



# DE&S

**Contract Number:** FsASTC/00114

**Date:** 11<sup>th</sup> February 2016

**Description:** High G Human Centrifuge Training and Test Capability  
EXTENSION  
CONTRACT AMENDMENT 08  
DATED 25 NOVEMBER 2021

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# 1. SCHEDULE OF REQUIREMENTS

<b>Name and Address of Contractor</b> <b>Thales UK Ltd</b> <b>Training Solutions</b> <b>Avionics</b> <b>Manor Royal, Crawley</b> <b>West Sussex</b> <b>RH10 OHA</b>	<b>MINISTRY OF DEFENCE</b>	<b>Contract No</b>  <b>FsASTC/00114</b>
	<b>Schedule of Requirements for</b> <b>High G Training and Test Capability</b>	
<b>Issued With Contract:</b> <b>FsASTC/00114</b>	<b>On</b> <b>11<sup>th</sup> February 2016</b>	<b>Previous Contract No</b>

Item Number	Description	Delivery Date	Deliver To	Qty	Firm Price All (£) (ex-VAT)
1	Infrastructure - Design and Construction of Building and Site Development (Including power connection)	1st October 2018	Site	1	[REDACTED UNDER FOI SECTION 43 - COMMERCIAL INTERESTS EXEMPTION]
2	Equipment - Design, Manufacture, Delivery, Installation and Acceptance of Centrifuge Equipment	1st October 2018	Site	1	[REDACTED UNDER FOI SECTION 43 - COMMERCIAL INTERESTS EXEMPTION]
3	Service Delivery - Three (3) year Provision of Training & Testing Capability	FOC + up to 3 Years	Site	1	[REDACTED UNDER FOI SECTION 43 - COMMERCIAL INTERESTS EXEMPTION]
4	Service Delivery – Two (2) Month Short Term Extension for Provision of Training and Testing Capability – CA07	1 <sup>st</sup> October 2021 – 30 <sup>th</sup> November 2021	Site	1	[REDACTED UNDER FOI SECTION 43 - COMMERCIAL INTERESTS EXEMPTION]
5	Provision of Additional Tasks in accordance with Annex M Appendix 1 (Contract Award up to 30 November 2021)	N/A	Site	1	Please see Annex M – Appendix 1
6	Provision of Additional Tasks in accordance with Annex M Appendix 1 ( for the period 1 December 2021 -30 November	N/A	Site	1	Please see Annex M – Appendix 1

	2025 ) – CA08				
7	Extension Service Delivery – Three (3) year Provision of Training & Testing Capability in accordance with SoW at Annex W – CA08	1 <sup>st</sup> December 2021 – 30 <sup>th</sup> November 2024	Site	1	[REDACTED UNDER FOI SECTION 43 - COMMERCIAL INTERESTS EXEMPTION]
8	<b>Bid Costs</b> for Line Item 7 – Extension Service Delivery – CA08	N/A	N/A	1	[REDACTED UNDER FOI SECTION 43 - COMMERCIAL INTERESTS EXEMPTION]
9	<b>*OPTION</b> Extension Service Delivery – Optional One (1) Year Provision of Training & Testing Capability in accordance with SoW at Annex W	1 <sup>st</sup> December 2024 – 30 <sup>th</sup> November 2025	Site	1	[REDACTED UNDER FOI SECTION 43 - COMMERCIAL INTERESTS EXEMPTION]
10	<b>*OPTION</b> Contract Transition period in accordance with Clause 9.1 – Contract Transition	6 month period up to Contract Expiry Date	Site	1	[REDACTED UNDER FOI SECTION 43 - COMMERCIAL INTERESTS EXEMPTION]
	<b>*Total Firm Price Excluding Unused Options at CA08:</b>				52,720,131.84

## 2. GENERAL CONDITIONS

DEFCON501 (Edn.10/21) – Definitions and Interpretations

DEFCON503 (Edn. 07/21 ) - Formal Amendments to Contract

DEFCON515 (Edn. 06/21 ) - Bankruptcy and Insolvency

DEFCON516 (Edn.04/12) - Equality

DEFCON518 (Edn.02/17) - Transfer

DEFCON520 (Edn. 08/21 ) - Corrupt Gifts and Payments of Commission

DEFCON526 (Edn.08/02) - Notices

DEFCON527 (Edn.09/97) - Waiver

DEFCON528 (Edn. 07/21 ) - Import and Export Licences

Clause 16. Where following receipt of materiel from a sub-contractor or any of their other suppliers restrictions are notified to the Contractor by that sub-contractor, supplier or other third party or are identified by the Contractor, the Contractor shall immediately inform the Authority by issuing an updated DEFFORM 528. Within 14 calendar days of such notification, the Contractor shall propose to the Authority actions to mitigate the impact of such restrictions. Such proposals may include, where appropriate, mutually supported attempts to obtain removal or modification to the restrictions or to obtain appropriate authorisations from the relevant foreign government. The Authority shall notify the contractor within 28 calendar days of receipt of a proposal whether it is acceptable and where appropriate the Contract shall be modified in accordance with its terms to implement the proposal.

DEFCON529 (Edn.09/97) - Law (English)

DEFCON530 (Edn.12/14) - Dispute Resolution (English Law)

DEFCON531 (Edn.11/14) - Disclosure of Information

DEFCON532A (Edn.04/20) - Protection Of Personal Data (Where Personal Data is not being processed on behalf of the Authority)

DEFCON537 (Edn.06/17) - Rights of Third Parties

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DEFCON566 (Edn. 10/20 ) - Change of Control of Contractor

DEFCON 601 (Edn. 04/14) - Redundant Material

DEFCON620 (Edn.08/21 ) - Contract Change Control Procedure  
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DEFCON 656B (Edn 08/16) - Termination for Convenience – £5m and Over

DEFCON 658 (Edn 10/17) - Cyber

*Further to DEFCON 658, the RAR is K76Y58UW and the Cyber Risk Profile of the Contract is Moderate, as defined in Def Stan 05-138.*

## **2.1. DEFINITIONS**

2.1.1. In this Contract, unless the context otherwise requires, capitalised words and terms in this Contract shall have the meaning ascribed to them in DEFCON 501, Annex C (Definitions) or at the prefix to individual Annexes to the Contract.

## **2.2. ORDER OF PRECEDENCE**

2.2.1. In the event of any discrepancy, inconsistency, divergence or anomaly arising between the provisions of the Contract, the order of precedence shall be as follows, save where expressly provided to the contrary:

1. Schedule of Requirements
2. Conditions of Contract Including Annexes
3. Extension Statement of Work Annex W
4. Contractor's Technical Solution at Annex T

2.2.2. In the event of any internal conflict in any document or any conflict between any documents with the same order of precedence, the Authority shall be entitled to give directions as to which part of the relevant document or which document shall take precedence over which other part or which other document. Should the Contractor disagree with the Authority's direction and the parties are unable to mutually agree, the matter shall be resolved in accordance with Clause 2.25. (Dispute Resolution).

## **2.3. SCOPE OF CONTRACT**

2.3.1. The Contractor shall undertake all work under the Contract to deliver of the Schedule of Requirements (SoR) in accordance with the Extension Statement of Work at Annex W and the Contractor's Solution at Annex T (to the extent that it relates to the Service Delivery phase at SoR lines 7 & 9). All work shall be carried out to the reasonable satisfaction of the Authority's Project Manager, in accordance with the agreed project management documentation.

## **2.4. CONTRACT DURATION**

2.4.1. The Contract shall commence on the date of unqualified acceptance of the terms and conditions by the Contractor (Contract Award or CA). The Contract shall comprise of a construction and delivery phase including testing and commissioning up to the achievement of Full Operating Capability (FOC) on 1st October 2018, a three (3) year service provision phase to the Contract Completion Date of 30th September 2021 and a two (2) month extension to the service provision to end 30th November 2021.

2.4.2. If the Contractor fails to achieve FOC on the contracted date specified in clause 2.4.1 above, the Contract Completion Date of 30<sup>th</sup> September 2021 will not change and therefore the 3 year service provision phase and the number of Service Availability Payments will be reduced proportionately to the period of delay in achieving FOC.

2.4.3. The Contract Extension period (SoR Line 7), for Service Delivery will be 1<sup>st</sup> December 2021 to 30<sup>th</sup> November 2024. In addition to this, there is an optional 1 year of service (SoR Line 9) from 1<sup>st</sup> December 2024 to 30<sup>th</sup> November 2025. The Authority reserves the unilateral right to exercise the Option by giving the Contractor twelve (12) months notice.

## **2.5. AMENDMENTS TO CONTRACT**



2.5.1. In addition to the provisions of DEFCON 503 (Amendments to Contract) and DEFCON 801 (Amendments to Qualifying Defence Contracts – Consolidated versions) nothing said, done or written, by any person, nor anything omitted to be said, done or written by any person, including, but without limitation, any servant or agent of the Authority, shall in any way affect the rights of the Authority, modify, affect, reduce or extinguish the obligations and liabilities of the Contractor under the Contract, or be deemed to be a waiver of the rights of the Authority, unless stated in writing and signed by the Authority's Commercial Branch at the Appendix to Contract (DEFFORM 111)

2.5.2. Should any change to this Contract require agreed adjustment to the Contract Price, it shall be recognised that, the Contract Extension period is a Qualifying Defence Contract and the obligations under the Defence Reform Act 2014 (DRA) and Single Source Contract Regulations (SSCR) shall continue to apply. In agreeing such changes particular attention shall be paid to the DRA Section 20 (Allowable Costs) and SSCR Clause 23 (Contract Pricing Statement)

2.5.3. Both parties agree that the contractual period 1<sup>st</sup> October 2018 until 30<sup>th</sup> November 2021 is not a QDC under the Single Source Contract Regulations and the Contract Extension shall be treated as a new and separate contract.

2.5.4. The parties will not seek to reclaim costs or claim additional costs in respect of the contractual period 1<sup>st</sup> October 2018 until 30<sup>th</sup> November 2021).

## **2.6. DISCLOSURE OF INFORMATION**

2.6.1 In addition to the provision of DEFCON 531 the Contractor shall take every precaution to ensure that information of a Military nature arising from or connected with the Contract, particularly as to location, numbers and movements of troops, aircraft and ships, is divulged only to the minimum number of employees and then only to the extent essential to each person's action in carrying out the Contract. The Contractor shall not in any circumstances allow access by employees to general information such as lists of units or their locations and shall restrict the information given to each employee to that relating only to the Establishment with which such employee is personally concerned.

2.6.2 No information regarding the services being provided under the Contract or facilities to photograph or film shall be given or permitted by the Contractor, except with the prior written permission of the Authority to whom any press or other enquiry on any such matter should be referred, in first instance.

## **2.7. GAINSHARE**

2.7.1. Gainsharing is the method by which the Authority and the Contractor agree to share in any improvements and savings that are identified by the Contractor throughout the duration of the Contract.

2.7.2. Its purpose is to provide the Contractor with an incentive to reduce costs in the interests of the public purse.

2.7.3. In the performance of the Contract, the Contractor agrees to endeavour to identify ways in which the solution to the requirements of the Contract could be changed so that, if implemented, the overall cost to the Authority of the Contract would be reduced.

2.7.4. In the event that the Contractor identifies any changes which would reduce the overall cost to the Authority of the Contract the Contractor shall:

2.7.4.1. Submit details of the proposed changes to the Authority;

2.7.4.2. Identify the potential savings that would result from the implementation of any such proposals and the point at which they will;

2.7.4.3. Enter into discussions with the Authority regarding the implementation of any such proposed changes.

2.7.5. The total value of any savings will be mutually agreed taking into account the cost of implementation of the change between the Authority and the Contractor. The share of any savings so agreed will be mutually agreed between the two parties on a case-by-case basis.

