



**Ministry of  
Defence**



**Contract No. 704104450**

**Maritime Command and Staff Trainer (MCAST)**

**Terms and Conditions of Contract**

**Version: 1.8**

**Date: 23/04/2025**

**Defence Equipment & Support**

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Document Prepared By	Signature	Appointment	Date

Reviewed by

Name	Appointment	Date

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Name	Signature	Appointment	Date

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**Version Control**

Issue Amended	Change/Amendment/Correction	Date	Name and Signature
1.1	Amended missing cross-reference in 3.3.1 to 3.2.1, and sections 23.5 and 23.6 where the missing cross-reference for both is 3.2.	21/04/2023	[REDACTED]
1.1	Removed the reference to DEFCON 705 from the Defence Conditions table.	21/04/2023	[REDACTED]
1.1	Initial Operating Capability means the Contractor has achieved Capability Milestones 1 and 2 as per the ITEAP and Annex J	21/04/2023	[REDACTED]
1.1	Liquidated damage values added	21/04/2023	[REDACTED]
1.2	Addition of version control	24/05/2023	[REDACTED]
1.3	Changes from Clause' 31.3 to 31.6 to include DEFCON 91	14/07/2023	[REDACTED]
1.4	Addition of Annex P - CEL	21/07/2023	[REDACTED]
1.6	Post negotiation updates referenced in MCAST Final Tender Change Log	14/12/2023	[REDACTED]
1.7	Reference to Annex P, addition of Annex S	19/01/2023	[REDACTED]
1.8	Administrative update prior to Contract Award	23/04/2025	[REDACTED]

**Terms and Conditions of Contract**

**For**

**Contract Number: 704104450**

**Maritime Command and Staff Trainer**

**("the Contract")**

By and between:

DE&S Synthetic Environments and Training

Ministry of Defence, Birch 1a, #3119,

Abbey Wood, Bristol, BS34 8JH

(the "**Authority**")

And

QinetiQ Ltd

Cody Technology Park

Ively Road, Farnborough, Hampshire, GU14 0LX

(the "**Contractor**")

(each a "Party" and together the "Parties")

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PART A. SCHEDULE OF REQUIREMENTS

MINISTRY OF DEFENCE		
<b>Name and Address of Contractor</b>  QinetiQ Ltd  Cody Technology Park,  Ively Road, Farnborough,  Hampshire, GU14 0LX	<b>Schedule of Requirements</b>  <b>MARITIME COMMAND AND STAFF TRAINER (MCAST)</b>	<b>Contract No</b>  704104450
<b>Issued With</b>  Offer Letter	<b>On</b>  28 <sup>th</sup> July 2025	<b>Previous Contract</b>  No N/A

Item No	Description	Total Price £ Sterling (ex-VAT)
1	Initial design of a Maritime Command and Staff Trainer to achieve Initial Operating Capability (IOC) in accordance with the Annex A (Statement of Work), Annex J (Pricing and Delivery), Condition 21 (Price) and Condition 24 (Stage (Interim) Payments) to the Contract.	Firm Price year 1 ██████████
2	Provision of a Maritime Command and Staff Trainer and continued development to achieve Full Operating Capability (FOC) in accordance with Annex A (Statement of Work), Annex J (Pricing and Delivery), Condition 21 (Price) and Condition 22 (Variation of Price to the Contract).	Firm Price year 1 ████  Fixed Price years 2-5 ██████████



3	Provision of Additional Tasking in accordance with the Annex A (Statement of Work), Annex J (Pricing and Delivery), the procedure in Annex D (Task Approval Form) and Condition 21 (Price).	<div>Firm Price (Labour Rates) years 1</div> <div>Setting and Scenario Dev and Control - [REDACTED]</div> <div>Training Management - [REDACTED]</div> <div>Exercise Management Process Control - [REDACTED]</div> <div>SOTR Manager - [REDACTED]</div> <div>Service Management Office - [REDACTED]</div> <div>Exercise Delivery Lead - [REDACTED]</div> <div>Scenario Development - [REDACTED]</div> <div>MEL/MIL Development - [REDACTED]</div> <div>Operations and Plans - [REDACTED]</div> <div>Technical Support (CIS) - [REDACTED]</div> <div>Fixed Price (Labour Rates) years 2-5</div> <div>[REDACTED]</div> <div>[REDACTED]</div> <div>[REDACTED]</div> <div>[REDACTED]</div> <div>[REDACTED]</div> <div>[REDACTED]</div>
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**CONDITIONS OF CONTRACT**

The Contract is subject to the terms and conditions attached

**Appendix 1 to Schedule of Requirements**

## Table of Irrevocable Contract Options

Option Item No	Description	Quantity	Total Price £ Sterling (ex-VAT)
<b>1a</b>	(a) Provision of an additional 1 year of a Maritime Command and Staff Trainer in accordance with the Schedule of Requirement Line item 2, Annex A (Statement of Work), Annex J (Pricing and Delivery), Condition 21 (Price) and Condition 22 (Variation of Price).		<b>Fixed Price years 5-6</b> ██████████
<b>1b</b>	(b) Provision of additional 1 year of Additional Tasking in accordance with Schedule of Requirement Line item 2, Annex A (Statement of Work), Annex J (Pricing and Delivery), the procedure in Annex D (Task Approval Form) and Condition 21 (Price).		<b>Fixed Price (Labour Rates) years 5-6</b> ██████████ ██████████ ██████████ ██████████ ██████████ ██████████
<b>2a</b>	(a) Provision of an additional 1 year of a Maritime Command and Staff Trainer in accordance with the Schedule of Requirement Line item 2, Annex A (Statement of Work), Annex J (Pricing and Delivery), Condition 21 (Price) and Condition 22 (Variation of Price).		<b>Fixed Price years 6-7</b> ██████████
<b>2b</b>	(b) Provision of additional 1 year of Additional Tasking in accordance with Schedule of Requirement Line item 2, Annex A (Statement of Work), Annex J (Pricing and Delivery), the procedure in Annex D (Task Approval Form) and Condition 21 (Price).		<b>Fixed Price Labour Rates years 6-7</b> ██████████ ██████████ ██████████ ██████████ ██████████ ██████████
<b>3</b>	The integration a maritime/littoral MBS exercise within a Joint virtual exercise using a common virtual operating environment.		██████████ Year 1 Firm Price; where this Option is exercised in years 2-7 the option price will

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				be escalated through Condition 22 (VoP).	
	4	The integration of a maritime/littoral MBS exercise within a multi-national virtual exercise using a common virtual operating environment.		<p>██████████</p> <p>Year 1 Firm Price; where this Option is exercised in years 2-7 the option price will be escalated through Condition 22 (VoP).</p>	
	5	The integration of force elements exercising within the wider defence simulation enterprise (e.g. DOTC(Air)) into a MCAST exercise, replacing synthetic force elements normally managed by exercise controllers.		<p>██████████</p> <p>Year 1 Firm Price; where this Option is exercised in years 2-7 the option price will be escalated through Condition 22 (VoP).</p>	

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**PART B. GENERAL CONDITIONS****Defence Conditions**

This Contract incorporates the following Defence Conditions, Quality Assurance Standards and Conditions, Defence Forms and Defence Standards which shall apply to this Contract. The Parties agree that the following standard conditions shall apply to this Contract in addition to any DEFCONs expressly incorporated in Part C (Special Conditions) as if written in full text:

DEFCON	Edition	Description
5J	18/11/16	Unique Identifiers
35	06/21	Progress Payments
68	10/22	Supply Of Hazard Data for Articles, Materials And Substances
76	11/22	Contractor's Personnel At Government Establishments
91	06/21	Intellectual Property Rights in Software  NOTE: This condition shall only apply where specified in accordance with Clause 31.4 and/or Annex R to this Contract.
126	06/21	International Collaboration  NOTE: For the purposes of DEFCON 126 Clauses 2 and 3 the prescribed period is for as long as the equipment remains in service with the UK Armed Forces
129	02/22	Packaging (For Articles Other Than Munitions)
129J	18/11/16	The Use Of The Electronic Business Delivery Form  Note: The Parties agree that the barcoding requirements under this DEFCON shall not apply to this Contract.
501	10/21	Definitions And Interpretations
503	06/22	Formal Amendments To Contract
507	07/21	Delivery
513	04/22	VAT and other Taxes
514	08/15	Material Breach
515	06/21	Bankruptcy and Insolvency
516	04/12	Equality
518	02/17	Transfer
520	08/21	Corrupt Gifts and Payment of Commission

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522	11/21	Payment and Recovery of Sums Due  Note: In the event that the Authority intends to exercise its right under clause 6 of this DEFCON the Authority will first notify the Contractor by formal correspondence.
524	12/21	Rejection
525	10/98	Acceptance
526	08/02	Notices
527	09/97	Waiver
528	07/21	Import and Export Licenses
529	09/97	Law (English)
530	12/14	Dispute Resolution (English Law)
531	09/21	Disclosure Of Information
532B	12/22	Protection of Personal Data (Where Personal Data is being processed on behalf of the Authority)
534	06/21	Subcontracting and Prompt Payment  Note: Where alternative payment arrangements have previously been agreed between the Contractor and its subcontractors, then those arrangements may apply subject to the provision of written confirmation from the subcontractor that they are content clause 3b does not apply.
537	12/21	Rights Of Third Parties
538	06/02	Severability
539	01/22	Transparency
550	02/14	Child Labour and Employment Law
566	10/20	Change of Control of Contractor
565	12/24	Supply Chain Resilience and Risk Awareness
595	03/19	Automatic Test Equipment Data Requirements
601	04/14	Redundant Materiel  Note: This DEFCON is included solely in relation to DEFCON 611.
602A	12/17	Quality Assurance (With Deliverable Quality Plan)
604	06/14	Progress Reports
605	06/14	Financial Reports
606	07/21	Change And Configuration Control Procedure
608	07/21	Access and Facilities to be Provided by the Contractor
609	07/21	Contractor's Records

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611	12/22	Issued Property
617	10/22	Plastic Packaging Tax
620	06/22	Contract Change Control Procedure <b>Note:</b> For the purposes of DEFCON 620, Appendix H (Change Control Procedure Form) to Annex A (Statement of Work) shall be used.
621B	10/04	Transport (If Contractor Is Responsible For Transport)
627	11/21	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
642	07/21	Progress Meeting
645	12/21	Export Potential
647	05/21	Financial Management Information
656B	08/16	Termination for Convenience > 5M  Note: In accordance with Clause 1 of DEFCON 656b the written notice period will be at least Twenty (20) business days (unless an alternative timescale is agreed between the Parties).
658	10/22	Cyber  Further to DEFCON 658 the Cyber Risk Profile of the Contract is [High], as defined in Def Stan 05-138.
659A	09/21	Security Measures
660	12/15	Official-Sensitive Security Requirements
670	02/17	Tax Compliance
681	06/02	Decoupling Clause – Subcontracting with the Crown
687A	06/21	Provision of a Shared Data Environment Service
694	07/21	Accounting For Property Of The Authority
697	11/22	Contractors on Deployed Operations  Note: CONDO will be managed in accordance with Condition 26 Additional Tasking.
703	06/21	Intellectual Property Rights – Vesting In The Authority  NOTE: This condition shall apply to all intellectual property generated and delivered, or to be delivered, in performance of work under the Contract unless expressly stated otherwise.
<b>DEFSTAN</b>	<b>Edition</b>	<b>Description</b>
05-138	06/21	V3. Cyber Security for Defence Contractors

