance with Clause 18.6 (Quality Assurance Requirements);
- 50.2.6. the Contractor has failed to achieve Operational Services Commencement or subsequent milestones.
- 50.2.7. the Contractor has failed to provide the transition services in accordance with Schedule 18 (Contractor's Transition and Delivery Plan);
- 50.2.8. the Contractor commits a material breach which is irremediable or not remedied in accordance with Clause 46 (Contractor Default and Rectification Plan);
- 50.2.9. the Contractor fails to agree a Rectification Plan and/or implement an agreed Rectification Plan in accordance with Clause 46 (Contractor Default and Rectification Plan);
- 50.2.10. a representation and warranty given by the Contractor pursuant to Clause 4 (Warranties) is materially untrue or misleading;
- 50.2.11. the Authority has become aware that the Contractor should have been excluded under Regulation 23(1) of the Regulations from the procurement procedure leading to the award of this Contract;
- 50.2.12. the Contractor has failed to maintain the Required Insurances in accordance with the requirements of Clause **Error! Reference source not found.** (Insurance);
- 50.2.13. the Contractor has failed to apply the proceeds received from any insurance policy accordance with the terms of Clause **Error! Reference source not found.** (Insurance);
- 50.2.14. there is a material breach by the Contractor of any of its obligations pursuant to DEFCON 532A (Protection of Personal Data (Where Personal Data is not Being Processed on Behalf of the Authority));
- 50.2.15. there is a breach by the Contractor of any of its obligations under this Contract which materially and adversely affects the Services.

### Persistent Breach

- 50.3. If a particular breach has continued for more than twenty (20) Business Days or occurred more than three (3) times in any three (3) month period, then the Authority Representative may serve a written notice on the Contractor Representative:
  - 50.3.1. specifying that it is a formal warning notice;
  - 50.3.2. giving reasonable details of the breach; and
  - 50.3.3. stating that the breach is a breach which, if it recurs frequently or continues, may result in a termination of this Contract,
 (a "**Warning Notice**").
- 50.4. If, following service of such a Warning Notice the breach specified has continued beyond twenty (20) Business Days or recurred more than three (3) times in any three (3) month period after the date of service, then the Authority Representative may serve another written notice on the Contractor Representative:

50.4.1. specifying that it is a Final Warning Notice; and

50.4.2. stating that the breach specified has been the subject of a Warning Notice served within the six (6) month period prior to the date of service of the Final Warning Notice; and

50.4.3. stating that, if such breach continues for more than twenty (20) Business Days or recurs more than three (3) times in any three (3) month period after the date of service of the Final Warning Notice, this Contract may be terminated,

(a "**Final Warning Notice**").

50.5. A Warning Notice may not be served in respect of any incident of breach which has previously been counted in the award of a separate Warning Notice.

50.6. In the event of a Persistent Breach, the Authority Representative may serve the Contractor Representative with a Termination Notice to terminate this Contract (in whole or in part).

## **51. CONSEQUENCES OF EXPIRY OR TERMINATION**

51.1. The provisions of:

51.1.1. DEFCON 522 (Payment and Recovery of Sums Due);

51.1.2. DEFCON 513 (Value Added Tax and Other Taxes);

51.1.3. Clause 34.7 (Employment Indemnity);

51.1.4. Clause 34.7.3 (Income Tax and National Insurance Contributions);

51.1.5. DEFCON 609 (Contractor's Records);

51.1.6. Clause 29 (Governance and Contract Management);

51.1.7. Clause 30 (Audit, Access and Surveillance Rights);

51.1.8. DEFCON 707 (Rights in Technical Data);

51.1.9. Clause 38 (Intellectual Property Rights);

51.1.10. DEFCON 632 (Third Party Intellectual Property – Rights and Restrictions);

51.1.11. DEFCON 531 (Disclosure of Information);

51.1.12. DEFCON 539 (Transparency);

51.1.13. DEFCON 532A (Protection Of Personal Data (Where Personal Data is not Being Processed on Behalf of the Authority));

51.1.14. Clause 44 (Limitations on Liability);

51.1.15. Clause 51 (Consequences of Expiry or Termination);

51.1.16. DEFCON 538 (Severability);

51.1.17. DEFCON 537 (Rights of Third Parties);

51.1.18. Clause 54 (Entire Agreement);

- 51.1.19. DEFCON 529 (Law (English));
- 51.1.20. DEFCON 530 (Dispute Resolution (English Law));
- 51.1.21. Schedule 1 (Definitions and Abbreviations);
- 51.1.22. Schedule 4 (Pricing and Payment);
- 51.1.23. Schedule 5 (Performance Management
- 51.1.24. Schedule 13 (Transfer of Undertakings (Protection of Employment); and
- 51.1.25. Schedule 19 (Contractor's Exit Management Plan),

shall survive the termination or expiry of this Contract.