2.7.6. Changes to the Contract shall only be effective following a Contract Amendment agreed between the Authority and the Contractor.

## **2.8. RESPONSIBILITIES**

2.8.1. The Contractor shall be responsible for the performance of all work required under the Contract, to the reasonable satisfaction of the Authority's Project Manager or their authorised representative.

2.8.2. Acceptance by the Authority of any of the Contractor's plans or documents referenced by the Contract does not signify acceptance of liability for their accuracy, suitability or applicability. Acceptance only signifies the Authority's acknowledgement of the Contractor's intention to implement the provisions of those plans.

## **2.9. SUSTAINABLE PROCUREMENT - BEST PRACTICE**

2.9.1. The Contractor is encouraged to bring to the attention of the Authority any measures which might promote sustainable procurement from a social, economic and environmental point of view.

## **2.10. SUSTAINABLE PROCUREMENT - LEGISLATIVE REQUIREMENTS**

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

2.10.2. If the Contractor becomes aware of any prosecution or proceedings, for criminal breaches of the economic, social and environmental legislation related to the subject matter or the execution of the Contract, against the Contractor, any servants, employees or agents of the Contractor and any Sub-Contractor's engaged in performance of the Contract, the Contractor shall immediately notify the Authority at the address specified in the Contract.

2.10.3. Any convictions during the period of the Contract for criminal breaches of the economic, social and environmental legislation related to the subject matter or the execution of the Contract by the Contractor or any of the Contractor's directors/partners or senior management who have powers of representation, decision or control, shall be regarded as a material breach of this Contract.

## **2.11. LEGISLATIVE REQUIREMENTS**

2.11.1. The Contractor shall in the performance of this Contract comply with all applicable legislative requirements including but not limited to the requirements listed in the Conditions of Contract and all associated Annexes and Appendices to the Contract.

## **2.12. SAFETY AND THE ENVIRONMENT**

2.12.1. The Contractor shall afford the Authority's appointed Independent Safety Auditor reasonable access to appropriate records in respect of the High G Training Facility and programme, including sub-contractor records for the purpose of allowing the Authority's appointed Independent Safety Auditor to carry out safety audits and other assessment activities to meet Authority's safety requirements.

2.12.2. The Contractor shall comply with the site Health and Safety regulations and procedures whilst working on Government Establishments. The site Health and Safety regulations and procedures are available from the establishment Health and Safety Officer.

2.12.3. The Contractor shall be responsible for providing all Personal Protective Equipment (PPE) necessary to ensure the safety of its employees in the performance of its obligations under the Contract.

2.12.4. The Contractor shall ensure that High G Capability complies with the Health and Safety at Work Act 1974 and corresponding "Enabling Regulations", Environmental Protection Act 1990, the Environment Act 1995 and other relevant statutory provisions and any additional requirements arising from international treaties and protocols to which the UK is a signatory.

2.12.5. The Contractor shall ensure High G Capability operates in accordance with ISO 14001 - Environmental Management System and ISO 14040 – Implementation of Environmental Management.

2.12.6. The Contractor shall ensure that High G Capability follows an equipment safety management system that complies with Def Stan 00-56 Parts 1 & 2. Safety Management Requirements for Defence Systems.

2.12.7. The Contractor shall ensure that the safety risk to personnel, the public and the environment shall be As Low As Reasonably Practicable (ALARP), the assurance of which shall be in accordance with JSP454 and Defence Standard 00-56 Parts 1 & 2 Issue 5 – Safety Management Requirements for Defence Systems, resulting in an acceptable Safety Case.

2.12.8. The Contractor shall produce a Safety Case for High G Capability and carry out the required Safety Assessments throughout the duration of the contract, in accordance with the requirements of the FsAST PT Safety and Environmental Management System and Def Stan 00-56 Parts 1 & 2.

2.12.9. The Contractor shall ensure that its employees comply with relevant MOD Safety and Environmental regulations when working on Government Property.

2.12.10. In the interests of safety and environmental issues there should be a free flow of information. To the extent that the Contractor is in possession of, and is able to provide, such information, the Contractor shall immediately communicate directly to the Authority all information affecting safety and environmental issues

## **2.13. SECURITY PROCEDURES**

2.13.1. The Contractor shall ensure, where appropriate, that its employees sign the Official Secrets Act and that its employees are cleared to the appropriate security level.

2.13.2. The Contractor shall ensure that staff that are expected to be employed on the contract and who have access to data that is protectively marked, shall have the appropriate security clearance.

2.13.3. The Authority reserves the right to insist on increased levels of security clearance for specific duties and to refuse or withdraw security clearance under specific circumstances.

2.13.4. The Contractor shall ensure that its employees, agents or Sub-Contractors comply with relevant Authority Security regulations when working at Government Establishments. This may include in the most exceptional circumstances a willingness to submit to a search of their person, personal belongings and transport when entering or leaving Government Establishments. The Contractor shall accept (without prejudice to any remedies the Authority may have) full responsibility for any loss or delay in performance of the Contract caused directly or indirectly by the expulsion of, or refusal to allow access to, a Contractor's employee, agent or Sub-Contractor who does not consent to being searched.

2.13.5. The site security regulations and procedures are available from the establishment Security Officer.

## **2.14. TECHNICAL INFORMATION AND DRAWINGS**

2.14.1. Except as provided in Clause 6.3, Government Furnished Assets (GFA), the Contractor shall be totally responsible for obtaining all necessary technical information, drawings and data, whether the source of the data is the Authority's, Services or Industry.

## **2.15. PARTS; EQUIPMENT AND DATA**

2.15.1. Except as provided in Clause 6.3, Government Furnished Assets (GFA), the Contractor shall be responsible for obtaining all necessary data, parts and equipment and for any liaison with the relevant Design Authorities, or other sources.

## **2.16. CONTRACTOR'S PERSONNEL**

2.16.1. The Contractor shall provide sufficient resources at all times to enable it to perform its obligations under the Contract. Personnel employed under the Contract shall have the appropriate qualifications and competence for the tasks on which they are engaged.

2.16.2. Contractor's working at RAF Cranwell will require Security Check (SC) clearance as a minimum and are responsible for ensuring it remains valid throughout the life of the Contract.

## **2.17. RETENTION OF QUALITY CONTROL/INSPECTION RECORDS**

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

## **2.18. TECHNICAL QUERIES**

2.18.1. Any queries of a purely technical nature are to be addressed to the Authority's Project Manager.

## **2.19. COMMERCIAL EXPLOITATION**

2.19.1. The Contractor shall not, to persons other than the Authority, use, sell, dispose or otherwise exploit for commercial gain any work, design, or service undertaken or produced under or in connection with the Contract without the prior written consent of the Authority. In the event of such consent, which shall not be unreasonably withheld, the Contractor shall first agree with the Authority, the sum or sums which shall reasonably be paid to the Authority having regard to the amounts paid or payable to the Contractor by the Authority under this Contract. The Contractor shall ensure that its supply chain shall also enter into similar agreements under their supply chain contracts in appropriate circumstances.

## **2.20. PREPARATION FOR AND SUPPORT TO MEETINGS**

2.20.1. The Contractor shall provide secretarial services and support services required for all approved meetings over the entire period of the Contract. This shall include the preparation and issue of all necessary information, calling notices, agendas and minutes.

2.20.2. The Contractor shall provide agendas and reports and submit to the Authority no later than fourteen (14) working days after the approved meeting over the entire period of the Contract

## 2.21. TASKING

2.21.1. Modification or upgrades to equipment may be required. The Authority may, from time to time, raise requests for additional work, in the format detailed at Annex M, and the Contractor is to complete the form using Firm Prices (ex VAT) for the work involved. In response to the Authority's tasking form the Contractor is to provide a complete statement of work including a detailed technical proposal on how it intends to meet the requirements of the Authority's task that shall include a breakdown of the costs in accordance with the Charging Rates detailed at Annex I in the form shown below:

**Labour** – Estimated Number of Hours (per grade) x Hourly Rate £/Hr (using the agreed rates applicable at the time of quotation as detailed in Annex I). Labour rates are to be inclusive of overheads.

**Materials** – Estimated costs.

**Subcontracts** – Quotes to be provided; competition to be used where possible.

**Travel and Subsistence** – Estimated Cost broken down as total cost per trip multiplied by the number of anticipated trips.

**Profit** – To be applied in accordance with Annex I

**Bid Costs** – Estimate costs of bidding this additional work in accordance with QDC rules

**Risk** – A costed risk register is to be provided where applicable.

**Timescale** – Proposed Start and Duration shall be entered on the Tasking form prior to submission for approval. A resourced project schedule shall be provided.

**Documents** – Updated versions of extant project management plans and any other relevant documentation. A resourced Work Breakdown Structure to include a level 4 resource Schedule as a hierarchical decomposition of the project into phases, deliverables and work packages shall be provided.

Where the task is split into a number of discrete work packages; the information required above shall be provided for each work package.

All of the above breakdowns (where applicable) are to be provided for any subcontracts involved in the task.

All tasking forms raised are to contain a unique Serial Number.

On receipt of the Contractor's quotation, the Commercial Officer will negotiate a price for the task and, on agreement of price, will issue a Firm Price letter to authorise the commencement of work. For the avoidance of doubt, no work shall commence until the task has been formally authorised by the Commercial Officer.

On completion of the Task, the Contractor shall complete and return the Tasking Form to the Authority and claim payment in accordance with DEFFORM 522A.

## 2.22. TRANSFER OF UNDERTAKINGS (PROTECTION OF EMPLOYMENT) – TUPE

2.22.1. The Contractor shall note the application of TUPE Conditions relating to the provision of Employee Information at Contract expiry within the Contract Terms and Condition

2.22.2. Your attention is drawn to the Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE), as amended at Annex D to this Contract.

## **2.23. INSURANCE**

### **2.23.1. Requirement to maintain**

2.23.1.1. Without prejudice to its obligation to indemnify the Authority under this Agreement, the Contractor shall take out and maintain or procure the taking out and maintenance in full force and effect the insurances in accordance with the requirements specified in Annex E (Insurance Schedule) and any other insurances as may be required by law (together the Required Insurances).

2.23.1.2. The Contractor shall ensure that the Required Insurances are effective in each case not later than the date on which the relevant risk commences.

2.23.1.3. The Required Insurances referred to in this Condition 2.23 shall be taken out and maintained with insurers who are of good financial standing and of good repute in the international insurance market.

2.23.1.4. The Contractor shall not (and the Contractor shall procure that none of its subcontractors of any tier shall) take any action, or permit anything to occur in relation to it, which would entitle any insurer to refuse to pay any claim under any insurance policy in which that party is an insured, a co-insured or additional insured person.

### **2.23.2. Insurance of the Agreement**

The Required Insurances referred to in this Condition 2.23 shall:

2.23.2.1. Where specified in Annex E (Insurance Schedule) name the Authority as co-insured for its separate interest;

2.23.2.2. Where specified in Annex E (Insurance Schedule) provide for non-vitiation and severability of interests protection in respect of any claim made by the Authority as a co-insured;

2.23.2.3. Where specified in Annex E (Insurance Schedule) procure that insurers shall undertake to waive all rights of subrogation howsoever arising and/or claims against the Authority, its employees, servants or agents which they may have or acquire, arising out of any occurrence in respect of which any claim is admitted and is insured under the Required Insurances. The provisions of this Condition 2.23.2.3 shall not apply against any Authority officer, director, employee, agent and assign who has caused or contributed to such an occurrence or claim by fraud, deliberate misrepresentation, deliberate nondisclosure or deliberate breach of policy condition;

2.23.2.4. Where specified in Annex E (Insurance Schedule) procure that the Required Insurances shall contain an indemnity to principals clause under which the Authority shall be indemnified in respect of claims made against the Authority arising from the acts or omissions of, or performance of the Contractor under this Agreement;

2.23.2.5. Be maintained from the date referred to in Condition 2.23.1.2 and for such further period as may be specified in Annex E (Insurance Schedule) substantially subject to the terms, cover features and extensions and principal exclusions as specified in the Insurance Schedule; and

2.23.2.6. be maintained from time to time (as far as is reasonably practicable), on terms no less favourable than those generally available to a contractor in respect of the risks insured in the international insurance market from time to time.