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05-139	06/23	V1. Cyber Security and Resilience of Products, Systems and Services
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**PART C. SPECIAL CONDITIONS**

**1 Definitions and Interpretations**

1.1 In addition to the provisions of DEFCON 501 (definitions and Interpretations), the following words and expressions shall apply to this Contract. In the event of any inconsistency between DEFCON 501 (definitions and Interpretations) and this Clause 1 (Definitions and Interpretations), this Clause 1 (Definitions and Interpretations) shall take precedence:

<b>Article(s), “Authority”, Contract, Contractor, Contract Price, Services, etc.</b>	has the meaning given in DEFCON 501 (Definitions and Interpretations) except as expressly stated elsewhere in the Contract;
<b>Additional Tasking</b>	means any additional works and/or services that lie within the general scope of the Contract provided by the Contractor in accordance with the provision of Clause 26 (Additional Tasking).
<b>Additional Tasking Register</b>	means the register detailed at Annex E (Task Approval Register).
<b>Applicable Law(s)</b>	<ul style="list-style-type: none"> <li>(a) any Act of Parliament;</li> <li>(b) any subordinate legislation within the meaning of Section 21 of the Interpretation Act 1978;</li> <li>(c) any exercise of the Royal Prerogative; or</li> <li>(d) any enforceable community right within the meaning of Section 2 of the European Communities Act 1972,</li> </ul> <p>in each case in the United Kingdom.</p>
<b>Authority Dependency Failure</b>	<p>Means;</p> <ul style="list-style-type: none"> <li>(a) the non-provision of Government Furnished Assets (GFA) in accordance with Annex F (GFA), or it can be demonstrated that the GFA provided in accordance with Annex F (GFA) is unsuitable for the Contractor to undertake and fulfil its obligations in accordance with the Contract; or</li> <li>(b) non-fulfilment of a dependency in accordance with Annex F (GFA)</li> </ul>
<b>Authority’s Commercial Officer</b>	means the post named in Box 1 of Annex N (DEFFORM 111).
<b>Authority’s Project Manager</b>	means the post named in Box 2 of Annex N (DEFFORM 111).
<b>Bill Paying Branch</b>	means Defence Business Services Finance, at the address stated in box 11 of the Annex N (DEFFORM 111).



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<b>Business Day(s)</b>	Any day excluding Saturdays, Sundays and public and statutory holidays in England and Wales.
<b>Capability Milestone</b>	means the milestones (CM1 to CM5) detailed in Annex J (Pricing and Delivery).
<b>Contract Commencement Date</b>	means the date on which Contract is signed by both parties.
<b>Contractor Related Party</b>	<p>means one or more of:</p> <ul style="list-style-type: none"> <li>(a) an officer, employee, representative, agent or adviser of the Contractor;</li> <li>(b) Contractor Executive;</li> <li>(c) a Sub-Contractor and any further Sub-Contractor of any tier; and</li> <li>(d) an officer, employee, representative, agent or adviser of a Sub-Contractor and any further sub-Contractor of any tier.</li> <li>(e) any person on or at any of the Authority sites at the express or implied invitation of the Contractor and/or Sub-contractor or a further Sub-Contractor, save to the extent such person is acting under the instruction or control of the Authority.</li> </ul>
<b>Contract Expiry Date</b>	<p>means the date falling five (5) years after the Contract Commencement Date where the Authority does not issue a notice extending the term of this Contract pursuant to Clause 3 (Options),</p> <p>means the date falling six (6) years after the Contract Commencement Date where the Authority issues a notice extending the Contract Term pursuant to Clause 3.2.1 (Options),</p> <p>means the date falling seven (7) years after the Contract Commencement Date where the Authority issues a notice extending the Contract Term pursuant to Clause 3.3.1 (Options).</p>
<b>Contract Term</b>	has the meaning set out in Clause 2 (Contract Term).
<b>Controlled Information</b>	means any information deemed to be classified or that could be seen as sensitive. Including asset management materials.
<b>CP&amp;F</b>	means the Authority Commercial Purchasing & Finance (CP&F) e-procurement tool.
<b>Crisis Event</b>	<p>means any national or international event of significance where the Authority requires additional or revised Contract Deliverables. Crisis Event may include such events as:</p> <ul style="list-style-type: none"> <li>(a) any material threat to national security, or defence;</li> <li>(b) any material adverse effect on the national interests of the United Kingdom;</li> </ul>

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	<p>(c) the occurrence of a state of war, crisis, tension, or other emergency (whether involving hostilities or otherwise).</p> <p>(d) a request from an authority of competent jurisdiction that the Ships be utilised for assistance in relation to the occurrence of possible occurrence of a major incident, crisis or natural disaster;</p> <p>(e) a request from NATO, the EU the United Nations for the Ships support or assistance in relation to international obligations; or</p> <p>(f) any other event of similar nature or cause.</p>
<b>Critical Design Review (CDR)</b>	means a multi-disciplined technical review to ensure that the MCAST system can meet stated performance requirements within cost, schedule, and risk.
<b>Deliverable Documentation</b>	Means the documentation in Appendix D (Contract Deliverables) to Annex A (Statement of Work).
<b>Design</b>	means any work undertaken in the performance of this contract to create, develop and support the MCAST operational and technical services.
<b>Dispute</b>	means any dispute, claim or difference of whatever nature arising out of, in connection with, or in relation to this Contract, including, but not limited to, a claim based on contract, tort, equity or domestic or international statute.
<b>Exit Criteria</b>	means all of the criteria referred to in Appendix G (Technical Reviews) to the Annex A (SOW) as "Exit Criteria" in the Table applicable to the design review in question;
<b>Exit Period</b>	means the period during which Exit Services will be performed following Contract Expiry or an early termination of this Contract,
<b>Exit Plan</b>	means the plan detailed at Annex C (Exit Plan).
<b>Exit Service</b>	means the activities required from the Contractor during the Exit Period.
<b>Exit Term</b>	means the date from which any Exit Services are required to the date of Contract Expiry or termination.
<b>Exit Manager</b>	means a suitable candidate delegated by the Contractor to manage the process of exit and transfer of assets to the Authority or Follow-On Contractor.
<b>Exit Management Information</b>	means all information relating to the termination and handover of the contract, including all data in the Exit Plan and any other means required for the exchange of service.

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<b>Follow-On Contractor</b>	means the contractor to continue running the service following contract termination.
<b>Full Operating Capability</b>	means the Contractor has achieved Capability Milestones 1 – 5 (inclusive) in accordance with Annex J (Pricing and Delivery).
<b>Gainshare</b>	means an approach to the review and adjustment of an existing contract, or series of contracts, where the adjustment provides benefits to both parties. It is a mutual activity requiring the agreement of both parties to the contract adjustment.
<b>Gainshare Proposal</b>	means a formal written suggestion of a new idea or creative thinking leading to a potential improved process or efficiency.
<b>Gainshare Proposal's Implementation Plan</b>	means a plan to be provided on Authority acceptance of an Gainshare Proposal and shall break each strategy into identifiable steps, assigns each step to stakeholder and suggest when and where each step will be completed.
<b>Good Industry Practice</b>	means the exercise of such degree of skill, diligence, prudence and foresight as would reasonably and ordinarily be expected from a skilled and experienced person seeking to comply with his contractual obligations and seeking to avoid liability arising under any duty of care that might reasonably apply to or to be expected from that person, complying with all Applicable Laws and engaged in the same type of undertaking and under the same or similar circumstances and conditions as the Contractor, Sub-Contractor or other Sub-Contractor.
<b>Independent Safety and Environmental Auditor</b>	means an individual or third party contracted by the Authority to provide independent assurance of safety and environment aspects of the Contract.
<b>Information</b>	means any information scientific, technical or otherwise irrespective of the manner in which it is presented including in the form of software and whether or not it is protected or capable of protection as Intellectual Property.
<b>Improvement</b>	means an approach to the review and adjustment of an existing contract, or series of contracts, where the adjustment provides benefits to both Parties. It is a mutual activity requiring the agreement of both Parties to the contract adjustment.
<b>Initial Operating Capability</b>	means the Contractor has achieved Capability Milestones 1 and 2 in accordance with Annex J (Pricing and Delivery) and Appendix C (ITEAP) to Annex A (Statement of Work).
<b>Integrated Test Evaluation and Acceptance (ITEA)</b>	as defined in the MCAST ITEA at Appendix C (ITEAP) to Annex A (Statement of Work).

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<b>Intellectual Property</b>	means patents, utility models, rights (registered and unregistered) in any designs; applications for any of the foregoing; copyright; database and topography rights; confidential information and trade secrets; and all rights and forms of protection of a similar nature to these or having equivalent effect anywhere in the world.
<b>Key Personnel</b>	means those persons appointed by the Contractor to fulfil the Key Roles, being the persons listed against each Key Role as at the Contract Commencement Date or as amended over the Contract Term.
<b>Key Roles</b>	means roles identified as critical to the management and delivery of the Service.
<b>Labour Rates</b>	means the rates agreed and set out within Annex J (Pricing and Delivery) for the Services delivered under Clause 26 (Additional Tasking).
<b>Lead Time</b>	the period between placement of an order and delivery of an Article.
<b>Longstop Date</b>	<p>“Longstop Date” means, in respect of:</p> <p>(a) Initial Operating Capability, the date which is twelve (12) months after the contract commencement date.</p> <p>(b) Full Operating Capability, the date which is three (3) years after the Contract Commencement Date.</p>
<b>MCAST System</b>	The system used by the Contractor to deliver the exercise (including AAR) in accordance with the Statement of Work at Annex A. The MCAST System does not include any GFA that may be utilised by the Contractor as part of the exercise delivery.
<b>New Provider</b>	means a third party or parties contracted (or to be contracted) by the Authority to carry out services and/or works similar to the Contractor Deliverables after Contract expiry or termination (as relevant).
<b>Obsolescence Concern</b>	means an identified future Obsolescence Issue.
<b>Obsolescence Issue</b>	means an item within a project which has been declared obsolescent.
<b>Party/Parties</b>	means the Authority and/or the Contractor excluding any other third party;

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<b>Persistent Breach</b>	Has the meaning set out in Clauses 40.7-40.9 (Contract Termination)
<b>Quality Plan or Quality Management Plan</b>	means a plan which meets DEFCON 602A, Part B- General Conditions, the requirements of AQAP 2105 and is in accordance with Annex A (Statement of Work).
<b>Relief Event(s)</b>	Means those events listed at 49.1.1 – 49.1.4
<b>Service Credit(s)</b>	means the amount that the Contractor shall credit or pay to the Authority in the event of a failure by the Contractor to meet the agreed Service Levels as set out/referred to in Annex K (KPI's);
<b>Sub-Contractor</b>	means any person (any legal or natural person or persons), firm, or company to whom the Contractor sub-lets any part of the Contractor Deliverables to be carried out by the Contractor.
<b>Task Approval Form (TAF)</b>	means the form provided at Annex D (Task Approval Form) to be used to initiate Additional Tasks under the Contract.
<b>UK Governmental Purpose</b>	means anything done by or for HMG under the authority of a Minister of the Crown; but, for the avoidance of doubt as regards this condition, such purposes shall not extend to commercial sales of Articles except for the disposal of outworn or surplus items, nor to licensing or trade of Contractor-owned IPR for revenue generation;
<b>Years</b>	means whole calendar years from the Contract Commencement Date.