### **Exit Management**

- 51.2. The Parties shall comply with the provisions of Schedule 19 (Contractor's Exit Management Plan) in relation to orderly transition of the Services to the Authority or a replacement Contractor.

## **GOVERNING LAW AND MISCELLANEOUS**

### **52. COMPLIANCE**

#### **Health and Safety**

- 52.1. The Contractor shall perform its obligations under this Contract (including those in relation to the Services) in accordance with:

52.1.1. all applicable Law regarding health and safety; and

52.1.2. any health and safety policy whilst at any Authority Premises.

- 52.2. Each Party shall notify the other as soon as practicable of any health and safety incidents or material health and safety hazards at the Authority Premises of which it becomes aware and which relate to or arise in connection with the performance of this Contract. The Contractor shall instruct the Contractor Personnel to adopt any necessary associated safety measures in order to manage any such material health and safety hazards.

#### **Modern Slavery**

- 52.3. The Contractor:

52.3.1. shall not use, nor allow its Subcontractors to use forced, bonded or involuntary prison labour;

52.3.2. shall not require any Contractor Personnel or the personnel of any Subcontractors to lodge deposits or identity papers with their employer and shall be free to leave their employer after reasonable notice;

52.3.3. warrants and represents that it has not been convicted of any slavery or human trafficking offences anywhere around the world;

- 52.3.4. warrants that to the best of its knowledge it is not currently under investigation, inquiry or enforcement proceedings in relation to any allegation of slavery or human trafficking offences anywhere around the world;
- 52.3.5. shall make reasonable enquires to ensure that its officers, employees and Subcontractors have not been convicted of slavery or human trafficking offences anywhere around the world;
- 52.3.6. shall have and maintain throughout the Contract Period its own policies and procedures to ensure its compliance with the Modern Slavery Act 2015 and include in its contracts with its Subcontractors anti-slavery and human trafficking provisions;
- 52.3.7. shall implement due diligence procedures to ensure that there is no slavery or human trafficking in any part of its supply chain performing obligations under the Contract;
- 52.3.8. shall prepare and deliver to the Authority, an annual slavery and human trafficking report setting out the steps it has taken to ensure that slavery and human trafficking is not taking place in any of its supply chains or in any part of its business;
- 52.3.9. shall not use, nor allow its employees or Subcontractors to use physical abuse or discipline, the threat of physical abuse, sexual or other harassment and verbal abuse or other forms of intimidation of its employees or subcontractors;
- 52.3.10. shall not use or allow child or slave labour to be used by its subcontractors;
- 52.3.11. shall report the discovery or suspicion of any slavery, trafficking, forced labour, child labour, involuntary prison labour or labour rights abuses by it or its subcontractors to the Authority and the Modern Slavery Helpline and relevant national or local law enforcement agencies;
- 52.3.12. if the Contractor is in Default under Clauses 52.3.1 to 52.3.11 the Authority may by notice:
- 52.3.12.1. require the Contractor to remove from performance of the Contract any subcontractor, Contractor Personnel or other persons associated with it whose acts or omissions have caused the Default; or
- 52.3.12.2. immediately terminate the Contract in accordance with Clause **Error! Reference source not found.**; and
- 52.3.13. shall, if the Contractor or the Authority identifies any occurrence of modern slavery connected to this Contract, comply with any request of the Authority to follow the Rectification Plan Process to submit a remedial action plan which follows the form set out in Annex D of the Tackling Modern Slavery in Government Supply Chains guidance to PPN 02/23 (Tackling Modern Slavery in Government Supply Chains);
- 52.4. If the Contractor notifies the Authority pursuant to Clause 52.3.11 it shall respond promptly to the Authority's enquiries, co-operate with any investigation, and allow the Authority to audit any books, records and/or any other relevant documentation in accordance with the Contract.

### Whistleblowing

- 52.5. As soon as it is aware of it the Contractor and Contractor Personnel must report to the Authority any actual or suspected breach of:
- 52.5.1. Law;

52.5.2. Clauses 52.3.1 to 52.3.11 or 52.6; or

52.5.3. DEFCON 520 (Corrupt Gifts and Payments of Commission).

52.6. The Contractor must not retaliate against any of the Contractor Personnel who in good faith reports a breach listed in this Clause to the Authority, a prescribed person or body.

### **53. INADEQUACY OF DAMAGES**

53.1. Without prejudice to any other rights or remedies that the Authority may have, the Contractor acknowledges and agrees that damages alone would not be an adequate remedy for any breach of the terms of this Contract by the Contractor. Accordingly, the Authority shall be entitled to the remedies of injunction, specific performance or other equitable relief for any threatened or actual breach of the terms of this Contract.