### **2.23.3. Requirements of the Contractor**

The Contractor shall:

2.23.3.1. without limiting any specific requirements in this Agreement, take or procure the taking of all reasonable risk management and risk control measures in relation to the Agreement as it would be reasonable to expect of a contractor, acting in accordance with industry best practice;

2.23.3.2. use reasonable endeavours to procure that all insurance brokers through whom any Required Insurances to be effected by the Contractor are effected or maintained shall maintain intact their files (including all documents disclosed and correspondence in connection with the placement of those Required Insurances and the payment of premiums and claims under such Required Insurances until the date specified in the Insurance Schedule.

#### 2.23.4. Evidence of the Required Insurances

The Contractor shall provide, on request, to the Authority:

2.23.4.1. evidence of the Required Insurances, in a form satisfactory to the Authority (for the avoidance of doubt the Authority will not require a copy of the policy in respect of the following Required Insurances; Construction Third Party Liability Insurance, Professional Indemnity Insurances, Third Party Public and Products Liability Insurance and insurances required by law);

2.23.4.2. evidence that the Required Insurances are in full force and effect and meet the insurance requirements of the Contractor in respect thereof

2.23.4.3. evidence, in a form satisfactory to the Authority, of the insurances required by Condition 2.23.4 shall be obtained as and when requested and shall be forwarded to the Authority as soon as possible but in any event no later than fifteen (15) working days following the Authority request or the relevant insurance policy renewal date

2.23.4.4. Neither inspection, nor receipt of such evidence, shall constitute acceptance by the Authority of the terms thereof, nor be a waiver of the Contractor's liability under this Agreement.

#### 2.23.5. Cancellation

2.23.5.1. Required Insurances, the Contractor shall procure that the insurers shall, as soon as is reasonably practicable, notify the Contractor in writing in the event of any such proposed suspension, cancellation or termination.

2.23.5.2. Where the Contractor receives notification from insurers pursuant to Condition 2.23.5.1, the Contractor shall promptly notify the Authority in writing of receipt of such proposed suspension, cancellation or termination.

#### 2.23.6. Insurance claims

2.23.6.1. The Contractor shall promptly notify to insurers any matter arising from or in relation to this Agreement from which it may be entitled to claim under any of the Required Insurances.

2.23.6.2. Except where the Authority is the claimant party and without limiting the other provisions of this Agreement condition, the Contractor shall notify the Authority immediately (such notification to be accompanied by reasonable particulars of the incident or circumstances giving rise to such claim):

2.23.6.3. of any incident or circumstances which may give rise to any claim amounting to or in excess of one hundred thousand pounds (£100,000) in connection with this Agreement under any of the Required Insurances; and

2.23.6.4. if the incident or circumstances may give rise to any claim in connection with this Agreement, which may be in excess of the limits of the Required Insurances in the Insurance Schedule.

2.23.7. If the Contractor is in breach of Condition 2.23.1 (Requirement to Maintain) the Authority may pay (at its option) any premiums required to keep such insurance in force or itself procure such insurance, and in either case, recover such amounts from the Contractor on written demand, together with all reasonable costs and expenses incurred in procuring such insurance.

2.23.8. Where any Required Insurance requires the payment of a premium, the Contractor shall be liable for such premium.

2.23.9. Deductibles or excesses

2.23.9.1. Where any Required Insurance is subject to an excess or deductible below which the indemnity from the insurers is excluded, the Contractor shall be liable for such excess or deductible.

2.23.9.2. The Contractor shall not be entitled to recover from the Authority any sum paid by way of excess or deductible under the insurances whether under the terms of this Agreement or otherwise.

2.23.10. All insurance proceeds received under the Contractor's "All Risks" Insurance referred to in Part 1 of Annex E (Insurance Schedule) shall be applied to repair, reinstate and replace each part or parts of the insured property in respect of which the proceeds were received.

## **2.24. TERMINATION**

2.24.1. Without prejudice to the Authorities rights in DEFCON 656B or elsewhere in this Contract, the Authority may terminate the Contract where:

2.24.1.1. the Contractor is in Material Breach of its obligations under the Contract;

2.24.1.2. the Contractor accumulates Service Credits for six (6) consecutive Payment Periods above a threshold amount per month of eighty (80) Service Credits representing continual poor performance;

2.24.1.3. the Contractor accumulates Service Credits in a single Payment Period above a threshold amount of two hundred (200) Service Credits, representing continual poor performance;.

2.24.2. If the Authority decides to terminate the Contract under any of the circumstances in Clause 2.24.1 (above), the Authority shall inform the Contractor, in a written notice, of its intention to terminate subject to Clauses 2.24.3 and 2.24.4

2.24.3. On the receipt of written confirmation from the Authority of its intention to terminate the Contract under Clause 2.24.1, the Contractor shall where a) production has not commenced refrain from commencing production and b) where service provision has commenced only continue the provision of such service if specifically instructed, in writing, to do so, by the Authority. The Contractor may respond to the notice within ten (10) working days of receipt of it, detailing the reasons for failure and including a plan for recovery (the "Recovery Plan") to rectify said failure(s).

2.24.4. The Authority shall review the proposed Recovery Plan and the reasons for failure within ten (10) working days of receipt and shall either:

2.24.4.1. instruct the Contractor to commence with the Recovery Plan; or

2.24.4.2. notify the Contractor of immediate Contract termination.

The notices above shall be given in writing by the Authority's Commercial Branch.

2.24.5. Where the Authority has instructed the Contractor to commence the Recovery Plan, the Contractor shall immediately implement the Recovery Plan at its own expense and provide the Authority with weekly updates on its progress until such a time that the Authority is satisfied that the Delivery Schedule and/or the provision of the Services is back on schedule or the agreed revised delivery plan. The Authority shall confirm in writing once this has been achieved.

2.24.6. If the Authority is not satisfied at any time with the progress made during the implementation of the Recovery Plan or is not confident that the Contractor will be able to fully rectify the failures, then the Authority shall notify the Contractor in writing of the immediate termination of the Contract.



2.24.7. Upon the Authority notifying the Contractor of Contract termination:

2.24.7.1. the Contractor shall cease all activity under this Contract and determine all sub-contracts; and

2.24.7.2. the Authority shall have the right to claim from the Contractor such damages as may have been sustained as a direct result of the Contractor's breach or breaches of the Contract, including but not limited to any costs and expenses reasonably incurred by the Authority in obtaining the High G Training and Test Capability in substitution from another supplier.

2.24.8. The Contract shall terminate in accordance with the provisions of DEFCON 656B in the event that the Lease (Annex R), entered into pursuant to clause 11.1.2 of the General Conditions, is determined in accordance with clause 8.2 of the Lease (Annex R). In this event, the notice period for purposes of conditions 1 and 6 (b) of DEFCON 656B shall be the same as the notice period determined pursuant to clause 8.2 of the Lease (Annex R) such that the termination date of the Contract and the Lease is coincident.

2.24.9. The Authority shall not be responsible for any additional costs to the Contractor as a result of Contract termination by Material Breach.

## **2.25. DISPUTE RESOLUTION**

1.25.1 The Dispute Resolution Clause is located at Annex U.

## **3. SPECIFICATIONS, PLANS, ETC**

DEFCON117 (Edn.07/21) - Supply Of Information For NATO Codification And Defence Inventory Introduction

DEFCON129J (Edn.18/11/16) - The Use Of The Electronic Business Delivery Form

Clause 4 of DEFCON 129J shall not apply to this contract

DEFCON595 (Edn.03/19) - General Purpose Automatic Test Equipment Data Requirements

DEFCON602A (Edn.12/17) - Deliverable Quality Plan

*Unless otherwise notified, the Quality Plan shall be delivered to the Quality Focal Point within 3 months of contract award and shall be considered accepted 1 month after delivery subject to the satisfaction of the Project Manager*

DEFCON606 (Edn. 06/14) - Change and Configuration Control

DEFCON608 (Edn.07/21) - Access and Facilities to be Provided by the Contractor

DEFCON627 (Edn.12/10) - Quality Assurance - Requirement for a Certificate of Conformity

*For the purposes of DEFCON 627, the Certificate of Conformity shall be in the form set out in Annex P*

### **3.1. CONTRACTORS WORKING PARTIES**

3.1.1. For the purposes of the Contract any Contractor Working Parties shall be provided in accordance with Defence Standard 05-61 Part 4 (Issue 3) entitled "Quality Assurance Procedural Requirements – Contract Working Parties".

## 3.2. QUALITY

### 3.2.1. Quality Management Plan

Once the Quality Management Plan (as detailed in Table 2, Annex W Statement of Work) has been agreed by the Authority it shall be incorporated into the Contract. The Contractor shall be solely responsible for the accuracy, suitability and applicability of the Quality Management Plan.

### 3.2.2. NATO Quality Assurance Requirements (Design/Development and Production)

For the purposes of the Contract AQAP2110 Edition D V 1 entitled "NATO Quality Assurance Requirement for Design/Development and Production" and Defence Standard 05-61 Part 1 (Concessions) Issue 4 shall apply.

### 3.2.3. NATO Supplementary Software Quality Assurance Requirements

For the purposes of the Contract AQAP 2210 Edition D V 1 entitled "NATO Supplementary Software Quality Assurance Requirements" shall apply.

### 3.2.4. Quality Assurance Conditions

3.2.4.1. The Contractor shall maintain its Quality Management System in accordance with the applicable standards. The Authority is fully committed to ISO 9001:2008 and the Contractor shall be registered to this Standard to meet the Quality Management Requirements of Authority Contracts.

3.2.4.2. For the purpose of this Contract the following Quality Assurance Standards shall apply:

#### Reference

AQAP 2070	NATO Mutual Governance Edition B
AQAP 2105	NATO Requirements for Deliverable Quality Plans Edition C V 1 November 2009
AQAP 2110	NATO Quality Assurance Requirements for Design, Development and Production Edition D V 1 November 2009
AQAP 2210	NATO Supplementary Software Quality Assurance Requirements Edition A V 2 November 2006
ISO 25051	Software Engineering – Software Product Quality Requirements and Evaluation (SQuaRE) – Requirements for Quality of COTS software product and instructions for testing 25051:2015
Def Stan 00-250 Part 1	Human Factors for the Designers of Systems
Def Stan 00-250 Part 2	

Def Stan 00-250 Part 3

Human Factors for the Designers of Systems

Def Stan 05-57

Configuration Management of Defence Materiel

Issue 7: July 2018

Def Stan 05-61 Part 1

Quality Assurance Procedural Requirements: Part 1 -

Concessions Issue 6: March 2016

Def Stan 05-61 Part 4 Quality Assurance Procedural Requirements: Contractor Working Parties  
issue 3 Amdt 1: Jan 2011

Def Stan 05-61 Part 9 Quality Assurance Procedural Requirements: Part 9 – Independent  
Inspection Requirements for Safety Critical Items Issue 5

3.2.4.3. The measures to be taken by the Contractor to ensure compliance with the above requirements shall be those defined by the Contractor in the Quality Plan. The Quality Plan shall clearly define the responsibilities of the Contractors Quality Assurance from commencement to completion of the Contract.