1.2 The headings in this Contract do not affect its interpretation. Save where the context otherwise requires, references to sub-clauses, Clauses, paragraphs, and Schedules are to sub-clauses, Clauses, paragraphs and schedules of this Contract.

1.3 Unless the context otherwise requires:

1.3.1 references to the Authority and the Contractor include their permitted successors and assignees;

1.3.2 references to statutory provisions include those statutory provisions as amended or re-enacted; and

1.3.3 references to any gender include all genders and use of the singular includes the plural and vice versa.

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1.4 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

1.5 Unless the context otherwise requires, words in the singular shall include the plural and, in the plural, include the singular.

## **2 Contract Term**

2.1 Subject to any right of early termination of this Contract, the term of the Contract shall commence on the Contract Commencement Date for a period of Five (5) years, unless the Contract is extended pursuant to Clause 3 (Options) and shall expire on the Contract Expiry Date ("the Term"). No Contract expiry or termination shall release any Party from rights or liabilities that have accrued prior to such expiration or termination.

2.2 Where the Authority so requires, the Contractor remains obliged to provide the Contractor Deliverables in accordance with Annex A (Statement of Work) and/or complete any Additional Tasking agreed in accordance with Clause 26 beyond the Contract Expiry Date. The Contractor is required to notify the Authority's Commercial Officer as defined in Annex N (DEFFORM 111) of any work outstanding at the end of the Contract Term.

## **3 Options**

3.1 The Contractor, in consideration of award of the Contract, hereby grants to the Authority the irrevocable options detailed at Appendix 1 to the Schedule of Requirements at Part A of this Contract.

3.2 Irrevocable options 1a and 1b:

3.2.1 The Authority shall, on giving the Contractor notice in accordance with clause 3.2.2, have the unilateral right to extend (at its sole discretion) the duration of the Contract by a period of 1 (one) Year in accordance with the terms and conditions set out in the Contract.

3.2.2 In the event that the Authority wishes (at its sole discretion) to exercise Irrevocable Option 1a and 1b the Authority's Commercial Officer shall provide written notice of the same to the Contractor no later than the 6 (six) months prior to the Contract Expiry Date, unless otherwise agreed between the Parties (see also clause 2 (Contract Term) of the Contract).

3.3 Irrevocable options 2a and 2b:

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- 3.3.1 If the Authority exercises option 1 in accordance with Clause 3.2.1, The Authority shall, on giving the Contractor notice in accordance with clause 3.3.2, have the unilateral right to extend (at its sole discretion) the duration of the Contract by a period of 1 (one) Year in accordance with the terms and conditions set out in the Contract.
- 3.3.2 In the event that the Authority wishes (at its sole discretion) to exercise Irrevocable Option 2a and 2b the Authority's Commercial Officer shall provide written notice of the same to the Contractor no later than the 6 (six) months prior to the Contract Expiry Date, unless otherwise agreed between the Parties (see also clause 2 (Contract Term) of the Contract).
- 3.4 Irrevocable Option 3 – The Authority may exercise Irrevocable Option 3 by serving written notice on the Contractor during the Contract Term.
- 3.5 Irrevocable Option 4 – The Authority may exercise Irrevocable Option 4 by serving written notice on the Contractor during the Contract Term.
- 3.6 Irrevocable Option 5 – The Authority may exercise Irrevocable Option 5 by serving written notice on the Contractor during the Contract Term.
- 3.7 The Authority reserves the right to exercise each or any of the irrevocable Contract options detailed at Appendix 1 to Schedule of Requirements at Part A of this Contract, it being agreed that the Authority has no obligation to exercise each or any such option(s).
- 3.8 The Authority shall not be liable for any advance commitment that the Contractor may enter into in pursuance of the irrevocable options detailed at Appendix 1 to Schedule of Requirements at Part A of these Terms and Conditions, including, but not limited to, any costs incurred and/or losses suffered by the Contractor.
- 3.9 Each or any of the irrevocable Contract option(s) shall be exercised through an amendment to the Contract. Such an amendment to the Contract shall be in accordance with the price detailed in Annex J (Pricing and Delivery) of the Contract.

## **4 Precedence of Documents**

- 4.1 If there is a conflict or inconsistency between this Contract and any other document referred to in this Contract, then the following order of precedence shall apply to resolve that conflict:
- 4.1.1 The special conditions;
- 4.1.2 The defence conditions;

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- 4.1.3 Annex A (Statement of Work) and all supporting documentation and appendices that form part of Annex A;
- 4.1.4 All remaining annexes and appendices.
- 4.2 Where there is a conflict or inconsistency between any of the standards included in the Contract, the order of precedence shall be:
  - 4.2.1 Allied publications and NATO standards;
  - 4.2.2 Defence standards;
  - 4.2.3 British standards and international standards;
  - 4.2.4 All remaining reference standards.
- 4.3 If a Party becomes aware of any inconsistency within or between the documents referred to in Clause 4.1 and/or Clause 4.2 above, such Party shall promptly notify the other and the Parties will seek to resolve such inconsistency, provided that if either Party considers the inconsistency to be material then the matter shall be determined in accordance with DEFCON 530 (Dispute resolution).

### **AMENDMENTS TO CONTRACT**

#### **5 Formal Amendments to the Contract**

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

- 5.1.1 affect the rights of the Authority, or
- 5.1.2 modify, affect, reduce or extinguish the obligations and liabilities of the Contractor under the Contract, or
- 5.1.3 be deemed to be a waiver of rights of the Authority

unless made in writing and signed by the Authority's Commercial Officer (see Box 1 of Annex N (DEFFORM 111)) as the duly authorised representative of the Authority.

- 5.2 The Authority shall have no liability for any work undertaken by the Contractor prior to the conclusion of a formal amendment to the Contract in accordance with DEFCON 503 and DEFCON 620.

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## **Change Control Procedure**

- 5.3 When a change is agreed by both Parties, in accordance with Appendix H (Change Control Procedure), a formal contract amendment will be raised in accordance with Clauses 5.1 and 5.2.

## **PARTIES' RIGHTS AND OBLIGATIONS**

### **6 Obligation of the Authority**

- 6.1 The Authority shall comply with all Applicable Law in the performance of its obligations under this Contract.
- 6.2 Other than the requirements set out in Annex A (Statement of Work), the Authority shall give no guarantee as to the amount of work to be provided, or the value of orders, taskings, demands or otherwise. The Authority shall give no guarantee of Task Approval Forms (TAFs) to be placed under the Contract nor is it obliged to provide the Contractor with any orders, taskings or demands.

### **7 Obligations of the Contractor**

- 7.1 The Contractor shall provide the Contractor Deliverables and/or shall ensure that the Contractor Deliverables are provided in accordance with:
- 7.1.1 The Statement of Work (SoW) at Annex A;
- 7.1.2 any schedule(s) set out within Appendices to the SoW; and
- 7.1.3 any associated Task Approval Form (TAF) which shall be in the format as defined in Annex D to the Contract.

### **8 Standards of Performance**

- 8.1 The Contractor shall (and shall ensure that the Contractor Related Parties shall) provide the Contractor Deliverables in compliance with:
- 8.1.1 All Applicable Law;
- 8.1.2 Good Industry Practice;
- 8.1.3 Any applicable standards set out in the relevant order of Task Approval Form (TAF) **9**

### **Contractor Related Parties**

- 9.1 The Contractor:

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- 9.1.1 shall be responsible and liable for the acts and omissions of the Contractor Related Parties as if they were the acts and omissions of the Contractor (including in connection with the achievement of the KPIs); and
  - 9.1.2 acknowledges and agrees that the appointment, employment, or engagement by the Contractor of any Contractor Related Party shall not relieve the Contractor from any liability or obligations under this Contract.
- 9.2 Without limitation in respect of its actual knowledge, the Contractor shall for all purposes of the Contract be deemed to have such knowledge in relation of the Contractor Deliverables and other obligations under this Contract as is held (or ought reasonably to be held) by any Contractor Related Party.

### **10 Key Personnel**

- 10.1 The Contractor shall ensure that Key Personnel fulfil the Key Roles for the Contract Term.
- 10.2 The Authority may identify further roles as being Key Roles during the Contract Term. Following agreement of these additional Key Roles with the Contractor, these personnel shall become Key Personnel.
- 10.3 The Contractor shall not remove or replace any Key Personnel (including when carrying out exit management) unless:
- 10.3.1 requested to do so by the Authority.
  - 10.3.2 the person concerned resigns, retires or dies or is on maternity leave, paternity leave, shared parental leave or long-term sick leave;
  - 10.3.3 the person's employment or contractual arrangement with the Contractor is terminated or a
  - 10.3.4 a Sub-Contractor's contract with the Contractor is terminated for material breach of contract; or
  - 10.3.5 the Contractor obtains the Authority's prior written consent (such consent not to be unreasonably withheld or delayed).
- 10.4 The Contractor shall:
- 10.4.1 notify the Authority promptly of the absence of any Key Personnel (other than for short-term sickness or holidays of two (2) weeks or less, in which case the Contractor shall ensure appropriate temporary cover for that Key Role);

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- 10.4.2 ensure that any Key Role is not vacant for any longer than ten (10) Business Days;
- 10.4.3 give as much notice as is reasonably practicable, and in any event, at least sixty (60) Business Days' notice, 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 personnel's employment contract;
- 10.4.4 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
- 10.4.5 ensure that any replacement for a Key Role:
- i. has a level of suitable qualifications and experience appropriate to the relevant Key Role; and
  - ii. is fully competent to carry out the tasks assigned to the Key Personnel whom they have replaced.

### **11 Contract Reviews and Reporting**

- 11.1 The Parties shall attend a Contract initiation meeting in accordance with Appendix F (Project Meetings and Working Groups) to Annex A (Statement of Work).
- 11.2 The Parties shall attend and participate in all project meetings, working group and risk review meetings (including all MCAST events and activities) in accordance with Appendix F (Project Meetings and Working Groups) to Annex A (Statement of Work) unless stated otherwise therein or by prior written agreement with the Authority's Commercial Officer.
- 11.3 The Parties shall attend all meetings identified in SOW Appendix F (Project Meetings and Working Groups) in accordance with the locations specified.. Where appropriate and agreed by the Authority provision will be made for remote attendance at such meetings over Microsoft Teams or a suitable alternative Video Tele Conferencing medium.
- 11.4 The Parties shall attend ad-hoc meetings as and when required by the Authority, in accordance with Annex A (Statement of Work)
- 11.5 The Contractor shall support more frequent meetings where required by the Authority due to project intensity or emergent technical issues.
- 11.6 The Integrated Test Evaluation and Acceptance (ITEA) working group may be merged or held in conjunction with another meeting at the Authority's discretion.

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**12 Quality Assurance**

- 12.1 The Contractor shall comply with the quality assurance standards and conditions and the quality management requirements detailed in Annex A (Statement of Work) and Appendix D (Contract Deliverables) to Annex A (Statement of Work).