### **54. ENTIRE AGREEMENT**

54.1. This Contract constitutes the entire agreement between the Parties in respect of its subject matter and supersedes and extinguishes all prior negotiations, arrangements, understanding, course of dealings or agreements made between the Parties in relation to its subject matter, whether written or oral.

54.2. Neither Party has been given, nor entered into this Contract in reliance on, any warranty, statement, promise or representation other than those expressly set out in this Contract.

54.3. Nothing in this Clause 54 shall exclude any liability in respect of misrepresentations made fraudulently.

### **55. COSTS**

55.1. Except as expressly provided in this Contract, each Party shall pay its own costs incurred in connection with the negotiation, preparation, execution and registration of this Contract and any documents referred to in it.

### **56. COUNTERPARTS**

56.1. This Contract may be executed in any number of counterparts, each of which when executed and delivered shall constitute a duplicate original, but all the counterparts shall together constitute the one Contract.

56.2. No counterpart shall be effective until each Party has executed at least one counterpart.

### **57. PASS-THROUGH WARRANTIES**

57.1. In circumstances where the Contractor's Subcontractors offer a warranty at no additional cost in any Contractor Deliverables or part of any Contractor Deliverables, the Contractor shall pass the benefit of this to the Authority.

57.2. The Contractor shall use reasonable endeavours to procure from its Subcontractors a warranty at no additional cost in any Contractor Deliverables or part of any Contractor Deliverables to be provided by such Subcontractors.

57.3. On or prior to Acceptance, the Contractor shall notify the Authority of any warranties the benefit of which shall pass to the Authority.



**58. IMPORT AND EXPORT LICENCES**

- 58.1. If, in the performance of the Contract, the Contractor needs to import into the UK or export out of the UK anything not supplied by or on behalf of the Authority and for which a UK import or export licence is required, the responsibility for applying for the licence shall rest with the Contractor in accordance with DEFCON 528 (Import and Export Licences).

**59. CONTRACTORS ON DEPLOYED OPERATIONS (CONDO)**

- 59.1. Where the Authority has a requirement for the Contractor, a subcontractor, or both, to Deploy to undertake a task at an expected work location in a CONDO Applicable Area:
- 59.1.1. the Parties shall implement such task in accordance with the requirements of Clause 10.3 (Emergent Work Tasking Process); and
- 59.1.2. the provisions of Schedule 25 (Contractors on Deployed Operations) shall apply.
- 59.2. For avoidance of doubt, Schedule 25 (Contractors on Deployed Operations) shall only become effective when such a task is included in the Contract.

**60. LIQUIDATED DAMAGES**

- 60.1. It is recognised by the Parties that if the Contractor fails to deliver Schedule of Requirement Line Item Nos. 2, 4, and 5 (Items 8, 9 and 10 in the event that the option is enacted) on or before the date stated in the Contractor Transition and Delivery Plan in accordance with Schedule 18, the Authority will suffer loss and damage.
- 60.1.1. Liquidated Damages Events are as stated in Table 1 below.
- 60.2. Accordingly, subject to Condition 60.3, for each day's delay for each Liquid Damages Events No. 1.1 and 1.2, or for Liquidated Damages Event No. 1.3 below for each day following the 21<sup>st</sup> (twenty first) consecutive day, and without prejudice to the provisions of the Milestone within the payment plan, beginning from the day following the contracted delivery date and excluding bank holidays and weekends, the Contractor shall pay the Authority twenty thousand pounds (£20,000) per day of non-delivery up to a maximum of one million pounds (£1,000,000). These liabilities will accumulate in increments of twenty thousand pounds (£20,000) per day until such time as the Article/Service is delivered. The Parties confirm that this sum represents a genuine pre-estimate of the Authority's direct losses.
- 60.3. The Contractor may be relieved, in the Authority's absolute discretion, from the payment of liquidated damages in the following circumstances:
- 60.3.1. damage is caused by operating the Aircraft outside the flight envelope, where such damage is not caused by the Contractor's default, breach and/or negligence;
- 60.3.2. damage is caused by a passenger or employee of the Authority, including RAF personnel, where such damage is not caused by the Contractor's default, breach and/or negligence;
- 60.3.3. damage caused by a military event whilst undertaking a tasking within a non-benign area, where such damage is not caused by the Contractor's default, breach and/or negligence;
- 60.3.4. Force Majeure Events in accordance with Clause 49.