3.2.4.4. Any unsatisfactory standards or performances which come to light during the inspection and which are not rectified following discussion between the Project Officer and the Contractor will be reported to the Authority Commercial Branch (see Box 1 of Appendix to Contract – DEFFORM 111).

3.2.4.5. The Authority reserves the right to include additional relevant Quality Assurance standards as may be required for each individual Task.

### 3.2.5. Safety Critical Items

For the purposes of the Contract, Safety Critical Items shall be subject to independent inspection in accordance with Defence Standard 05-61 Part 9 (Issue 5 ) entitled “Quality Assurance Procedural Requirements – Independent Inspection Requirements for Safety Critical Items”.

### 3.2.6. Quality Assurance Representative

All reference to the QAR in documents which form part of this Contract shall be read as referring to the Authority specified in Box 7 of DEFFORM 111.

## 3.3. INDEPENDENT SAFETY AUDITORS, ADVISORS AND ASSESSORS

3.3.1. The Contractor shall provide access to records, including sub-contractor records, for contract purposes; to enable the Authority’s appointed Independent Safety Auditor to carry out safety audits and other assessment activities to meet Authority safety requirements.

## 3.4. INSTALLATION

3.4.1. The Contractor shall not install the equipment at RAF Cranwell without prior agreement by the Authority to ship the equipment following Factory Acceptance Test, prior to Site Acceptance Test

3.4.2. The Contractor shall provide his own site accommodation including storage, workshop and telephone facilities and shall be responsible for supplying all spares, tools and test equipments required for installing and commissioning the equipment being supplied under the Contract. All such

spares, tools and test equipment shall remain the property of the Contractor and shall be removed from the site at the completion of the Contract.

### **3.5. PLANNING APPROVALS**

- 3.5.1. The Contractor shall be responsible for obtaining all planning approvals. The Authority shall provide reasonable assistance to the Contractor in obtaining planning approvals. No work shall commence on any portion of the works until the relevant planning approval for that area of work has been obtained.

### **3.6. CONFIGURATION CONTROL**

- 3.6.1. For the purposes of the Contract Defence Standard 05-57 entitled "Configuration Management of Defence Materiel" shall apply.

### **3.7. RELIABILITY AND MAINTAINABILITY**

- 3.7.1. For the purposes of the Contract, Defence Standard 00-40 shall apply.

### **3.8. RISK ASSESSMENT QUESTIONNAIRE**

- 3.8.1. The Contractor acknowledges that any risk assessment which has been, or may be, undertaken in connection with this Contract has been, or will be, a project management function only. Such risk assessment does not affect the legal relationship between the parties. The issuing of any risk assessment questionnaire and the process of risk assessment generally, including without limitation, the identification of (or failure to identify):

3.8.1.1 particular risks and their impact; or

3.8.1.2. risk reduction measures, contingency plans and remedial actions

shall not in any way limit or exclude the Contractor's obligations under this Contract and shall be entirely without prejudice to the Authority's rights, privileges and powers under this Contract. The risks identified as a result of any risk assessment questionnaire and risk assessment process generally remain the risks of the Contractor and are not assumed by the Authority except to the extent that the Authority expressly and unequivocally accepts those risks under the Contract.

## **4. PRICE**

DEFCON654 (Edn.10/98) - Government Reciprocal Audit Arrangements

DEFCON670 (Edn.02/17) - Tax Compliance

### **4.1. QUALIFYING DEFENCE CONTRACT**

DEFCON 800 (Edn 12/14) Qualifying Defence Contract

DEFCON 801 (Edn 12/14) Amendments to Qualifying Defence Contracts – Consolidated versions

DEFCON 802 (Edn 12/14) QDC: Open Book on subcontracts that are not Qualifying Sub-contracts (QSC)

DEFCON 804 (Edn 03/15) QDC: Confidentiality of Single Source Contract Regulations Information

Notwithstanding Clause 3 of DEFCON 804, the MoD may not disclose the SSCR Information to its professional advisers or consultants or any Central Government Body, without the prior written consent of the Contractor, such consent not to be unreasonably withheld. For the purposes of this

condition, it shall not be deemed unreasonable for the Contractor to insist that enforceable confidentiality undertakings are obtained from such potential discloses as a condition for such consent.

#### 4.2. QDC -SINGLE SOURCE CONTRACTING REGULATION REPORTS

The reports that will apply, in accordance with the Single Source Contract Regulations are as listed below:

- a. **Contract Pricing Statement (CPS):** to be provided, in accordance with the Single Source Contracting Regulations (SSCR), within 1 month of Contract Award, or as requested by the Authority.
- b. **Contract Reporting Plan (CRP):** to be provided, in accordance with the Single Source Contracting Regulations (SSCR), within 1 month of Contract Award, or as requested by the Authority.
- c. **Contract Notification Report (CNR):** to be provided, in accordance with the Single Source Contracting Regulations (SSCR), within 1 month of Contract Award, or as requested by the Authority.
- d. **Contract Completion Report (CCR):** to be submitted within 6 months of the contract completion date.
- e. **Contract Cost Statement Report (CCS):** to be submitted within 12 months of the contract completion date, or as requested by the Authority, in accordance with "On Demand Contracts" within the SSCR.
- f. **Interim Contract Report (ICR):** must be provided by the contractor within 2 months after each CRP reporting date and again at the end of Year 2 of the Extension, or as requested by the Authority, in accordance with "On Demand Contracts" within the SSCR.

#### 5. INTELLECTUAL PROPERTY RIGHTS

DEFCON14 (Edn.06/21 ) - Inventions and Designs Crown Rights and Ownership of Patents and Registered Designs

*For the purposes of this Contract DEFCON 14 shall apply with the following modification and clarification:*

*Where any invention or design to which the provisions of DEFCON 14 apply is created outside the UK and where local laws so require, any application may, notwithstanding the provisions of clause 2(c), be made under equivalent conditions of secrecy at the local patent office of the territory where the invention or the design was created. Where local laws so require, the supply of a copy of the application under clause 4(a) shall be subject to any necessary approval of the local patent office but the application number and date of filing shall be notified to the Authority in all cases.*

DEFCON15 (Edn.06/21 ) - Design Rights and Rights to Use Design Information

*The rights accruing to the Authority under DEFCON 15 shall apply to those deliverables identified in the listed Contract Data Requirement(s) (CDR) in the form of DEFFORM 315 (Edn 02/98) provided at Annex O to the Contract*

*For the purposes of clause 18 (Levy) of this DEFCON 15, the form of agreement is set out in Annex L.*

*For the avoidance of doubt any computed levy will be a function of the proportion of the Authority's contribution to the development of any particular Article.*

*For the avoidance of doubt the application of DEFCON 15 only applies to those Contract elements the design of which are funded by the Authority.*

#### DEFCON16 (Edn.06/21 ) - Repair and Maintenance Information

*For the purposes of this Contract DEFCON 16 shall apply with the following clarification:*

*The rights accruing to the Authority under DEFCON 16 shall apply to those deliverables identified in the listed Contract Data Requirement(s) (CDR) in the form of DEFFORM 315 (Edn 02/98) provided at Annex O to the Contract*

*For the avoidance of doubt*

*"Operation" shall be construed as including training for operation of "Articles".*

#### DEFCON21 (Edn.06/21 ) - Retention of Records

*For the purposes of this Contract DEFCON 21 shall apply with the following clarification:*

- (a) In accordance with clause 3 of DEFCON 21 the "Control Copy" shall be held for 6 years.*
- (b) DEFCON 21 (Retention of Records) shall apply to all copyright works procured under DEFCON 90 (Copyright) and to any Technical Publications detailed in Annex A to FsASTC/00114*
- (c) In accordance with Condition 2.19 the Quality Control/Inspection Records shall be retained for a period of four (4) years.*

#### DEFCON90 (Edn.06/21 ) – Copyright

*For the purposes of this Contract DEFCON 90 shall apply with the following clarification:*

- (a) The nations prescribed for the purposes of clause 4(c) of DEFCON 90 shall be the NATO nation states, Sweden, Australia and New Zealand.*

#### DEFCON126 (Edn.06/21 ) - International Collaboration Clause

*For the purposes of this Contract DEFCON 126 shall apply with the following clarification:*

- (a) The period prescribed for the purposes of clauses 2 and 3 of DEFCON 126 shall be 12 years from the commencement date of the Contract.*

#### DEFCON632 (Edn.06/21 ) - Third Party Intellectual Property - Rights and Restrictions

#### DEFCON703 (Edn.06/21 ) - Intellectual Property Rights - Vesting in the Authority.

*For the purposes of this Contract DEFCON 703 shall apply with the following modification and clarification:*

*The presence of any background or private venture funded Contractor owned or third party owned intellectual property (including without limitation any patents or design rights) or confidential information in the Results, or delivered with the Results, shall not fetter the exercise of the Authority's right under clause 2 of DEFCON 703 to use or have used the items to which this Condition applies for any UK Government purpose.*

*The provisions of DEFCON 703 (Intellectual Property Rights - Vesting in the Authority) shall apply solely to those items listed in the Contract Data Requirement(s) (DEFFORM 315) at Annex O to the Contract*

#### AUTHORISATION BY THE CROWN FOR USE OF THIRD PARTY INTELLECTUAL PROPERTY RIGHTS

*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.*

## **5.1 FOREIGN SUB-CONTRACTS**

5.1.1 Where the Contractor enters into a sub-contract with a supplier or contractor whose location, for the purposes of accepting any such sub-contract, is outside the United Kingdom, they shall cause the following to be included in such sub-contract.

5.1.2 The Contractor hereby agrees to indemnify the Authority against any claim, action or proceeding arising or relating to use or infringement or alleged use or infringement (whether by manufacture, use, sale or otherwise) of any patent, registered design, copyright, or other intellectual property arising in or out of the performance of the Contract or the supply or provision of articles or services to the Authority or the use by the Authority of any Article, drawing document or other information or services provided under the Contract, and the Contractor undertakes to be responsible for dealing with the settling at his own expense any such claim, action or proceeding.

5.1.3. The Contractor shall keep the Authority fully informed of the progress of any such claim, action or proceeding and shall not conclude any settlement thereof without first advising the Authority of the terms proposed. The Authority reserves the right to intervene or assume responsibility at any time for the conduct of any such action or proceeding or consequent settlement. In such event, the Authority will bear any additional cost that arises beyond that which should have been reasonably incurred by the Contractor in such action, proceeding or settlement.

## **5.2. PROCEDURE FOR MAKING DIRECT AGREEMENTS WITH SUB-CONTRACTORS**

5.2.1 The Contractor shall not place any sub-contract or order involving the design or development of equipment required under this contract without the prior approval of the Authority which, except as in sub-clause 5.2.2 below, will be given by the Commercial Officer.

5.2.2 The Contractor shall not enter into any commitment in relation to the equipments specified in the agreement set out in Annex H, as may be amended from time-to-time, until the sub-contractor has entered into an agreement with the Authority in the form set out at Annex H. 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 condition they shall report the matter to (appropriate Commercial Officer) and await further instructions before placing the sub-contract or order.

## **5.3 BACKGROUND AND COMMERCIAL OFF THE SHELF (COTS) DELIVERABLE SOFTWARE**

5.3.1 Background and COTS deliverable software means commercially available software and software developed without the funding of the Authority. The rights accruing to the Authority under this clause 5.3 shall apply to those deliverables identified at Annex A to FsASTC/00114

5.3.2 In respect of the background software listed in Tables 1 and 2 of Annex N, the Contractor shall supply and shall procure from the Equipment supplier (AMST) software licences for the Authority and with the agreement of the Authority at no additional charge to the Contract Price in accordance with the Authority's DEFFORM 701 software licence.