**13 Safety Management**

- 13.1 The Contractor shall notify the Authority immediately upon becoming aware of any safety issues in relation to the Contractor Deliverables (including arising from proposed modifications/new design) in accordance with the requirements detailed in Annex A (Statement of Work). The Contractor shall also:

13.1.1 set out the measures taken by the Contractor or planned to be taken to limit or resolve such safety issues; and

13.1.2 attend any meeting regarding such safety issues when requested to do so by the Authority; and

13.1.3 provide such supporting evidence as reasonably required by the Authority in order that a safety assessment/safety case can be conducted.

- 13.2 The Contractor shall ensure the Authority's Independent Safety and Environmental Auditor (ISEA) is provided with full access to all Contractor and Sub-Contractor premises for the Contract Term.

- 13.3 The ISEA shall have the right to attend all safety and environmental meetings held during the Contract Term.

- 13.4 The Contractor shall inform the Authority fifteen (15) Business Days prior to Business Days all safety and environmental meetings being held to allow the attendance of the ISEA to be considered.

**14 Environmental Management**

- 14.1 The Contractor shall ensure that all activities performed under the Contract shall comply with certified environmental management standards based on ISO 14001 or equivalent and Annex A (Statement of Work).

**15 Not Used**

**16 Attendance On-Board or at Government Establishments**

- 16.1 The Contractor shall ensure that its Contractor Related Parties meet the requirements of sub-clauses 6 to 9 of DEFCON 76 (Contractor's Personnel at Government Establishments).

**17 Obsolescence**

- 17.1 The Contractor shall be responsible for managing obsolescence for the Contract Term and, notwithstanding any Obsolescence Issues, the Contractor shall remain responsible for meeting all performance and other requirements of this Contract.

- 17.2 The Contractor shall be responsible for all costs associated with:

17.2.1 the mitigation of Obsolescence Concerns;

17.2.2 the resolution of Obsolescence Issues.

The costs for which the Contractor is responsible include, but are not limited to, the costs of investigating part availability, locating suitable part replacement, vendor interface, engineering and redesign efforts, testing and qualification requirements, documentation changes. The Contractor shall ensure that the Authority does not incur any additional costs due to obsolescence.

**18 Place of Design**

- 18.1 Any changes to the Contractor's and/ or Contractor Related Party's place(s) of Design or business during the Contract Term shall be notified immediately upon becoming aware of such change to the Authority Commercial Officer, copied to the Authority Project Manager.

- 18.2 To ensure continuing United Kingdom (UK) capability and to safeguard national security particular emphasis on SECRET UK EYES ONLY (SUKEO) elements within the Contract, the following conditions apply.

18.2.1 All Design of the Contractor Deliverables shall be conducted at UK based facilities.

18.2.2 the Contractor shall undertake a review of the impact of any change pursuant to Clause 18.1 on the Contractor Deliverables and the proposed mitigation actions to be presented to the Authority for assessment. In the event the Authority considers such impact to be unacceptable following its assessment, it will notify the Contractor accordingly and the Contractor shall within five (5) Working Days of receipt of such notification provide the Authority with its proposed revised mitigation actions to

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reflect the Authority's concerns, such mitigation actions to be to the satisfaction of the Authority in its absolute discretion. All update and maintenance shall be conducted at a nominated UK based facility, with SECRET material requiring the use of a Facility Security Clearance (FSC) site.

18.2.3 The Contractor shall ensure that no system, part system or equipment design shall be removed from the UK without prior written consent of the Authority.

### **19 Insurance**

19.1 The Contractor shall, at its own expense, maintain in effect at all times during the performance of this Contract such insurance policies:

19.1.1 as it is required to hold under applicable Regulations; and

19.1.2 such other policies, at such coverage limits, as a prudent business conducting similar operations would maintain and on terms no less favourable than those generally available to a prudent contractor in respect of the risks insured in the international insurance market from time to time with a reputable third-party insurance company, of good financial standing and appropriately regulated (the insurance policies).

19.2 The Contractor shall at the Authority's request and within reasonable timescales provide evidence of such policies required pursuant to 19.1, in the form of;

19.2.1 copies of such policies signed by a Company Director, or;

19.2.2 a brokers letter detailing such policies and the value and validity.

19.3 Receipt of such evidence provided under 19.2, by the Authority shall not in itself constitute acceptance by the Authority or relieve the Contractor of any of its liabilities and obligations under this Contract.

19.4 The Contractor shall at all times comply with the terms of the insurance policies (including paying all premiums and other moneys payable, notifying circumstances which might give rise to claims, and making claims), and shall not do or permit to be done anything which might render any of the insurance policies void or voidable or entitle the insurer to refuse to pay any claim or part of a claim.

19.5 If, for whatever reason, the Contractor fails to give effect to and maintain the insurance policies, the Authority may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Contractor.

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- 19.6 The Contractor shall ensure that any Sub-Contractor maintains adequate insurances having regard to the obligations under this Contract which they are contracted to fulfil.

### **20 Packaging**

- 20.1 The Contractor shall package all Contractor Deliverables and shall mark any cases and packaging in accordance with DEFCON 644 and Annex A (Statement of Work).

## **PRICING, PAYMENT, TASKING, PERFORMANCE AND DELIVERY**

### **21 Price**

- 21.1 The prices payable under the Contract shall be as detailed in the Schedule of Requirements at Part A of this Contract.
- 21.2 The prices in the Schedule of Requirements and in Appendix 1 to the Schedule of Requirements at Part A of this Contract shall be fully inclusive of all insurance costs, royalties, commercial agreements, licence fees, and taxes with the exception of value added tax (see DEFCON 513). The prices shall include packaging, handling costs, transportation (including carriage insurance and freight) to the consignee and the cost of compliance with all the terms and conditions of the Contract (within the UK only).
- 21.3 The price for Item No 1 of the Schedule of Requirements at Part A of this Contract in respect of year one (1) shall be a Firm Price (i.e., not subject to variation of any kind) and in accordance with Annex J (Pricing and Delivery).
- 21.4 The price for Item No 2 of the Schedule of Requirements at Part A of this Contract in respect of year one (1) shall be a Firm Price (i.e., not subject to variation of any kind) and in accordance with Annex J (Pricing and Delivery).
- 21.5 The price for Item No 2 of the Schedule of Requirements at Part A of this Contract in respect of years two (2) to five (5) shall be a Fixed Price and subject to variation in accordance with Clause 22 (Variation of Price) only.
- 21.6 The price for Item No 3 of the Schedule of Requirements at Part A of this Contract in respect of year one (1), shall be agreed using Firm Rates in accordance with Annex J (Pricing and Delivery).
- 21.7 The price for Item No 3 of the Schedule of Requirements at Part A of this Contract in respect of years two (2) to five (5) shall be agreed using Fixed rates in accordance with Clause 22 (Variation of Price) and Annex J (Pricing and Delivery).

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- 21.8 If exercised by the Authority in accordance with Clause 3.2 (Options), the price for Option Item No 1a, to Appendix 1 to Schedule of Requirements at Part A of this Contract in respect of year six (6) shall be a Fixed Price as stated at Annex J (Pricing and Delivery) and subject to variation in accordance with Clause 22 (Variation of Price).
- 21.9 If exercised by the Authority in accordance with Clause 3.2 (Options), the price for Option Item No 1b, to Appendix 1 to Schedule of Requirements at Part A of this Contract in respect of year six (6) shall use Fixed rates as stated at Annex J (Pricing and Delivery) subject to variation in accordance with Clause 22 (Variation of Price).
- 21.10 If exercised by the Authority in accordance with Clause 3.3 (Options), the price for Option Item No 2a, to Appendix 1 to Schedule of Requirements at Part A of this Contract in respect of year seven (7) shall be a Fixed Price as stated at Annex J (Pricing and Delivery) and subject to variation in accordance with Clause 22 (Variation of Price).
- 21.11 If exercised by the Authority in accordance with Clause 3.3 (Options), the price for Option Item No 2b, to Appendix 1 to Schedule of Requirements at Part A of this Contract in respect of year seven (7) shall use Fixed rates as stated at Annex J (Pricing and Delivery) subject to variation in accordance with Clause 22 (Variation of Price).
- 21.12 The price for Irrevocable Option No 3 of the Appendix 1 to Schedule of Requirements shall be a Firm Price (i.e. not subject to variation of any kind) in accordance with clause 3.4 in year one. If exercised in years 2-5 or option years 6-7 shall be a Fixed Price as stated at Annex J (Pricing and Delivery) and subject to variation in accordance with Clause 22 (Variation of Price).
- 21.13 The price for Irrevocable Option No 4 of the Appendix 1 to Schedule of Requirements shall be a Firm Price (i.e. not subject to variation of any kind) in accordance with clause 3.5 in year one. If exercised in years 2-5 or option years 6-7 shall be a Fixed Price as stated at Annex J (Pricing and Delivery) and subject to variation in accordance with Clause 22 (Variation of Price).
- 21.14 The price for Irrevocable Option No 5 of the Appendix 1 to Schedule of Requirements shall be a Firm Price (i.e. not subject to variation of any kind) in accordance with clause 3.6 in year one. If exercised in years 2-5 or option years 6-7 shall be a Fixed Price as stated at Annex J (Pricing and Delivery) and subject to variation in accordance with Clause 22 (Variation of Price).
- 21.15 All prices shall be in pounds sterling (£) GBP.

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- 21.16 The formula set out at Clause 22 (Variation of Price) shall be applied to the Fixed Prices in each of the Contract years. The results for each year shall be used to calculate the variation of price adjustment in that year.
- 21.17 The variation of price adjustment shall be calculated each year two (2) months prior to the anniversary of the Contract Commencement Date and be embodied in the contract each year by amendment by the anniversary of the Contract Commencement Date.
- 21.18 Where the Contractor incurs additional expenses in the delivery of their obligations under the contract (for example: organising the use of alternative facilities) – these costs may be reimbursable and will be dealt with on an ad hoc basis between the Parties. It is expected that the Additional Tasking mechanism set out at Clause 26 will be followed.

## 22 Variation of Price

- 22.1 The prices stated in Annex J (Pricing and Delivery) are FIRM priced for Year one (1) and FIXED price thereafter, Years two (2) to five (5).
- 22.2 The prices stated in Annex J (Pricing and Delivery) are FIXED as at Contract Commencement Date price levels. The prices do not include provision beyond this date for increases or decreases in the market price of the Articles being purchased.
- 22.3 Any such variation to the FIXED prices shall be calculated in accordance with the following formula:

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

### Where:

V represents the variation of price

P represents the FIXED Price as stated in Annex J (Pricing and Delivery).

O represents the index. For the purposes of this Contract the following indices shall be applicable for all Fixed Prices: [REDACTED]

O<sub>o</sub> represents the 12-month average OUTPUT Price Index figure of [REDACTED] for the base period – 12 months prior to the Contract Commencement Date.

O<sub>i</sub> represents the 12-month average of OUTPUT Price Index figure of [REDACTED] across the 12 months prior to the period for which variation is being added.