60.4. The Authority shall take payment of any sums due under this Condition 60 by deducting the amount owed from the next payment Milestone (either/or a combination of SOR Item Nos. 2, 4,5, 8, 9 and 10) in accordance with DEFCON 522.

60.5. The provisions of this Clause are without prejudice to any other rights of the Authority under the Contract, including but not limited to those under DEFCON 514 (Material Breach). Accordingly, if the Authority terminates the Contract, liquidated damages shall be payable under this Condition until the date of such termination.

60.6. Unless expressly otherwise stated otherwise by the Authority in writing, the provisions of DEFCON 527 (Waiver) shall apply to the Authority's right to recover liquidated damages under this Clause.

NO.	Event	Details	Comments/Actions
1.1	Day 1 of In-Service Support.	a) In accordance with the Schedule 7, DID 1 (Contractor's Transition and Delivery plan).	b) The Contractor will be given the option to substitute the Aircraft for a contract charter of similar quality, if unable to provide the Aircraft.
1.2	Day 1 of In-Service Support after embodiment of SPIRAL 1 or SPIRAL 2 military modifications.	a) In accordance with the Schedule 7, DID 1 (Contractor's Transition and Delivery plan).	b) The Contractor will be given the option to substitute the Aircraft for a contract charter of similar quality, if unable to provide the Aircraft.
1.3	Failure of Contractor to provide Aircraft ATL for more than 21 consecutive days.	a) As per the daily state sheet in accordance with Schedule 2, Annex 3 (Statement of Requirement).	c) The Contractor will be given the option to substitute the Aircraft for a contract charter of similar quality, if unable to provide the Aircraft.

Table 1: Liquidated Damages Events

**Appendix 1. ADDRESSES AND OTHER INFORMATION (DEFFORM 111)****DEFFORM 111**  
**(Edn 10/22)****Appendix - Addresses and Other Information****1. Commercial Officer**

Name:

Address:

Email:

**8. Public Accounting Authority**

1. Returns under DEFCON 694 (or SC equivalent) should be sent to DBS Finance ADMT – Assets In Industry 1, Level 4 Piccadilly Gate, Store Street, Manchester, M1 2WD  
☎ 44 (0) 161 233 5397

2. For all other enquiries contact DES Fin FA-AMET Policy, Level 4 Piccadilly Gate, Store Street, Manchester, M1 2WD  
☎ 44 (0) 161 233 5394

**2. Project Manager, Equipment Support Manager or PT Leader** (from whom technical information is available)  
Name:

Address

Email:

**9. Consignment Instructions**

The items are to be consigned as follows:

**3. Packaging Design Authority**  
Organisation & point of contact:

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



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

**A. DSCOM.** DE&S, DSCOM, MoD Abbey Wood, Cedar 3c, Mail Point 3351, BRISTOL BS34 8JH

Air Freight Centre

IMPORTS ☎ 030 679 81113 / 81114 Fax 0117 913 8943

EXPORTS ☎ 030 679 81113 / 81114 Fax 0117 913 8943

Surface Freight Centre

IMPORTS ☎ 030 679 81129 / 81133 / 81138 Fax 0117 913 8946

EXPORTS ☎ 030 679 81129 / 81133 / 81138 Fax 0117 913 8946

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



(b) U.I.N.

**B. JSCS**

JSCS Helpdesk No. 01869 256052 (select option 2, then option 3)  
JSCS Fax No. 01869 256837

Users requiring an account to use the MOD Freight Collection Service should contact [UKStratCom-DefSp-RAMP@mod.gov.uk](mailto:UKStratCom-DefSp-RAMP@mod.gov.uk) in the first instance.

**5. Drawings/Specifications are available from**

**11. The Invoice Paying Authority**

Ministry of Defence

☎ 0151-242-2000

DBS Finance

Walker House, Exchange Flags

Fax: 0151-242-2809

Liverpool, L2 3YL

**Website is:**

<https://www.gov.uk/government/organisations/ministry-of-defence/about/procurement>

**6. Intentionally Blank****12. Forms and Documentation are available through \*:**

Ministry of Defence, Forms and Pubs Commodity Management  
PO Box 2, Building C16, C Site

Lower Arncott

Bicester, OX25 1LP (Tel. 01869 256197 Fax: 01869 256824)

**Applications via fax or email:**

[Leidos-FormsPublications@teamleidos.mod.uk](mailto:Leidos-FormsPublications@teamleidos.mod.uk)

**7. Quality Assurance Representative:****\* NOTE**

Commercial staff are reminded that all Quality Assurance requirements should be listed under the General Contract Conditions.

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

1. Many **DEFCONs** and **DEFFORMs** can be obtained from the MOD Internet Site:  
<https://www.kid.mod.uk/maincontent/business/commercial/index.htm>

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