5.3.3 In respect of the COTS/third party software listed in Tables 3 and 4 of Annex N, the Contractor shall use reasonable endeavours to procure software licences in accordance with the Authority's DEFFORM 701 software licence. In the event the Contractor is unable to procure such software licences the Contractor shall consult the Authority.

5.3.4 Where there is no express licence governing the Authority's use of any software (including but not limited to PV Software or firmware) which is contained in any private venture deliverable common law rights to use and transfer that software shall apply.

5.3.5 In the event of any conflict between the provisions of any express software licence granted directly by the Contractor (under either licence or sub-licence) to the Authority and any other provision of this Contract, the Contract shall take precedence.

## **5.4. TECHNICAL PUBLICATIONS**

5.4.1 The Contractor shall ensure that the Authority has the right to copy, amend, extend or have copied, amended or extended any technical publication called for under Annex A and Annex W to FsASTC/00114 or any part thereof including any such part when incorporated in any amended or extended version of such technical publication. The Contractor shall incur no liability to the Authority with respect to any subsequent amendments made by a third party.

## **5.5. TECHNICAL SUPPORT**

5.5.1. Without prejudice to the Authority's ownership and/or rights of use under any other Condition of this IPR Section, the Authority shall have in respect of all technical information comprised or contained within any technical deliverable to which this Contract applies a free licence:



5.5.1.1. to copy that technical information and to circulate it within any United Kingdom Government Department (which term includes the United Kingdom Armed Forces); and

5.5.1.2. to issue that technical information or any copy of the same or any part thereof to a technical support contractor for the purposes of:

5.5.1.2.1. monitoring the work under the Contract,

5.5.1.2.2. certification, inspection, testing, modelling, analysis and evaluation of the deliverables and/or

5.5.1.2.3. evaluation with a view to procuring further equipment for use with the System,

## 5.6. FOREIGN MILITARY PERSONNEL

5.6.1. For the avoidance of doubt, UK Government defence purposes extends to the training by the UK MoD or its agents and contractors of foreign military personal.

## 6. LOANS

DEFCON23 (Edn.06/21 ) - Special Jigs, Tooling and Test Equipment

DEFCON76 (Edn.06/21 ) - Contractor's Personnel at Government Establishments

*To the extent of any loss, damage or destruction to MOD Property that is or should be recoverable under any of the required Insurances in Annex E to the Contract (Insurance Schedule) the liability shall be in accordance with the amounts set out in Annex E (Insurance Schedule) and Annex R (Lease) . In respect of any other damage not covered by Annex E (Insurance Schedule) or Annex R (Lease), to the extent permitted by law, the Contractors Liability shall be limited to **[redacted under FOI Section 43 - Commercial Interests Exemption]** per incident.*

DEFCON611 (Edn.02/16) - Issued Property

DEFCON694 (Edn.07/21 ) - Accounting For Property of the Authority

## 6.1. ACCESS TO AUTHORITY SITES

6.1.1. The Authority will assist in arranging access to Authority site(s) including the Designated Area as defined in Annex A and to the Authority's personnel required to undertake the work required under this Contract. Requests for access/visits shall be made in a timely manner to allow any necessary arrangements to be made and clearances to be approved/authorised.

6.1.2. No access will be granted unless such approval has been given. This shall be co-ordinated through the Project Officer (see box 2 in DEFFORM 111, Appendix to Contract).

6.1.3. In respect of visits to Authority sites or personnel, the Authority shall have no liability to the Contractor if the opportunity to visit the Authority sites or personnel is given to the Contractor and the Contractor fails to take up any such offer.

6.1.4. In such circumstances the liability of the Authority shall cease with effect from the first time the opportunities are offered.

6.1.5. Whilst at RAF Cranwell (including the Designated Area) or any other Authority site the Contractor's personnel shall at all times comply with appropriate site / Station Standing orders.

6.1.6. Where required to perform the Contract, the Authority will assist the Contractor in arranging access to Authority sites.

## **6.2. BUILDING AND SERVICES**

6.2.1. The Contractor shall comply with the works service conditions and support services conditions at Annex B applicable to work carried out under Schedule of Requirements Item 1 of the Contract. These conditions shall supplement, not replace, and should be read in conjunction with all other terms and conditions contained in the Contract.

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

6.3.1. The Authority shall make available those items of GFA as listed at Annex G to the Contract, on the terms set out against each item.

6.3.2. All GFA issued by the Authority to the Contractor shall be managed in accordance with the requirements of DEFCON 611 (Edn 02/16) and DEFCON 694 (Edn 07/18).

6.3.3. The list of GFA items at Annex G to the Contract, shall be reviewed at each Progress and Performance Quarterly Meeting. Any subsequent changes to the GFA list at Annex G will be incorporated, through an Amendment to the Contract at periodic intervals to be agreed by both the Authority and the Contractor.

6.3.4. The Authority shall have no liability to the Contractor if the GFA detailed at Annex G is offered to the Contractor and the Contractor fails to take up any such offer. In such circumstances the liability of the Authority shall cease with effect from the first time the GFA is offered.

6.3.5. All GFA issued under the Contract shall be issued as Contract Support Items as defined at paragraph 17.3 of DEF-STAN 05-099 Part 1 Issue 1 dated 14 July 17

## **6.4. MEDICAL OFFICERS (MO)**

6.4.1. Medical Officer or MO shall mean either a RAF CAM or an Authority designated medical officer.

6.4.2. The Authority shall appoint and at all times retain a Medical Officer and ensure that they are adequately trained and possess such skill and experience as is necessary for the proper medical supervision of the delivery of the High G Capability and procure that the Medical Officer performs its duties with all reasonable care and skill and such duties shall include but not be limited to training and attendance at the Facility for testing and evaluation trials.

6.4.2 The Authority shall at all times be responsible for the acts and omissions of the Medical Officer including those of any third party Medical Officer who the Authority appoints but is not a RAFCAM Medical Officer.

## **7. DELIVERY**

DEFCON5J (Edn.11/16) - Unique Identifiers

*Where used in conjunction with contracts for services, Clause 2 of the DEFCON shall not apply.*

DEFCON 507 (Edn.07/21 ) – Delivery  
DEFCON 621B (Edn.12/04) - Transport (If Contractor is responsible for transport)

## **7.1. DELIVERY**

7.1.1. The Contractor shall complete the work detailed in the Schedule of Requirements by the dates specified.

7.1.2. The cost of delivery is to be included in the Contract price.

## **7.2. FORCE MAJEURE**

7.2.1 The Contractor shall not be in breach of this Contract, nor liable for late or non-performance of any of its obligations under this Contract, if such delay or failure result from a "Force Majeure Event". For the purposes of this Contract a Force Majeure Event is defined as one of the following:

- a. acts of nature;
- b. war;
- c. hostilities;
- d. fire at any of the Contractor's premises or those of its suppliers.

7.2.2 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.

7.2.3 Subject to Clause 7.2.4 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.

7.2.4 The maximum extension of time granted under this clause shall be limited to One Hundred and Eighty (180) calendar days after which time the Authority may, on giving written notice to the Contractor, terminate this Contract with immediate effect.

## **8. PAYMENTS/RECEIPTS**

DEFCON513 (Edn.07/21 ) - Value Added Tax

DEFCON534 (Edn.06/21 ) - Prompt Payment (Sub-Contracts)

### **8.1. PAYMENT AND PERFORMANCE MECHANISM**

8.1.1. Payment and Performance shall be in accordance with the Payment and Performance Mechanism Terms and Conditions at Annex J.

## **9. CONTRACT ADMINISTRATION**

DEFCON604 (Edn.06/14) - Progress Reports

*For the purposes of the Contract, the frequency of reports shall be Quarterly.*

DEFCON609 (Edn.07/21 /) - Contractor's Records

DEFCON625 (Edn.06/21 ) - Co-Operation on Expiry of Contract

DEFCON642 (Edn.07/21 ) - Progress Meetings

DEFCON647 (Edn.05/21 ) - Financial Management Information

### **9.1. CONTRACT EXIT AND TRANSITION**

## **CONTRACT EXIT**

9.1.1. On expiry of the Contract or in the event that the Authority notifies the Contractor of the Authority's intention to terminate the Contract under or in connection with its terms, the Parties shall give effect to the Transition Plan issued to the Authority under Annex W (SOW) and all other relevant clauses within this Contract.

9.1.2. On expiry or termination of the Contract, the Authority shall not be liable for additional charge(s) other than those Contract conditions that apportion liability to the Authority in respect of the winding up of the Contract and for the handover by the Contractor, to any successor contractor or the Authority, of all data relevant to the performance of this work by that successor Contractor.

## **CONTRACT TRANSITION: SUPPORT TO FUTURE REQUIREMENT**

9.1.3. For a period of up to twenty-four (24) months before Contract Expiry, the Authority reserves the right to request the provision of documents specified in Table 2 of the Statement of Work or other information identified in sub-clauses 9.1.4 to support any potential competition for the future High G Requirement. Failure to provide the Authority with documentation specified at Table 2 of the Statement of Work within the requested timeframe will result in Service Credits as specified in Table E2 of Annex J – Payment and Performance Mechanism, unless otherwise agreed on a case by case basis by the Authority.

9.1.4. Information to be provided to the Authority:

9.1.4.1. All relevant support documentation including repair specification, hardware, all equipment manuals and service delivery documentation

9.1.4.2 All Authority holdings;

9.1.4.3 All reports, databases, software produced over the period of the Contract that would be required to continue the provision of Services;

9.1.4.4 Ensure that all facilities and GFA held is returned to the Authority in a serviceable state

9.1.4.5 Make available all warranty and licences held

9.1.4.6 Facilitate inspections and surveys of the facility

## **CONTRACT TRANSITION TO A SUCCESSOR CONTRACTOR**

9.1.5. If the Authority enacts the Option at Item 10 of the Schedule of Requirements, the Contractor shall:

9.1.5.1. Fulfil its obligations under Issue 1 of the Transition Plan issued under Annex W (SOW) and items identified in sub-clauses 9.1.4.1 to 9.1.4.6 in a format which it would expect were it the successor contractor. In the event a later Issue of the Transition Plan impacts the price of Item 10, the Authority may request a revised price from the Contractor.

9.1.5.2. For a period of 6 months prior to contract expiry or termination, the Contractor shall co-operate and give explanation, advice and guidance to any successor contractor or the Authority in all matters that the successor contractor may raise as relevant to the past and/or future performance of the Contract.

9.1.5.3. In accordance with DEFCON 625, the Authority reserves the right to request additional support to Contract Transition activities post Contract Expiry date.

## **9.2. PUBLICITY**

9.2.1. The Contractor shall not release any information associated with the project without first obtaining the prior written consent of the Authority, except as may be required by law or other

government requirements. Prior to release, copies of the information to be released shall be forwarded to the Authority Commercial Branch (see Box 1 of Appendix to Contract – DEFFORM 111). If the publication is to be in a language other than English, an accurate and complete type-written translation in English shall be provided with the request. It is agreed that neither party has the authority to communicate on behalf of the other.