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a represents the Non-Variable Element of 0.1

b represents the Variable Element of 0.9

$$a + b = 1$$

- 22.4 The Indices referred to in Clause 22.3, above shall be taken from the following Tables: OUTPUT Price Index - e.g. Office of National Statistics Publication MM22 Table 2 'Price Indices of UK OUTPUT: All Manufacturing and Selected Industries', or, Table 4 'Price Indices of Products Manufactured in the UK'.
- 22.5 Indices published with a 'B' or 'F' marker, or a suppressed value, in the last 3 (three) years are not valid for Variation of Price clauses and shall not be used. Where the price index has an 'F' marker or suppression applied to the Contract Term, the Authority and the Contractor shall agree an appropriate replacement index or indices. The replacement index or indices shall cover, to the maximum extent possible, the same economic activities as the original index or indices.
- 22.6 In the event that any material changes are made to the indices (e.g. a revised statistical base date) during the Contract Term and before final adjustment of the final Contract Price, then the re-basing methodology outlined by the Office for National Statistics (ONS, the series providers) to match the original index to the new series shall be applied.
- 22.7 In the event the agreed index or indices cease to be published (e.g. because of a change in the Standard Industrial Classification) the Authority and the Contractor shall agree an appropriate replacement index or indices, which shall cover to the maximum extent possible the same economic activities as the original index or indices. The methodology outlined by the Office for National Statistics used for rebasing indices (as in Clause 22.6 above) shall then be applied.
- 22.8 Notwithstanding the above, any extant index / indices agreed in the Contract shall continue to be used as long as it is / they are available and subject to ONS revisions policy. Payments calculated using the extant index / indices during its / their currency shall not be amended retrospectively as a result of any change to the index or indices.
- 22.9 The Contractor shall notify the Authority of any significant changes in the purchasing / manufacturing plan on the basis of which these provisions were drawn up and agreed, or of any other factor having a material bearing on the operation of these provisions such as to cause a significant divergence from their intended purpose, in order that both Parties may consider whether any change in this Clause 22 would be appropriate.

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- 22.10 Prices shall be adjusted taking into account the effect of the above formula in Clause 22.1 as soon as possible after publication of the relevant indices or at a later date if so agreed between the Authority and the Contractor. Where an index value is subsequently amended, the Authority and the Contractor shall agree a fair and reasonable adjustment to the price, as necessary.
- 22.11 Claims under this Clause shall be submitted to the Bill Paying Branch, certified to the effect that the “requirements of this Clause 22 (Variation of Price)” have been met.

### **23 Payment**

- 23.1 Payment of each milestone (as detailed at Annex J - Pricing and Delivery) shall be made via CP&F, where the Contractor can satisfactorily demonstrate achievement of the agreed Contractor Deliverables as defined in DEFCON 501, by the agreed method, in accordance with Annex A (Statement of Work) and Appendix D (Contractor Document Deliverables) to the Statement of Work.
- 23.2 Payment for Item No 1 (design) of the Schedule of Requirements at Part A of this Contract shall be in accordance with Annex J (Pricing and Delivery) to the Contract.
- 23.3 Payment for Item No 2 (service provision) of the Schedule of Requirements at Part A of this Contract shall be in accordance with Annex J (Pricing and Delivery), and dependent on the Contractor’s level of Performance, assessed against the agreed KPIs as set out in Annex K (Key Performance Indicators) to the Contract.
- 23.4 Payment for No Item 3 (Additional Tasking) of the Schedule of Requirements at Part A of this Contract shall be made in accordance with the provisions set out in the TAF in accordance with Clause 26 (Additional Tasking).
- 23.5 Payment for Option Items No 1(a) and 2(a), (Provision of additional years of a Maritime Command and Staff Trainer) of the Appendix 1 to Schedule of Requirements at Part A of this Contract, shall be in accordance with Annex J (Pricing and Delivery) and dependent on the Contractor’s level of Performance, assessed against the agreed KPIs as set out in Annex K to the Contract, only if the option(s) detailed at Clause 3.2 or 3.3 (Options) is exercised.
- 23.6 Payment for Option Item No 1(b) and 2(b) (Provision of additional years of Additional Tasking) of the Appendix 1 to Schedule of Requirements at Part A of this Contract shall be made in accordance with the provisions set out in the TAF in accordance with Clause 26 (Additional Tasking), only if the option(s) detailed at Clause 3.2 or 3.3 (Options) is exercised.

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**24 Stage (Interim) Payments**

- 24.1 The Authority shall subject to the following provisions of this condition, make to the Contractor advances against the price(s) payable for item 1 of the Schedule of Requirements at Part A of this Contract ('interim payments') in accordance with those payments noted as 'interim payment' in the Stage Payment Plan set out in Annex J (Pricing and Delivery).
- 24.2 The Contractor shall be entitled to interim payments, to be claimed in accordance with Condition 23 (Payment) for each applicable stage under the Stage Payment Plan, provided that:
- 24.2.1 the Contractor has completed all work to the Authority's satisfaction, in accordance with Clause 27 (Acceptance and Rejection) and Annex A (Statement of Work); and
- 24.2.2 all previous stages have been completed, unless the Parties expressly agree otherwise; and
- 24.2.3 the Contractor shall have complied with all its contractual obligations which enable the Authority to monitor the contractor's contractual performance, including but not limited to those obligations related to the provision of information to the Authority.
- 24.3 Notwithstanding Clause 24.2 above, the Authority shall not be obliged to make any interim payments to the Contractor as detailed in Annex J (Pricing and Delivery) if it has reasonable cause to believe that the Contractor will be unlikely to render complete performance of its obligations in respect of item 1 of the Schedule of Requirements at Part A of the Contract.
- 24.4 Where the Authority intends to rely on Clause 24.3 above as the basis for rejecting any claim for an interim payment which the Contractor may make in accordance with Annex J (Pricing and Delivery), the Authority shall give to the Contractor notice in writing of its intention together with reasons and justification for the rejection.
- 24.5 The Authority shall, without prejudice to any other right/remedy of either Party, be entitled to recover from the Contractor in full all interim payments made under the Contract where:
- 24.5.1 The Contract, or the part of the Contract under which Item 1 of the Schedule of Requirements at Part A of this Contract is to be provided, is terminated otherwise than in accordance with DEFCON 656B (Termination for Convenience), or expires by reason of passing of time; and
- 24.5.2 The Contractor has failed to complete performance of item 1 of the Schedule of Requirements at part A of this Contract within 12 months of the Contract Commencement Date.

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24.6 In the event of repayment to the Authority under the provision of Clause 24.5 above then all that, which vested in the Authority under the provisions of DEFCON 649 (Vesting) and which related to item 1 of the Schedule of Requirements at Part A of this Contract shall re-vest in and become the absolute property of the Contractor.

24.7 Payment of any interim payment by the Authority under this Clause 24 (Stage (Interim) Payments) shall not, unless expressly stated to do so, constitute:

24.7.1 acceptance by the Authority of any Contractor Deliverables.

24.7.2 a representation by the Authority that the Contractor has complied with any contractual obligations; or

24.7.3 a waiver of the Authority's right to subsequently claim that the conditions for payment of that stage payment were not satisfied.

### **25 Key Performance Indicators (KPI's)**

25.1 The Contractor's performance shall be measured monthly, in arrears, at the Monthly meeting using the Key Performance Indicators (KPIs), in accordance with Annex K (KPIs).

25.1.1 Any Service Credits deducted in a contract quarter shall be applied to the respective quarterly performance payment. Any Service Credits deducted against the quarterly performance payment as a result of performance against the KPIs detailed in Annex K will be permanent.

### **26 Additional Tasking**

26.1 All tasks required by the Authority outside of the scope of this Contract shall be conducted via Additional Tasking.

26.2 All Additional Tasking under this Contract shall be issued by the Authority only, in accordance with the terms and conditions of the Contract.

26.3 The Firm Price agreed for the TAF shall use the Fixed Rates as detailed at Annex J (Pricing and Delivery) to the Contract. By exception the Authority may agree a Fixed Price for a TAF, subject to variation in accordance with Clause 22 (Variation of Price).

26.4 Additional Tasking under Item 3 of the Schedule of Requirements at Part A of this Contract, Option Items 1b and 2b of Appendix 1 to the Schedule of Requirements at Part A of this Contract will be initiated by means of a Task Approval Form (TAF) in the format provided at Annex D (Task Approval Form (TAF)).

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- 26.5 Additional Tasking shall be identified by the TAF sequential serial number allocated by the Authority. The Contractor shall use this reference number, where known, in all communications with the Authority. The Contractor may allocate additional reference numbers for the convenience of their own internal systems.
- 26.6 In the event that the Authority has a proposed TAF, then the Authority shall raise a TAF PART A, which will have been approved by the Authority's Commercial Officer and shall issue it to the Contractor.
- 26.7 Subject always to Clauses 26.8 and 26.9 below the Parties agree to follow the TAF process detailed within this Clause for Additional Tasking.
- 26.8 Notwithstanding Clause 26.7 above the Parties agree that if the TAF is marked as a Crisis Event TAF then the Contractor shall use their best endeavours to:
- 26.8.1 expedite the TAF process;
- 26.8.2 provide a separate assessment of any direct adverse effects (if any) on the Contract of the Crisis Event TAF; and
- 26.8.3 satisfy the requirements of the Crisis Event TAF.
- 26.9 The Contractor shall respond within twenty (20) Business Days (unless otherwise agreed by the Parties acting reasonably) to a TAF PART A by submitting the Contractor's fully completed and signed TAF PART B to the Authority's Commercial Officer. The TAF PART B shall be Firm Priced and supported by a breakdown.
- 26.10 Where the Contractor is unable to provide a fully completed signed TAF PART B within twenty (20) Business Days then the Contractor shall provide to the Authority's Commercial Officer an initial response within fifteen (15) Business Days setting out a programme for submitting a fully signed completed TAF Part B.
- 26.11 Unless otherwise agreed, in the event that the work duration of a proposed TAF is in excess of six (6) months, and the Contractor considers that a TAF payment plan (one or more consecutive payments) would be reasonable, agreeable and appropriate, then the Contractor shall submit a proposed TAF Payment Plan with the TAF PART B. Any proposed TAF Payment Plan shall contain a final payment of no less than thirty percent (30%) of the TAF proposal form's value seen at Annex D (Task Approval Form (TAF)).
- 26.12 It shall be the Authority's sole decision whether to accept or reject any TAF proposal submitted by the Contractor with a completed TAF PART B.

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- 26.13 The Authority's Commercial Officer shall accept the Contractor's TAF PART B, and TAF Payment Plan if applicable, by signing and issuing to the Contractor the TAF PART C which shall be the Contractor's authority to proceed with that TAF. The Authority shall then raise a Purchase Order (PO) on CP&F. Once the PO has been issued to the Contractor, the Contractor may commence work on the Additional Tasking. The Contractor shall not commence any work prior to receipt a CP&F PO from the Authority.
- 26.14 Any TAF which contains a signature on the TAF PART C which is not that of the Authority's Commercial Officer shall be immediately returned by the Contractor to the Authority's Commercial Officer and shall not be considered by the Contractor as any authority to proceed with the TAF. Any work undertaken by the Contractor on a TAF that has not been accepted by the Authority's Commercial Officer on the TAF PART C shall be at the Contractor's own risk and expense. The Authority shall not pay for any or all work undertaken by the Contractor which has not been duly authorised by the Authority's Commercial Officer.
- 26.15 Payment of the agreed Firm Price for a TAF, or the final payment of a TAF Payment Plan, shall only become due and payable by the Authority following the Contractor's successful and satisfactory completion, delivery, and acceptance of all the work as set out in the TAF.
- 26.16 The Authority shall maintain the TAF Register, the latest version of which is provided at Annex E (Task Approval Register). The Authority's Commercial Officer shall up-issue the Additional Tasking Register quarterly in arrears and will provide the same to the Contractor in accordance with the procedure detailed in DEFCON 503.
- 26.17 CONDO activities will all be managed in accordance with this Clause 26 via Additional Tasking.

## **27 Acceptance and Rejection**

### **Design And Supply**

- 27.1 The Contractor Deliverables shall be provided in accordance with Annex A (Statement of Work). The Contractor shall present evidence of the solution by testing and/or supporting documentation and certification, in accordance with steps set out in the MCAST System ITEAP at Appendix C (ITEAP) to Annex A (Statement of Work).
- 27.2 Notwithstanding any acceptance criteria the Authority shall have the right to inspect any aspect of the design at any reasonable time.

### **Deliverable Documentation**

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- 27.3 All Deliverable Documentation, including any draft versions thereof, shall comply with the terms of this Contract and be issued in accordance with Appendix D (Contract Deliverables) to Annex A (Statement of Work).
- 27.4 A list of all documents required to be delivered to the Authority by the Contractor is contained in Appendix D (Contract Deliverables) to Annex A (Statement of Work).
- 27.5 The Contractor shall submit all deliverable documentation, to the level of OFFICIAL SENSITIVE, to the Authority's Project Manager and the Authority's Commercial Officer via email.
- 27.6 Where the Authority has comments and/or proposed amendments on a deliverable document, unless otherwise stated in Annex A (Statement of Work), the Authority shall communicate in writing within thirty (30) Business Days of receipt of the document, either that a document has been:
- 27.6.1 Accepted, subject if necessary, to suggested amendments, by stating "Deliverable No X is Accepted"
- 27.6.2 Accepted with a Caveat that some comments and or recommendations are to be actioned in the next version of the document. If the Contractor does not accept the comments and/or recommendations then the document will be deemed to be rejected.
- 27.6.3 Rejected, together with the reasons for the rejection. In this case the delivery shall be deemed not to have occurred. The Authority will work with the Contractor to understand the issues and the Contractor shall re-submit the deliverable documentation within ten (10) business days. Two further revisions are permitted.
- 27.6.4 Requires more time to provide comments and/or proposed amendments. In this case the thirty (30) Business Days will start again from when the Authority has contacted the Contractor.

**28 Not Used**

**29 Continuous Improvement**

- 29.1 The Contractor shall continually review the Contract for opportunities for improvement in effectiveness, efficiencies, and value for money to the Authority. At any time during the duration of the Contract, the Contractor may suggest to the Authority's Commercial Officer a proposed improvement to the Contract and/or Contractor Deliverables.

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- 29.2 The Parties will meet to discuss, assess, and clarify as necessary, all aspects of the suggested improvement and attempt to quantify its potential benefits to each of the Parties. The Authority may either:
- 29.2.1 subject to Clause 29.3, accept in principle only the suggested improvements;
- or 29.2.2 reject the suggested improvement; or
- 29.2.3 offer recommendations or refinements to the suggested improvements in order for the Contractor to submit a revised suggested improvement.
- 29.3 Provided that the suggested improvement is not rejected by the Authority in accordance with Clause 29.2.2 the Contractor shall submit the Gainshare proposal to the Authority's Commercial Officer. The Gainshare Proposal shall include as a minimum:
- 29.3.1 a business case for the Gainshare Proposal, including all technical and commercial objectives and their consequences;
- 29.3.2 a cost/benefit analysis of the Gainshare Proposal including an outline of the benefits, costs or investments that are reasonably anticipated;
- 29.3.3 a full breakdown of the costs where known;
- 29.3.4 the identified potential benefit(s) (financial, technical, commercial or otherwise) to each Party of the Gainshare Proposal;
- 29.3.5 any impact upon the Contract and their consequences;
- 29.3.6 any proposed Gainshare ratio (if applicable) with full supporting rationale for the apportionment; and
- 29.3.7 its associated Gainshare Proposal Implementation Plan;
- and be provided by the Contractor under the cover of an associated TAF Part A and TAF Part B.
- 29.4 The Authority shall assess the Gainshare Proposal and shall, in writing within thirty (30) Business Days (or such other time as agreed between the Parties), either:
- 29.4.1 accept the Gainshare Proposal ; or
- 29.4.2 reject the Gainshare Proposal; or

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29.4.3 offer recommendations or refinements to a revised Gainshare Proposal in order for the Contractor to submit a further revised Gainshare Proposal. No further proposals following the revised Gainshare Proposal will be accepted.

29.5 If the Gainshare Proposal is accepted by the Authority, in accordance with Clause 29.4.1 then the acceptance shall be communicated to the Contractor in writing by the Authority's Commercial Officer in accordance with Clause 5 (Formal Amendments to Contract) and Clause 26 (Additional Tasking) in the format of TAF Part C signed by the Authority's Commercial Officer. The Contractor shall implement the Gainshare Proposal and the Parties shall comply with their respective obligations detailed within the Gainshare Proposal. Following completion of the Gainshare Proposal's Implementation Plan, the Parties shall meet to discuss the implementation including a cost and benefit review.

29.6 Any resulting Gainshare Agreement will be inserted at Annex I to the

contract. **FINANCIAL INSPECTION AND REVIEW**

### **30 Rights of Audit**

30.1 The Contractor shall grant the Authority's nominated representative(s) or agent(s) reasonable access to the Contractor's systems and records relating to the Contract from the Contract Commencement Date. Contract records shall be kept for a period of 6 (six) years after Expiry Date.

30.2 The Contractor shall keep full and accurate records (including, without limitation, financial documents including Contractor quotations/tenders evidencing expenditure and income) with respect to the Contract.

30.3 The Contractor shall grant the Authority and its authorised representative(s) or agent(s) the right of access at all reasonable times to visit the Contractor's premises and to inspect and/or take copies from the records, relating to the Contract. The Contractor shall provide all reasonable assistance at all times during the Contract Term, and for 6 (six) years after completion of all work thereunder, for the purposes of allowing the Authority and/or its authorised representative(s) or agent(s) to obtain such information as is necessary to:

30.3.1 fulfil the Authority's obligations to supply information in relation to Parliamentary, Governmental, judicial or other administrative purposes; or

30.3.2 carry out an audit of the Contractor's compliance with the obligations set out in the Contract including, without limitation, the Contractor's obligations with respect to the meeting of performance and quality standards, the security and confidentiality of data, computer integrity and other security requirements; or

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30.3.3 investigate suspected fraud or other impropriety by the Contractor, and/or any third party in relation to the Contract, in which case the provisions of this Clause shall be to the powers of the law enforcement authorities granted by law; or

30.3.4 verify the accuracy of and appropriate application of charges and prices and any proposed or actual variations to the charges and prices in accordance with the Contract.

30.4 Subject to DEFCON 531 (Disclosure of Information) the Authority and its authorised representatives and/or agents shall treat as confidential all data and records accessed during any audit carried out pursuant to this Clause 30 (Rights of Audit).

30.5 The Authority shall give a minimum of five (5) Business Days notice of the exercise of its audit rights under this Clause 30, except:

30.5.1 where overriding Government circumstances dictate (e.g. Ministerial/Parliamentary requirements); or

30.5.2 where there shall be a standing right for the Authority or its agent(s) to carry out a spot check audit in conjunction with progress meetings held at the Contractor's premises.

### **INTELLECTUAL PROPERTY (IP), INFORMATION AND GOVERNANCE**

The Clauses below provide rights of use that are in addition to the rights secured under the IP DEFCONs set out in this Contract.

#### **31 Software Licensing**

31.1 The Contractor shall in respect of his solution to the Contract requirements specify to the Authority any software that he intends to use in delivering its solution which software exists at Contract placement ('existing software').

31.2 The Contractor shall indicate in writing to the Authority whether any existing software is of a stand-alone nature and specify the owner of the software if other than the Contractor.

31.3 In respect of existing software which is also designated as stand-alone and to be delivered to the Authority under the Contract the Contractor hereby grants, or shall in respect of any third party owned software procure the grant of, a perpetual, royalty free licence for the Authority to use and have third parties use such software on behalf of the Authority for the purposes of the project and on the terms of DEFFORM 701 or substantially similar terms acceptable to the Authority. This licence is without prejudice to the pre-existing rights of the Authority in any

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software or to the operation of DEFCON 91 in respect of any software generated under the Contract.

- 31.4 Where existing software listed in Annex R (Software Deliverable Specification) that is owned by the Contractor is updated, upgraded, or otherwise modified in any way under this Contract by the Contractor, DEFCON 91 shall apply in respect of any new elements of such software that are generated as a consequence. The same shall apply in respect of software listed in Annex R ( Software Deliverable Specification) and owned by a Sub-Contractor, to the extent that they carry out updates, upgrades, or modifications to their own software. Unless otherwise agreed by the Authority the Contractor shall deliver Source Material in respect of all software listed in Annex R (Software Deliverable Specification).
- 31.5 Except where otherwise provided for in accordance with clause 31.4, DEFCON 703 (Edn 06/21) shall apply to all IP and Contractor Deliverables which are delivered, or to be delivered, in performance of work under the Contract.
- 31.6 The Authority grants to the Contractor a perpetual, sub-licensable, non-exclusive, royalty-free licence to use, copy, modify and disclose Authority-owned IP, which has been vested in the Authority in accordance with clause 31.5, solely for the purposes of the Contractor performing its obligations under this Contract.
- 31.7 Where any Contractor Deliverable contains elements of pre-existing, Contractor-owned IP, then the Contractor grants to the Authority a worldwide, perpetual, sub-licensable, non-exclusive, royalty-free, irrevocable licence to use, and to have used by third parties on its behalf, such pre-existing IP for any UK Government Purpose. No right is granted to the Authority to make use of the pre-existing IP in a manner that is independent of the rest of the Contractor Deliverable. The Contractor shall clearly identify any pre-existing IP in any Contractor Deliverable, and shall, wherever possible, place such content in a separate annex, section or part of the Deliverable.

## **32 Security of Supply**

- 32.1 Without prejudice to the rights of the Authority otherwise secured under or outside of the Contract in the event that:
- 32.1.1 the Authority decides to place a follow on contract with the Contractor for the continuing provision of the Contractor Deliverables which are the same as or similar to those provided under this Contract and the Contractor is unwilling or unable to accept, on fair and reasonable terms, a follow on contract from the Authority; and/or

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32.1.2 the Contractor permanently discontinues its business for whatever reason and such business is not continued by a successor in interest to the Contractor to whom the relevant intellectual property rights have been transferred,

32.1.3 then the Authority shall have the right to obtain from the Contractor, or from the authorised trustees or receivers acting on behalf of the Contractor, sufficient data, code, information and license(s) required for the provision of the Contractor Deliverables as those provided under this Contract or such similar deliverables, Articles or Services. Such data, code, information and license(s) may be used royalty-free by the Authority or replacement contractor to provide deliverables, Articles or Services similar to those provided under the Contract

### **33 Sub-Contracts**

33.1 The Contractor shall not place any sub-contract or order involving design or development of the equipment required under this Contract without the prior written approval of the Authority's Commercial Officer (see Box 1 of Annex N DEFFORM 111).

33.2 The Contractor shall not enter into any commitment in relation to such work until the Sub-Contractor has entered into an agreement with the Authority in the form set out in DEFFORM 177 Design Rights and Patents (Sub-Contractors Agreement). Wherever possible, the request for approval should be accompanied by two copies of the agreement signed by the Sub-Contractor. If in any case the Contractor is unable to comply with this Clause, it shall report the matter to the Authority's Commercial Officer (see Box 1 of Annex N DEFFORM 111) and await further instructions before placing the sub-contract.