## **10 LICENCE IN RELATION TO RAF CRANWELL**

10.1 For the Contract Duration period specified at Clause 2.4, the Authority shall grant the following rights to the Contractor and any Sub-Contractor for the purpose of the carrying out of the works in relation to the High G Test and Training Capability as required under the Schedule of Requirements:

10.1.1 A non-exclusive licence to enter and remain upon those parts of RAF Cranwell as are edged in red on the plan included as Appendix 1 to Contract Annex A (SOW) – High G Training and Test Capability Site Data Pack to this Contract (the “Property”);

10.1.2 Such rights of access to and egress from RAF Cranwell as detailed in Appendix 1 to Contract Annex A – High G Training and Test Capability Site Data Pack are necessary for the Contractor and any Sub-Contractor over land in the ownership or control of the Authority to perform their obligations and exercise their rights under this Contract and in particular for the purposes of implementing the High G Training Service as required under the Schedule of Requirements and for the purposes of installation of the Equipment (and to rectify any Snagging Matters or Defects), provided that any routes may be varied by the Authority to such alternative routes as the Authority may reasonably specify from time to time;

10.1.3 From the relevant date specified in the Contractor Deliverables Programme, the right to occupy the Property for the purpose of carrying out the works (and to rectify any Snagging Matters or Defects) relating to the High G as required under the Schedule of Requirements and (where necessary) to erect a barrier around the Property and to take such other measures as may be required by legislation, or otherwise, to make the Property safe for the duration of the licence granted by this clause 10;

10.1.4 A non-exclusive licence to park motor vehicles only on the car parks identified in the site data pack attached to this Contract at Appendix 1 to Contract Annex A – High G Training and Test Capability Site Data Pack and as may be shown or described or varied, from time to time during the duration of the licence in accordance with the Contractor Tender, or any other agreement made between the parties, each acting reasonably;

10.1.5 Provided that the Authority may determine the rights under this clause 10 at any time on reasonable notice or at any time in the event of breach of any of the obligations on the part of the Contractor contained within this clause 10.

### **10.2. Conditions attached to the Licences**

The licences granted by the Authority pursuant to Appendix 1 to Contract Annex A– High G Training and Test Capability Site Data Pack are subject to the following:

10.2.1 The statutory rights of the Authority or any relevant authority or any third party that has existing rights over RAF Cranwell or any third party who acquires such rights in the future over RAF Cranwell;

10.2.3 The rights shall not in any circumstances entitle the Contractor or Sub-Contractor to exclusive occupancy or exclusive possession of the Property or any part of RAF Cranwell;

10.2.4 Save where otherwise required or permitted by this Contract, the Contractor and each Sub-Contractor are not to cause any material disruption to the operations or activities carried out by the Authority or any third party on or at RAF Cranwell for the purposes contemplated by this Contract or any other of the Authority’s or any third party’s continuing occupation of any part of RAF Cranwell;

- 10.2.5 All local charges registered before or after the date of this Contract;
- 10.2.6 All notices, orders, resolutions, restrictions, agreements, directions and proposals therefore made by any local authority the Authority or relevant authority before or after the date of this Contract;
- 10.2.7 Any unregistered interests which would override registered dispositions under the Land Registration Act 2002, notwithstanding that any title to the relevant part of RAF Cranwell is unregistered;
- 10.2.8 The Contractor's obligation to abide by and to comply in full at all times with the provisions of the RAF Cranwell Health and Safety Brief for Visitors and Contractors, a copy of which has been provided to the Contractor prior to the date of this Contract;
- 10.2.9 The Contractor's obligation to notify the Authority immediately of any issues arising during the carrying out of the works which could affect RAF Cranwell and to allow the Authority entry onto the Property together with all necessary machinery and equipment in order to carry out any works to the Property and or RAF Cranwell Provided That there shall be no obligation on the Authority to do the same;
- 10.2.10 To ensure that all vehicles leaving the Property are adequately cleaned to prevent the deposit of waste materials and debris on RAF Cranwell and if any such material or debris is so deposited the Contractor shall forthwith employ such measures as shall be necessary to remove the material and debris and to clean and reinstate such property to the reasonable satisfaction of the Authority;
- 10.2.11 In accordance with the timetable for the fulfilment of the Contractor's Obligations to clear from the Property and the car parking area referred to in Appendix 1 to Annex A to the reasonable satisfaction of the Authority all temporary structures rubbish and all building and surplus material and equipment of the Contractor and in default the Authority shall be entitled to employ an alternative contractor to clear them and shall be entitled to be reimbursed by the Contractor for any costs reasonably incurred in clearing or procuring the clearing of them;
- 10.2.12 Not to store materials or park vehicles in the immediate external vicinity of the boundaries of the Property other than for reasonable periods necessary for loading and unloading or as agreed with the Authority in respect of RAF Cranwell;
- 10.2.13 The Prime Contractor shall be solely responsible for the provision of all utilities and mains services connections from agreed connection points to the new facility. This shall include meeting the ongoing requirements of Aquatrine, the Authority's water and wastewater provider for new connections.

## **11 THE LEASE**

### **11.1. GRANTING OF INFRASTRUCTURE LEASE**

- 11.1.1 On successful acceptance of the works Infrastructure delivered under Item 1 of the Schedule of Requirements and in accordance with the infrastructure terms at Annex B, the Authority shall take ownership of said works Infrastructure.
- 11.1.2 The parties shall then execute the Agreed Form of Lease on or before 5 working days prior to planned lease commencement date. During the term of the lease the Authority shall afford to the Contractor for the purpose of service provision the rights contained in the Lease and the Authority shall discharge its obligations pursuant to such lease.

### **11.2 FORM AND GRANT OF THE LEASE**

- 11.2.1 On the Contract Commencement date of the Lease at Annex R, the Authority shall grant to the Contractor and the Contractor shall accept from the Authority the Lease.

11.2.2 The Lease and its counterpart shall be prepared by the Authority's Solicitors and an engrossment of the counterpart shall be delivered to the Contractor's solicitors within five Working Days after the date of handover and acceptance of the Facility from the Contractor to the Authority.

11.2.3 On completion of the Lease the Contractor shall deliver to the Authority the counterpart of the Lease duly executed by the Contractor and the Authority shall deliver to the Contractor the executed Lease

### **11.3 EXCLUSION OF SECURITY OF TENURE**

11.3.1 The parties confirm that: the Authority served a notice on Thales UK Ltd on 8 February 2016 as required by section 38A(3)(a) of the LTA 1954 and which applies to the tenancy to be created by the Lease before this Contract was entered into; and

11.3.2 asblaw LLP who was duly authorised by Thales UK Ltd to do so, made a statutory declaration dated 9 February 2016 in accordance with the requirements of section 38A(3)(b) of the LTA 1954.

### **11.4. TENANCY AT WILL**

11.4.1. For the period 1 October 2021 – 30 November 2021, the Contractor shall be a Tenant at Will of the Infrastructure under the same terms and conditions of the Lease at Annex R.

## **12. STRUCTURAL WARRANTY FOR CENTRIFUGE**

12.1 The Contractor shall procure that the centrifuge supplier shall provide to the Authority by way of a direct agreement a structural warranty in the form set out in Annex Q.

12.2 The Contractor acknowledges the existence of the structural warranty and will not do or omit to do something, or act in a manner, that would diminish the Authority's rights / benefits under the structural warranty.

## **13. EXERCISE OF OPTIONS**

13.1. No work shall be carried out on the Options detailed at Items 9 or 10 of the Schedule of Requirements without the express written permission of the Authority. The Authority shall not be liable for payment for any work not so authorised and the decision to proceed with the Option is entirely at the Authority's discretion.

13.2. If the Authority wishes to exercise the Option detailed at Item 9 of the Schedule of Requirements, the Authority shall notify the Contractor at least one (1) year prior to the expiry of Extension Service Delivery period detailed at Item 5 of the Schedule of Requirements.

13.3. If the Authority wishes to exercise the Option detailed at Item 10 of the Schedule of Requirements, the Authority shall provide the Contractor with six (6) month's notice.

## **14. COVID-19: EXTENSION OF TIME AND RELIEF FROM PERFORMANCE**

14.1 The parties recognise that the continuance of the COVID-19 pandemic may have an adverse impact on the ability of the Contractor to perform its obligations under this Contract. The Contractor shall not therefore be in breach of its obligations under this Contract, nor liable for late or non-performance of any of its obligations under this Contract, if such delay or failure is a sole and direct result of the continuance of the COVID-19 pandemic.

14.2 The Contractor shall immediately notify the Authority in writing that the continuance of the COVID-19 pandemic has solely and directly resulted or is likely to solely and directly result in a

delay or failure to perform its obligations under the Contract, which obligations are adversely impacted, and the actions proposed to mitigate such adverse impact.

14.3 Subject to clause 4 below, the Contractor shall be entitled to request an appropriate period of:

- a. additional time for performing; and/or
- b. relief from other contractual consequences, of late or non-performance of such obligations provided always that the Contractor has used, to the satisfaction of the Authority, all reasonable endeavours, both to mitigate the adverse impact of the continuance of the COVID-19 pandemic, and to facilitate the continued performance of its obligations under the Contract.

14.4 The maximum period of additional time and/or for which relief will be granted under this clause shall be limited to 6 months, after which the Authority may terminate the Contract on giving 60 days' notice in writing to the Contractor. On termination of the Contract, the Contractor shall be entitled to be paid an amount equal to any and all charges payable (but as yet unpaid) for Contractor Deliverables delivered up to the date of termination but shall otherwise have no claim against the Authority in relation to such termination.



## Appendix - Addresses and Other Information

### 1. Commercial Officer

**Name:** DES FsAST-Comrcl4

**Address:** NH1 Atrium, #1027  
MOD Abbeywood  
bristol, BS34 8JH

Email: DESFsAST-Comrcl4@mod.uk



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

**Name:** DES FsAST-2

**Address:** NH1 Atrium, #1027  
MOD Abbeywood  
bristol, BS34 8JH

Email: DESFsAST-2@mod.uk



### 3. Packaging Design Authority

**Organisation & point of contact:**

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



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

**Branch/Name:**



(b) U.I.N.

### 5. Drawings/Specifications are available from

### 6. For contracts containing DEFCON 5, mauve Copies of MOD Form 640 are to be sent to

(where no address is shown the mauve copy should be destroyed)

### 7. Quality Assurance Representative:

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

**AQAPS** and **DEF STANs** are available from UK Defence Standardization, for access to the documents and details of the

### 8. Public Accounting Authority

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

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

### 9. Consignment Instructions

The items are to be consigned as follows:  
See Schedule Of Requirements

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

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

**Air Freight Centre**

IMPORTS ☎ 030 679 81113 / 81114 Fax 0117 913 8943

EXPORTS ☎ 030 679 81113 / 81114 Fax 0117 913 8943

**Surface Freight Centre**

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

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

### **B. JSCS**

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

JSCS Fax No. 01869 256837

[www.freightcollection.com](http://www.freightcollection.com)

### 11. The Invoice Paying Authority (see Note 1)

Ministry of Defence ☎ 0151-242-2000

DBS Finance

Walker House, Exchange Flags Fax: 0151-242-2809

Liverpool, L2 3YL

**Website is:**

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

### 12. Forms and Documentation are available through \*:

Ministry of Defence, Forms and Pubs Commodity Management

PO Box 2, Building C16, C Site

Lower Arcott

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

**Applications via fax or email:** [DESLCSLS-OpsFormsandPubs@mod.uk](mailto:DESLCSLS-OpsFormsandPubs@mod.uk)

### NOTES

**1. Forms.** Hard copies, including MOD Form 640 are available from address in Box 12., All other invoicing forms e.g. AG Forms 169 and 173, are available from the website address shown at Box 11.

**2.\*** Many **DEFCONs** and **DEFFORMs** can be obtained from the MOD Internet Site:

helpdesk visit <http://dstan.uwh.dii.f.r.mil.uk/> [intranet] or  
<https://www.dstan.mod.uk/> [extranet, registration needed].

<https://www.aof.mod.uk/aofcontent/tactical/toolkit/index.htm>

## **ANNEX A - STATEMENT OF WORK**

REFERENCE: Statement of Work For The High G Training and Test Capability - ISSUE 1.0 - DATED 19 January 2015



20151105-FsASTC00  
114\_HighG\_Annex A

## **APPENDIX 1 – HIGH G FACILITY SITE DATA PACK**

[REDACTED UNDER FOI SECTION 26 – DEFENCE EXEMPTION]

## **APPENDIX 2 – SYSTEM REQUIREMENTS**

[REDACTED UNDER ‘MILITARY SENSITIVE TECHNICAL INFORMATION’ EXEMPTION]

## **APPENDIX 3 – ITEAP**

[REDACTED UNDER FOI SECTION 41 - INFORMATION PROVIDED IN CONFIDENCE EXEMPTION]

## **APPENDIX 4 – IDAP**

REFERENCE: INFRASTRUCTURE DESIGN AND ACCEPTANCE PROCESS (IDAP) FOR HIGH G TRAINING AND TEST CAPABILITY - Issue 1.2 – Dated 19th January 2015



20151105-FsASTC00  
114\_HighG\_Annex A

## **APPENDIX 5 – MEETINGS**

REFERENCE: 20141210-Annex A\_Appendix 5\_Meetings-Issue\_1-OSC



20141210-Annex  
A\_Appendix 5\_Meeti

## **APPENDIX 6 – QUALITY PERFORMANCE INDICATORS**

REFERENCE: 20151105-FsASTC00114\_HighG\_Annex A\_Appendix 6\_QPI Guidance-OSC



20151105-FsASTC00  
114\_HighG\_Annex A

## **ANNEX B - INFRASTRUCTURE TERMS AND CONDITIONS**

REFERENCE: 20180315 - Amdt 4 - Infrastructure Terms and Conditions of Contract



20180315-amdt  
-4-FsASTC00114\_Hig

## **ANNEX C - DEFINITIONS**

**‘Abnormal Termination’** – shall mean the cessation of a G-Profile as an Emergency Stop or System Termination.

**“Agreement”** shall mean a form of agreement signed by or on behalf of the Authority and the Contractor which incorporates by reference particular conditions of contract;

**“Archive”** – shall mean to retain information within the long term (over 12 months)

**“Authority”** shall mean the Secretary of State for Defence;

**“Authority’s Accounts”** shall mean the Authority’s accounts department or agency which is responsible for the payment of all invoices on behalf of the Authority under the Contract, whose address is set out in the Agreement;

**“Authority’s Training / Testing programme”** shall mean the schedule/programme of training as formally notified by the Authority/the programme of Centrifuge usage.

**‘Building’** shall mean the building in which the High G Training & Test Capability is located

**“Change”** Shall mean any deviation or alteration to the agreed and/or Contractual path or delivery of the Contract, or an alteration in the obligations of either party.

**“Change Control”** shall mean any recorded amendment to Contract

**“Change Notification”** shall mean a notification of the occurrence of any Change;

**“Change Proposal”** shall mean the Contractors response to any request for change issued by the Authority.

**“Commercial Officer”** shall mean the person so designated in the Agreement or such other person appointed from time to time by the Authority and notified as such to the Contractor;

**“Commercial Representative”** shall mean the person so designated in the Agreement or such other person so appointed from time to time by the Authority. The Commercial Representative shall be of a more senior rank or grade than the Commercial Officer;

**“Commercially Available Software”** shall mean software that is at the time of the introduction by the Contractor sold as a standard package and is freely available on reasonable commercial terms.

**“Configuration Control”** shall mean the process of monitoring and recording in writing the evolution of all design;

**“Contract Completion Date”** means the date specified in Clause 2.4 (Contract Duration);

**“Contract”** means this contract including all annexes, appendices and schedules as applicable.

**“Contractor”** shall mean the person or persons, firm or company named in the Agreement whose tender has been accepted by the Authority and includes the Contractor’s legal personal representatives or permitted assigns;

**“Contractor Commercially Sensitive Information”** shall mean the information listed by the Contractor, being information notified by the Contractor to the Authority which is

acknowledged by the Authority as being commercially sensitive information;

**“Contractor Intellectual Property Rights”** shall mean Intellectual Property Rights owned by the Contractor or any Sub-Contractor as at the Contract Award Date.

**“Controlled Information”** shall mean any information in any written or tangible form which is disclosed to the Contractor by or on behalf of the Authority under or in connection with the Contract, and which is identified by the legend "Controlled Information" or other approved legend notified to the Contractor. Controlled Information shall exclude information provided by oral communication.

**‘Create’** – shall mean to generate or modify a database. This may change the parameters recorded, within the constraints of the SRD

**‘Data Manager’** – shall mean the person responsible for the accurate collection of all required operating data. This person may also have an instructional role.

**“Default Payment Notice”** shall mean the notice given by the Contractor to the Authority.

**“Defence Infrastructure Organisation (DIO)”** shall have the same meaning as the ‘Authority’

**“DEFFORM 30 Agreement”** shall mean the Electronic Transactions Agreement between the Authority and the Contractor;

**“Designated Representative(s)”** Shall mean those posts or positions that have the authorisation to make decisions within their delegations on behalf of their respective organisations.

**“DID or Data Item Description”** shall mean those documents detailed in the SOW which describe the required format, contents and layout of key document deliverables.

**“DOTAS”** shall mean the Disclosure of Tax Avoidance Schemes rules which require a promoter of tax schemes to tell HM Revenue & Customs of any specified notifiable arrangements or proposals and to provide prescribed information on those arrangements or proposals within set time limits as contained in Part 7 of the Finance Act 2004 and in secondary legislation made under vires contained in Part 7 of the Finance Act 2004 and as extended to National Insurance Contributions by the National Insurance Contributions (Application of Part 7 of the Finance Act 2004) Regulations 2012, SI 2012/1868 made under s.132A Social Security Administration Act 1992.

**“DPA”** shall mean Data Protection Act 1998

**“Emergency Stop”**– shall mean the cessation of a G Profile by the Operator, Engineer or Data Manager that brings the gondola rapidly to a halt adjacent to the centrifuge hall exit.

**“Employing Sub-Contractor”** – shall mean any sub-contractor of the contractor providing all or any part of the Services whom employs or engages any person in providing the Services.

**“Engineer”** – shall mean the person responsible for the safe technical conduct of the G Profile as directed by the Operator.

**“Equipment”** – shall mean the human high G centrifuge training and test equipment.

**“Export”** – shall mean to transfer information to transferrable media or via a WAN

**“Establishment”** shall mean RAF Cranwell

**“Equality Act”** shall mean the Equality Act 2010, as amended from time to time, including all regulations made under it and all relevant statutory codes of practice;

**‘Facility’** shall mean the combination of the Infrastructure and Centrifuge Training and Test Equipment required to deliver service in accordance with the SOW;

**“Full Operating Capacity” / “FOC”** Shall mean the point in time when the System has been accepted in accordance with clause 2.2 of Appendix 3 (ITEAP) and Appendix 4 (IDAP) to Annex A (SOW) and a Milestone Achievement Certificate has been certified by the Authority;

**“G”** – shall mean the ratio of actual acceleration to acceleration due to earth’s gravity or 'g' (9.81 ms<sup>-2</sup>). Hence an acceleration of 4 G is four times that due to gravity, or 39.2 ms<sup>-2</sup>.

**“G Baseline”** - shall mean the sustained idle baseline G for use between G Profiles.

**“G Offset”** – shall mean a period of decrease in G.

**“G Onset”** – shall mean a period of increase in G.

**“G Plateau”** – shall mean a period of constant G (constant values of G<sub>x</sub>, G<sub>y</sub> and G<sub>z</sub>)

**“G profile”** – shall mean a series of G Plateaus linked by a series of G Onsets and G Offsets

**‘G<sub>x</sub>’** - The direction of action of acceleration is defined on a three co-ordinate system based on the human spine, where X is the fore and aft axis. Positive and negative signs are used to specify direction along each axis such that a forwards acceleration is +G<sub>x</sub>.

**‘G<sub>y</sub>’** - The direction of action of acceleration is defined on a three co-ordinate system based on the human spine, where Y the lateral axis. Positive and negative signs are used to specify direction along each axis such that a right lateral acceleration is +G<sub>y</sub>.

**‘G<sub>z</sub>’** - The direction of action of acceleration is defined on a three co-ordinate system based on the human spine, where Z is the vertical axis. Positive and negative signs are used to specify direction along each axis such that a 'headwards' acceleration is +G<sub>z</sub>.

**“Gainsharing”** shall mean the method by which the Authority and the Contractor agree to share any improvements and savings that are identified by the Contractor or the Authority throughout the duration of the Contract.

**“General Anti-Abuse Rule”** shall mean (a) the legislation in Part 5 of the Finance Act 2013; and (b) any future legislation introduced into parliament to counteract tax advantages arising from abusive arrangements to avoid national insurance contributions.

**“Government Furnished Assets (GFA)”** shall mean any assets owned by the Authority and supplied to industry in support of the Contract identified at Annex G to the Contract.

**‘Input’** - shall mean to insert data into a pre-existing database

**‘Instructors Core Operating Hours’** shall mean 08:00 – 17:00 Monday to Friday for 200 days of the year during which the Contractor’s instructors shall be available to deliver training to the Authority;

**“Intellectual Property Rights”** shall mean any intellectual property rights of any description and recorded in any form including but not limited to patents, registered trademarks and

registered designs (and applications for the same whether UK or foreign) unregistered trademarks, unregistered design rights, database rights, inventions, software, copyright (including copyright in computer programs), know-how and confidential information and all intellectual property rights and other rights and forms of protection of a similar nature or having equivalent effect anywhere in the world whether or not registered or capable of registration and in respect of such rights which are capable of registration, the right to apply for registration and all applications for registration of any of the foregoing rights.

**“Key Personnel”** shall mean the personnel of the Contractor named as key personnel in the Agreement;

**“Loss or Damage”** shall mean:-

- (i) loss or damage to property;
- (ii) personal injury to, or the sickness or death of, any person;
- (iii) loss or damage to the Works or to any Things on the Site;
- (iv) nuisance or inconvenience to the owners, tenants or occupiers of other properties or to the public; and
- (v) pollution, silting or erosion of any river, stream or waterway;

**“Maintenance Plan”** shall mean the Contractor owned plan which details the scheduling of activities required to maintain the Facility in order to meet the obligations of the Contract.

**‘Maximum Instantaneous G Offset Rate’** – shall mean the maximum magnitude during G Offset, calculated as the peak value of the derivative of acceleration with respect to time, expressed in G.s-1.

**‘Maximum Instantaneous G Onset Rate’** – shall mean the maximum magnitude during G Onset, calculated as the peak value of the derivative of acceleration with respect to time, expressed in G.s-1.

**‘Medical Officer’ or ‘MO’** – shall mean either a RAF CAM or an Authority designated medical officer.

**“Milestone”** shall mean an objectively ascertainable event detailed in the Milestone Payment Schedule and ‘Milestones’ shall be construed accordingly;

**“Milestone Payment Schedule”** shall mean the Milestone Payment Schedule completed by the Contractor and agreed with the Authority, as amended (if at all) in accordance with Annex J, which detail the Milestones as advances against the Contract Sum payable on completion of each Milestone by the Authority to the Contractor during the performance of the Contract, a copy of which is annexed to the Agreement;

**“MOD Health and Safety Policy”** shall mean the Authority’s Health and Safety Policy as set out in the Authority’s Health and Safety Handbook JSP 375 or as may be varied or replaced by the Authority from time to time;

**"New Provider"** shall mean any replacement service provider or providers engaged to provide the Services (or part thereof) or substantially similar services or the Authority itself where the Services or substantially similar services or part thereof continue to be provided by the Authority after partial termination, termination or expiry of this Contract;

**"Non-Core Hours"** shall mean all hours which are not Core Hours;

**“Occupant”** shall mean any human undergoing exposure to the High G environment, to include all AEA and clothing



**‘Operational Day’** shall mean a period of no less than 9 hours during which the System is available for training or research.

**‘Operational Hours’** shall mean the defined daily period during which the System is available for training or research.