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

34.1 Notwithstanding any other provisions of the Contract and for the avoidance of doubt, award of the 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.

### **35 Publicity**

35.1 The Contractor shall not publicise, either directly or indirectly in any media release, public announcement, or public disclosure relating to this Contract or its subject matter, in any promotional or marketing materials, lists, or business presentations, without the written

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consent of the Authority for each such use or release in accordance with this Clause 35 (Publicity) save as required through statutory regulations.

- 35.2 The Authority shall use reasonable endeavours to consult the Contractor before publicising any media release, public announcement, or public disclosure relating to this Contract or its subject matter. For the avoidance of doubt the Authority shall not require consent from the Contractor prior to publication, which remains at the Authority's sole discretion.

### **36 Cyber Security**

- 36.1 The Contractor will adhere to Secure Design principles for the lifecycle of the service in accordance with JSP 440 – Leaflet 5C.
- 36.2 The cyber risk level assigned to this Contract is “High” as defined in defence standard (DEFSTAN) 05-138 (Cyber Security for Defence Contractors). The Risk Assessment Reference (RAR) is: [REDACTED]
- 36.3 (DEFSTAN) 05-139 (Cyber Security and Resilience of Products, Systems and Services) is also deemed applicable through the lifecycle of the service, to include transition.

### **37 Information Regarding Prosecution or Proceedings**

- 37.1 If the Contractor becomes aware of any prosecution or proceedings, for criminal breaches of the Applicable Law related to the subject matter or the execution of the Contract, against the Contractor or Contractor Related Parties, engaged in performance of the Contract, the Contractor shall immediately notify the Authority.
- 37.2 Where a breach is notified pursuant to 37.1 the Contractor shall also notify the Authority of the relevant rectification measures as soon as reasonably practicable.
- 37.3 Any convictions during the Contract Term for criminal breaches of the Applicable Law related to the subject matter or the execution of the Contract by the Contractor or any of the Contractor's directors/partners or senior management who have powers of representation, decision or control, may be regarded as a material breach of the Contract pursuant to DEFCON 514 (Material Breach) and the nature of the breach.

### **38 Government Furnished Assets**

- 38.1 The Authority shall be responsible for providing the Government Furnished Assets (GFA) to be supplied under the Contract as detailed at Annex F (Government Furnished Assets (GFA) Register).

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- 38.2 The Contractor acknowledges and agrees that all GFA shall at all times remain the property of the Authority and that each such item shall be used in the provision of the Articles and Services under this Contract and for no other purpose, without the prior approval in writing of the Authority.
- 38.3 The Contractor shall be responsible for the management of all GFA in accordance with DEFCON 611.
- 38.4 At expiry or upon earlier termination of this Contract, in accordance with DEFCON 611, the Contractor shall provide to the Authority a list of all GFA holdings under this Contract. The Authority's Commercial Branch shall issue directions for the transfer, disposal or return to stores of all listed items, with which the Contractor shall comply in accordance with Annex C (Exit Management Plan).
- 38.5 This Clause 38 shall apply equally to any GFA supplied by the Authority in respect of any Additional Tasking authorised by the Authority for delivery in accordance with Clause 26 (Additional Tasking), such asset provision and availability being as specified in the applicable Task, save to the extent that the relevant Task sets out alternative arrangements for the treatment and/or disposal of such assets in connection with such service.
- 38.6 The Contractor shall have no claim against the Authority for any additional cost or delay occasioned by the closure for holidays of Government Establishments, where this is made known to the Contractor prior to entering into the Contract.
- 38.7 The Authority does not give any warranty or undertaking as to the completeness, accuracy, or fitness for any purpose of any of the Authority provided information. Neither the Authority nor its agents or employees shall be liable to the contractor in contract (save as expressly provided elsewhere in the Contract), tort, statute nor otherwise, as a result of any inaccuracy, omission, unfitness for any purpose, or inadequacy of any kind, in the Authority provided information.
- 38.8 For the avoidance of doubt, any hardware and software acquired as part of the managed service, which is not deliverable to the Authority under the Contract, shall be the sole responsibility of the Contractor.

### **39 Earned Value Management**

- 39.1 The Contractor shall develop, deliver, and update the Earned Value Management Plan over the Contract Term in accordance with Earned Value Management guidance at Appendix K to Annex A (Statement of Work).

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**OBLIGATIONS TO ASSIST – TERMINATION, PERSISTENT BREACH & EXIT PLAN**

**40 Termination**

40.1 Except where expressly provided in this Contract:

40.1.1 termination of this Contract (or any part thereof) shall not affect any accrued rights and liabilities of either party at any time up to the date of termination;

40.1.2 termination of this Contract (or any part thereof) shall not affect the continuing rights and obligations of the Contractor and the Authority arising from this Contract including any provision of this Contract which is expressed to survive termination or which is required to give effect to such termination or the consequences of such termination, including, but not limited to Clause 24 (Stage (Interim) Payments), 43 (Exit Plan), 41 (Consequences of Termination), DEFCON 68, DEFCON 514, DEFCON 515, DEFCON 520, DEFCON 522, DEFCON 526, DEFCON 528, DEFCON 529, DEFCON 530, DEFCON 531, DEFCON 566, DEFCON 658 DEFCON 659A, DEFCON 670.

40.2 Without affecting any other right or remedy available to it, each of the events listed at 40.2.1 shall constitute a material breach of the Contractor's obligations under the Contract and shall entitle the Authority to terminate this Contract in accordance with DEFCON 514. For the avoidance of any doubt, the events listed at 40.2.1 represent a non-exhaustive list of what may constitute a material breach of the Contractor's obligations;

40.2.1 a failure by the Contractor to make payment(s) of an amount of money that is due and payable by the Contractor under this Contract within twenty (20) Working Days of service of a formal written demand by the Authority, where the amount fell due and payable one (1) (or more) months prior to the service of the written demand;

40.2.2 the occurrence of a Persistent Breach;

40.2.3 a breach by the Contractor of Clause 33 (Sub-Contracts);

40.2.4 a breach by the Contractor of DEFCON 518 (Transfer);

40.2.5 the occurrence of the circumstances in paragraph 6.7 of Annex K (KPIs);

40.2.6 any breach by the Contractor of circumstances in Clause 18 (Place of Design);

40.2.7 the Contractor commits a breach of this Contract which results in the criminal investigation, prosecution and conviction of the Contractor and/or any Sub-Contractor under the health and safety legislation.



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40.2.8 the Contractor fails to maintain insurances in accordance with the requirements of Clause 19 (Insurance).

40.2.9 A failure by the Contractor to achieve:

- (i) IOC by its corresponding Longstop Date which is twelve (12) months after the contract commencement date.; or
- (ii) FOC by its corresponding Longstop Date which is three (3) years after the contract commencement date.

### Rectification

- 40.3 Where, in the Authority's view, any breach listed in clause 40.2 is capable of being remedied, the Authority shall give notice to the Contractor in writing (an "Authority Rectification Notice") requiring the Contractor to make a proposal to the Authority, in writing, to rectify the breach (a "Rectification Proposal") within five (5) Business Days from the date of the Authority Rectification Notice, (or such longer period as may be agreed between the Parties).
- 40.4 The Authority shall notify the Contractor, in writing, of its acceptance or rejection of the Contractor's Rectification Proposal (at the Authority's entire discretion) within five (5) Business Days (or such longer period as may be agreed between the Parties) from the date the Contractor's Rectification Proposal was received by the Authority.
- 40.5 If the Contractor fails to provide a Rectification Proposal in accordance with clause 40.3 within five (5) Business Days (or such longer period as may be agreed between the Parties) from the date of the Authority's Rectification Notice, or if the Authority rejects the Contractor's Rectification Proposal then the Authority may proceed to terminate this Contract for material breach in accordance with DEFCON 514
- 40.6 If the Contractor's Rectification Proposal is accepted by the Authority the Contractor shall remedy the relevant breach within thirty (30) Business Days (or such longer period as may be agreed between the Parties) from the date of the Authority's acceptance of the Rectification Proposal. At the expiry of that period if the Contractor has failed to rectify the breach to the satisfaction of the Authority, then the Authority may proceed to terminate this Contract for material breach in accordance with DEFCON 514.

### Persistent Breach

- 40.7 If a particular breach by the Contractor, has continued for more than sixty (60) Business Days or occurred more than three (3) times in any three (3) month period, then the Authority's

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Commercial representative may serve a notice, in writing, a "Formal Warning Notice" on the Contractor:

- 40.7.1 Specifying that it is a Formal Warning Notice, and
- 40.7.2 Giving reasonable details of the breach, and
- 40.7.3 Stating that the breach is a breach which, if it recurs or continues in accordance with clause 40.8, may result in termination of this Contract.

40.8 If, following service of a Formal Warning Notice in accordance with clause 40.7 the particular breach by the Contractor, as specified in the Formal Warning Notice has continued beyond thirty (30) Business Days or recurred in one (1) or more months within the six (6) month period immediately after the date of service of the Formal Warning Notice, then the Authority's Commercial representative may serve a notice, in writing, a "Final Warning Notice" on the Contractor:

- 40.8.1 Specifying that it is a Final Warning Notice, and
- 40.8.2 Stating that the breach specified has already been the subject of a Formal Warning Notice and has continued beyond 30 Business Days or recurred in one or more months within the six (6) month period immediately after the date of service of the Formal Warning Notice.
- 40.8.3 Stating that, if such breach continues for more than thirty (30) Business Days or recurs in one (1) or more months within the six (6) month period immediately after the date of service of the Final Warning Notice, the breach shall constitute a persistent Breach and this Contract may be terminated by the Authority.

40.9 If the breach continues for more than thirty (30) Business Days or recurs in one (1) or more months within the six (6) month period immediately after the date of service of the Final Warning Notice, it shall constitute a Persistent Breach.

### Partial Termination Right

- 40.10 In the event of termination for material breach, the Contractor acknowledges the Authority's right, at the Authority's entire discretion to terminate this Contract in part. If the Authority exercises such a right, the Contract Price shall be proportionately reduced to reflect the impact of such termination on the Services.
- 40.11 If the Authority exercises its right to terminate this Contract in part, the Parties shall comply with DEFCON 514.

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- 40.12 For the avoidance of doubt, in the event the Contract is terminated in part, the Parties shall continue to fulfil their respective obligations in respect of those parts of the Contract which are not being terminated.

#### **41 Consequences of Termination**

- 41.1 The termination of the Contract, however arising, shall be without prejudice to the rights and duties of either Party accrued prior to termination. The Conditions that expressly or by implication have effect after termination shall continue to be enforceable even after termination.

#### **42 Entire Agreement**

- 42.1 This Contract constitutes the entire agreement between the Parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- 42.2 Each Party acknowledges that in entering into this Contract, it does not rely on, and shall have no remedies in respect of, any statement, representation, assurance, or warranty (whether made innocently or negligently) that is not set out in this Contract.
- 42.3 Nothing in this Clause 42 shall limit or exclude any liability for fraud.

#### **43 Exit Plan**

- 43.1 In the event of expiry or earlier termination of this Contract for any reason, the Contractor shall provide an Exit Service to ensure:
- 43.1.1 An efficient and effective transition of the work to the Authority or a Replacement Contractor, whilst maintaining required Contract outputs; or
- 43.1.2 An efficient and effective completion of the work and closure of the Contract whilst maintaining any required Contract outputs during the Exit Term.
- 43.2 The Contractor's Exit Service shall be defined in the Exit Management Plan (see ISS02.05.002). When enacting the Exit Service, the Contractor shall always comply with Annex C (Exit Management Plan).
- 43.3 The Contractor shall on request:
- 43.3.1 provide the latest version of the Exit Plan to the Authority or such other person as the Authority may specify;

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43.3.2 prepare and keep complete and up to date:

- i. any information in the Contractor's possession or under its control which the Authority requires for the purpose of future support; and
- ii. copies of all documentation, in hard and electronic copy, relevant to the Contractor Deliverables for the purposes of future support; and

43.3.3 Supply data required for future support and provide all information referred to in Clause 43.3.2 to the Authority both in hard and electronic copy within fifteen (15) Business Days of being requested to do so by the Authority.

43.3.4 By entering into this Contract the Contractor acknowledges and agrees that the future support data and such other information shall be transferred to potential participants in any future support and undertakes not to take any steps to prevent or hinder such transfer.

43.4 Nothing contained within this Clause 43 commits the Authority or a new Provider to enter into a Contract with a Sub-Contractor.

43.5 TUPE shall be in accordance with Annex L (Transfer of Undertaking Protection of Employment (TUPE)) to the Contract.

43.6 Development and delivery of the Exit Plan is included in the Contract Price. Implementation of the Exit Plan is within the scope of the Contract but is not included within the Contract Price. Implementation of the Exit Plan shall be undertaken as an Additional Tasking in accordance with the process described at Clause 26 (Additional Tasking).

## **44 Exit Notice**

44.1 No later than six (6) months prior to expiry of this Contract, or in the case of termination, as soon as reasonably practicable after service of notice of termination, the Authority shall serve a written notice ("the Exit Notice") on the Contractor. The Exit Notice shall specify:

44.1.1 The basis on which the Authority wishes to exit the Contract; and

44.1.2 The exit term, being the date from which any Exit Services are required to the date of Contract Expiry or termination; and

44.1.3 The Exit Service activities required from the Contractor during the Exit Period.

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**45 Exit Period**

45.1 During the Exit Period the Contractor shall:

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

45.1.2 Provide an Exit Service as defined in the Exit Notice; and

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

45.2 During the Exit Term, the Authority shall have ultimate responsibility for managing implementation of the Exit Management Plan and the Exit Services.

**46 Limitations On Liability**

Definitions

46.1 In this Condition 46 the following words and expressions shall have the meanings given to them, except where the context requires a different meaning:

“Charges” means any of the charges for the provision of the Services, Contractor Deliverables and the performance of any of the Contractor’s other obligations under this Contract, as determined in accordance with this Contract;

“Data Protection Legislation” means all applicable Law in force from time to time in the UK relating to the processing of personal data and privacy, including but not limited to:

(1) UK GDPR;

(2) DPA 2018; and

(3) the Privacy and Electronic Communications (EC Directive) Regulations 2003 (SI 2003/2426) as amended, each to the extent that it relates to the processing of personal data and privacy;

“Default” means any breach of the obligations of the relevant Party (including fundamental breach or breach of a fundamental term) or any other default, act, omission, negligence or statement of the relevant Party, its employees, servants, agents or subcontractors in connection with or in relation to the subject matter of this Contract and in respect of which such Party is liable to the other. In no event shall a failure or delay in the delivery of an Authority responsibility or an activity to be carried out by the Authority or its representatives in accordance with the Contract be considered a Default;

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'DPA 2018' means the Data Protection Act 2018;

"Law" means any applicable law, subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978, regulation, order, regulatory policy, mandatory guidance or code of practice judgment of a relevant court of law, or directives or requirements of any regulatory body, delegated or subordinate legislation or notice of any regulatory body;

"Service Credits" means the amount that the Contractor shall credit or pay to the Authority in the event of a failure by the Contractor to meet the agreed Service Levels as set out/referred to in Annex K (KPI's);

"Term" means the period commencing on [the Contract Commencement Date and ending [on the Contract Expiry Date or on earlier termination of this Contract.

'UK GDPR' means the General Data Protection Regulation (Regulation (EU) 2016/679) as retained in UK law by the EU (Withdrawal) Act 2018 and the Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019;

### Unlimited liabilities

46.2 Neither Party limits its liability for:

46.2.1 death or personal injury caused by its negligence, or that of its employees, agents or sub-contractors (as applicable);

46.2.2 fraud or fraudulent misrepresentation by it or its employees;

46.2.3 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

46.2.4 any liability to the extent it cannot be limited or excluded by law.

46.3 The financial caps on liability set out in Clauses 46.4 and 46.5 below shall not apply to the following:

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

i. the Contractor's indemnity in relation to DEFCON 632 (Third Party IP - Rights and Restrictions);

ii. the Contractor's indemnity in relation to TUPE at Annex L (TUPE);

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

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- ii. the Authority's indemnity in relation to TUPE under Annex L (TUPE);

46.3.3 breach by the Contractor of DEFCON 532B and Data Protection Legislation; and

46.3.4 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.

46.3.5 For the avoidance of doubt any payments due from either of the Parties to the other in accordance with DEFCON 811 or the Defence Reform Act 2014 and/or the Single Source Contract Regulations 2014, as amended from time to time, shall not be excluded or limited under the provisions of Clause 46.4 and/or 46.5 below.

### Financial limits

46.4 Subject to Clauses 46.2 and 46.3 and to the maximum extent permitted by Law:

46.4.1 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:

i. in respect of DEFCON 76 [REDACTED]

ii. in respect of DEFCON 514 [REDACTED]

iii. in respect of DEFCON 611 [REDACTED]

46.4.2 without limiting Clause 46.4.1 and subject always to Clauses 46.2, 46.3 and 46.4.3, 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 Annex K (KPIs) whether in contract, in tort (including negligence), arising under warranty, under statute or otherwise under or in connection with this Contract shall be £5m pounds in aggregate;

46.4.3 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 46.4.1 and 46.4.2 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 46.4.1 and 46.4.2 of this Contract.

46.5 Subject to Clauses 46.2, 46.3 and 46.6, 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

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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.

- 46.6 Clause 46.5 shall not exclude or limit the Contractor's right under this Contract to claim for the Charges.

### Consequential loss

- 46.7 Subject to Clauses 46.2, 46.3 and 46.8, 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:

46.7.1 indirect loss or damage;

46.7.2 special loss or damage;

46.7.3 consequential loss or damage;

46.7.4 loss of profits (whether direct or indirect);

46.7.5 loss of turnover (whether direct or indirect);

46.7.6 loss of business opportunities (whether direct or indirect); or

46.7.7 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.

- 46.8 The provisions of Clause 46.7 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:

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

- i. to any third party;
- ii. for putting in place workarounds for the Contractor Deliverables and other deliverables that are reliant on the Contractor Deliverables; and
- iii. relating to time spent by or on behalf of the Authority in dealing with the consequences of the Default;

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

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- 46.8.3 the additional cost of procuring and maintaining in place transitional assistance and replacement deliverables 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 Contract Price that would have been payable for the relevant Contractor Deliverables);
- 46.8.4 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;
- 46.8.5 damage to the Authority's physical property and tangible assets, including damage under DEFCON 76 and 611;
- 46.8.6 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;
- 46.8.7 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);
- 46.8.8 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
- 46.8.9 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

- 46.9 If any limitation or provision contained or expressly referred to in this Condition 46 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 Condition 46.

### Third party claims or losses

- 46.10 prejudice to any other rights or remedies the Authority may have under this Contract (including but not limited to any indemnity claim under DEFCON 632 or at Law), the Authority shall be

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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:

46.10.1 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

46.10.2 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

46.11 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.

## **47 Liquidated Damages**

47.1 It is recognised by the Parties that if the Contractor fails to deliver the provision of the MCAST service in line with the SOTR and Capability Milestones of IOC and FOC to the satisfaction of the Authority by the date(s) specified in the delivery schedule, the Authority will suffer loss and damage.

47.2 [REDACTED]  
[REDACTED]  
[REDACTED]

47.3 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, in the event that the Authority terminates the Contract, Liquidated Damages shall be payable under Clause 47.2 above until the date of such termination.

47.4 Unless expressly stated 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.

## **48 Force Majeure**

48.1 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

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Majeure Event". For the purposes of this Contract a Force Majeure Event is defined as one of the following:

48.1.1 acts of nature;

48.1.2 war;

48.1.3 hostilities;

48.1.4 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.

48.1.5 Changes in Applicable Law relevant to Contract performance.

48.2 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.

48.3 Subject to Clause 48.4 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.

48.4 The maximum extension of time granted under this clause shall be limited to 8 weeks (or other such period agreed between the Parties), 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 Relief Event**

49.1 Pursuant to the provisions of this Clause 49 and save to the extent that such events are caused or contributed to by the acts, omissions, wilful misconduct, defaults or negligence of the Contractor or Contractor Related Parties, the following events shall be regarded as Relief Events, where the events are the direct and sole cause of performance shortfalls, for the purposes of calculating the application of Service Credits and achievement of Longstop Dates. Where the following events are not the sole cause of, however, directly contribute to performance shortfalls, the Contractor shall receive equitable relief that is commensurate with the extent to which the event caused the related performance shortfalls:

49.1.1 Theft or criminal act towards the Contractor and or its property which impinges on the delivery of the Contract provided that the Contractor has undertaken reasonable measures to mitigate such acts.

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- 49.1.2 As a result of an Authority Dependency Failure.
- 49.1.3 Wilful misconduct by the Authority towards the Contractor and or its property which impinges on the delivery of the Contract.
- 49.1.4 Failure by the Authority to comply with the Deliverable Documentation review timescales set out in Appendix D to SoW – Contract Deliverables.
- 49.2 The Contractor shall demonstrate to the Authority that the occurrence of the event impacted on its ability to deliver the requirements of this Contract.
- 49.3 Relief from the provisions of the performance management regime detailed in Annex K (KPIs) and within this Contract, shall apply only to the extent and for the period during which the occurrence of each event affects particular requirements of this Contract. Upon cessation of the cause of each Relief Event the performance management regime will resume.
- 49.4 Relief against the Longstop Dates as defined within this contract, shall apply only to the extent and for the period during which the occurrence of each event affects particular requirements of this Contract. Upon cessation of the cause of each Relief Event the Longstop Date shall be adjusted to account for the associated period of relief.
- 49.5 In the event of one or more of the events identified in paragraph 49.1 occurring, the Contractor shall provide a formal written statement to the Authority's designated representative confirming:
- 49.5.1 The times during which such event occurred;
- 49.5.2 The impact the occurrence had on delivery of the requirements of this Contract;
- 49.5.3 Actions taken to manage the situation and mitigate the impact of the event;
- 49.5.4 An estimate as to when normal service shall resume
- 49.6 The Contractor shall use reasonable endeavours to mitigate the effects of any Relief Event.

### Offer and Acceptance:

#### For and on behalf of the Contractor:

Name and Title	[REDACTED]
Signature	[REDACTED]
Date	[REDACTED]

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For and on behalf of the Secretary of State for Defence:

Name and Title	
Signature	
Date	