**‘Operator’** shall mean the MO responsible for the safe conduct of the G Profile.

**‘Operators’** shall mean personnel managing the System in the control room. Generally the Operator and the Engineer].

**“Overseas”** shall mean outside the United Kingdom of Great Britain and Northern Ireland.

**“P2P”** shall mean Purchase to Payment, the Authority Designated electronic payment system.

**“P2P Purchase Order”** shall mean an electronic payment order submitted by the Authority to the Contractor.

**“P2P Invoice”** shall mean an electronic invoice submitted by the Contractor to the Authority in accordance with the format for an invoice in accordance with the arrangements in the DEFFORM 30 Agreement between the Authority and the Contractor;

**‘Payload’** – shall mean any Occupant and equipment carried in the gondola, including all worn AEA and clothing. To include any additional equipment that is not part of either the standard cockpit configurations or permanently fixed medical equipment.

**“Payment Approval”** means receipting by the Authority of a P2P Invoice on the Authority’s ordering receipting and payment system (DECS P2P);

**‘Power Isolate’** – shall mean the cessation of a G Profile after the isolation of electrical power from the centrifuge. Gondola may stop anywhere in the centrifuge hall.

**“Purchase to Payment”** also referred to as P2P, is the electronic method of payment used by the Authority to make payments to Contractor.

**“Quality Plan”** shall mean the Contractor’s quality plan attached to the Agreement

**‘Quarantine’** shall mean to isolate information to prevent tampering or modification by unauthorised personnel.

**‘Record’** – shall mean to capture data and record it within a database.

**“Recovery Plan”** shall address rectification of recurring non-performance and the method of recovery of lost hours.

**“Relevant Tax Authority”** shall mean HM Revenue & Customs, or, if applicable, a tax authority in the jurisdiction in which the Contractor is established.

**‘Replay’** – shall mean to view stored or archived data/information.

**‘Restore’** – shall mean to retrieve information from Store or Archive.

**“Required Insurances”** shall mean the policies of insurance set out in Annex E Insurance Schedule (Required Insurances);

**“Requirements”** shall mean those objectives and requirements identified as such within the Contractor’s Brief that the Contractor is required to achieve;

**“Relief Event”** shall mean the relaxation of performance measurement following a situation, agreed by the authority, that could lead to a degeneration of performance whereby the cause is outwith the Contractors direct control.

**“Risk Management”** shall mean all activities required to identify and control the risks relating to the Works;

**“Risk Register”** shall mean the Authority Risk Register.

**“Service”** shall mean the availability of the Facility and the Training and Test Equipment as defined in Annex A (Statement of Work);

**"Service Failure"** shall mean any defect in or failure of the Service which results (or would result if the Authority was, at the relevant time, using that Service) in a failure to provide the Service.

**“Site”** shall mean the place or places specified in the Contractor’s Brief and/or the Agreement or agreed from time to time with the Authority as the place or places to be used for the carrying out of the Works.

**“Specification”** shall mean the Statement of Work at Annex A including the Systems Requirements at Appendix 1

**‘SQEP’** shall mean Suitably Qualified and Experienced Personnel;

**‘Store’** shall mean to retain information within the short term (up to 12 months).

**‘Subject’** shall mean a human in the High G Environment, not undergoing training, who may be present for research purposes, to include all AEA and clothing.

**"Subsequent Transferring Employee"** shall mean an employee wholly or mainly employed or otherwise assigned to the Services (or in respect of partial termination, the relevant part of the Services) whose employment transfers under the Transfer Regulations from the Contractor or any Employing Sub-Contractor to a New Provider;

**Subsequent Relevant Transfer"** shall mean a transfer of the employment of Subsequent Transferring Employees from the Contractor or any Employing Sub-Contractor to a New Provider or the Authority under the Transfer Regulations;

**"Subsequent Transfer Date"** shall mean the date on which the transfer of a Subsequent Transferring Employee takes place under the Transfer Regulations;

**“Supplementary Conditions”** shall mean any supplementary conditions incorporated into the Contract as identified in the Agreement;

**“Supply Chain”** shall mean the individuals and organisations that will be responsible for any of the design and/or construction of the Works as set out in the Schedule of Supply Chain Members;

**“Sustainable Development”** shall mean development which meets the needs of the present without compromising the ability of future generations to meet their own needs;

**‘System termination’** shall mean the cessation of a G Profile automatically by the system. Gondola may stop anywhere in the centrifuge hall.

**“Technical Guidance”** shall mean any guidance published by the Authority or any other Government department. Technical Guidance of relevance to the Works and Contractor’s Design shall be listed in, or appended to, the Contractor’s Brief or otherwise notified to the Contractor. Any reference to ‘relevant Technical Guidance’ shall be construed accordingly;

**“Third Party Intellectual Property Rights”** shall mean Intellectual Property Rights owned by a third party.

**“Transparency Information”** shall mean the content of this Contract in its entirety, including from time to time agreed Changes to the Contract and details of any payments made by the Authority to the Contractor under the Contract;

**“Trainee”** shall mean a human undergoing training in the High G Environment to include all AEA and clothing

**“Transfer Regulations”** shall mean the Transfer of Undertakings (Protection of Employment) Regulations 2006 as amended from time to time.

**“User”** shall mean any general user of the capability, not limited to the occupant

**“Unique Order Identifier (UOI)”** – shall mean a UOI generated by P2P for non inventory purchase orders

**“Unknown Artificial Obstruction”** shall mean an Artificial Obstruction certified by the Commercial Officer as an Unknown Artificial Obstruction;

**“VAT”** shall mean value added tax at the rate prevailing at the time of the relevant supply charged in accordance with the provisions of the Value Added Tax Act 1994;

## **ANNEX D - TUPE**

### **TUPE EXIT CLAUSES**

#### **TRANSFER REGULATIONS**

##### **EMPLOYEE TRANSFER ARRANGEMENTS ON EXIT**

#### **1. DEFINITIONS**

- 1.1 In this Annex D, save where otherwise provided, words and terms defined in Annex C (Definitions) of the Contract shall have the meaning ascribed to them in Annex C (Definitions) of the Contract.

#### **2. EMPLOYMENT**

##### **2.1 Information on Re-tender, Partial Termination, Termination or Expiry**

- 2.1.1 No earlier than two years preceding the termination, partial termination or Expiry of this Contract or a potential Transfer Date or at any time after the service of a notice to terminate this Contract or the provision of any of the Services (whether in whole or part) or on receipt of a written request by the Authority, the Contractor shall (and shall procure that any Employing Sub-Contractor shall):

- (a) supply to the Authority such information as the Authority may reasonably require in order to consider the application of the Transfer Regulations on the termination, partial termination or expiry of this Contract;
- (b) supply to the Authority such full and accurate and up-to-date information as may be requested by the Authority including the information listed in Appendix 1 to this Schedule [X] relating to the employees who are wholly or mainly employed, assigned or engaged in providing the Services or part of the Services under this Contract who may be subject to a Relevant Transfer;
- (c) provide the information promptly and in any event not later than three months from the date when a request for such information is made and at no cost to the Authority;
- (d) acknowledge that the Authority will use the information for informing any prospective New Provider for any services which are substantially the same as the Services or part of the Services provided pursuant to this Contract;
- (e) inform the Authority of any changes to the information provided under paragraph 2.1.1(a) or 2.1.1(b) up to the Transfer Date as soon as reasonably practicable.

- 2.1.2 Three months preceding the termination, partial termination or expiry of this Contract or on receipt of a written request from the Authority the Contractor shall:

- (a) ensure that Employee Liability Information and such information listed in Part A of Appendix 2 of this Schedule [X] (Personnel

Information) relating to the Transferring Employees is provided to the Authority and/or any New Provider;

- (b) inform the Authority and/or any New Provider of any changes to the information provided under this Paragraph 2.1.2 up to any Transfer Date as soon as reasonably practicable;
- (c) enable and assist the Authority and/or any New Provider or any sub-contractor of a New Provider to communicate with and meet those employees and their trade union or other employee representatives.

2.1.3 No later than 28 days prior to the Transfer Date the Contractor shall provide the Authority and/or any New Provider with a final list of the Transferring Employees together with the information listed in Part B of Appendix 2 of this Schedule [X] (Personnel Information) relating to the Transferring Employees. The Contractor shall inform the Authority and/or New Provider of any changes to this list or information up to the Transfer Date.

2.1.4 Within 14 days following the relevant Transfer Date the Contractor shall provide to the Authority and/or any New Provider the information set out in Part C of Appendix 2 of this Schedule [X] in respect of Transferring Employees.

2.1.5 Paragraphs 2.1.1 and 2.1.2 of this Appendix are subject to the Contractor's obligations in respect of the Data Protection Legislation and the Contractor shall use its best endeavours to obtain the consent of its employees (and shall procure that its Sub-Contractors use their best endeavours to obtain the consent of their employees) to the extent necessary under the Data Protection Legislation or provide the data in an anonymous form in order to enable disclosure of the information required under paragraphs 2.1.1 and 2.1.2. Notwithstanding this paragraph 2.1.4, the Contractor acknowledges (and shall procure that its Sub-Contractors acknowledge) that they are required to provide sufficient information to the Authority to enable the Authority to determine the nature of the activities being undertaken by employees engaged in providing the Services, to assess whether there is an organised grouping for the purposes of the Transfer Regulations and to assess who is assigned to such organised grouping. To the extent that anonymous data has been provided by the Contractor pursuant to its obligations under Paragraph 2.1.1 or 2.1.2 above, the Contractor shall provide full data to the Authority no later than 28 days prior to the Transfer Date.

2.1.6 On notification to the Contractor by the Authority of a New Provider or within the period of six months prior to the Termination Date or after service of a notice to terminate this Contract (whether in whole or in part), whichever is earlier and in any event on receipt of a written request by the Authority, the Contractor shall not and shall procure that an Employing Sub-Contractor shall not:

- (a) materially amend or promise to amend the rates of remuneration or other terms and conditions of employment of any person wholly or mainly employed or engaged in providing the Services under this Contract; or
- (b) replace or re-deploy from the Services any person wholly or mainly employed or engaged in providing the Services, or materially

increase or decrease the number of persons performing the Services under this Contract or the working time spent on the Services (or any part thereof); or

- (c) reorganise any working methods or assign to any person wholly or mainly employed or engaged in providing the Services (or any part thereof) any duties unconnected with the Services (or any part thereof) under this Contract; or
- (d) terminate or give notice to terminate the employment of any person wholly or mainly employed or engaged in providing the Services (or any part thereof) under this Contract other than in the case of serious misconduct or for poor performance,

save in the ordinary course of business and with the prior written consent of the Authority (not to be unreasonably withheld or delayed) and the Contractor shall indemnify and keep indemnified the Authority in respect of any reasonable costs (including reasonable legal costs), losses and expenses and all damages, compensation, fines and liabilities arising out of or in connection with any breach of paragraphs 2.1.1, 2.1.2, 2.1.3, 2.1.4 or 2.1.6 of this Schedule [X].

- 2.1.7 The Authority may at any time prior to the period set out in paragraph 2.1.5 of this Schedule [X] request from the Contractor any of the information in sections 1(a) to (d) of Appendix 1 and the Contractor shall and shall procure any Sub-Contractor will provide the information requested within 28 days of receipt of that request.

## 2.2 **Obligations in Respect of Transferring Employees**

- 2.2.1 To the extent that the Transfer Regulations apply on expiry, termination or partial termination of this contract, the Contractor shall and shall procure any Employing Sub-Contractor shall and the Authority shall and shall procure that a New Provider shall in such circumstances:
- (a) before and in relation to the Transfer Date liaise with each other and shall co-operate with each other in order to implement effectively the smooth transfer of the Transferring Employees to the Authority and/or a New Provider; and
  - (b) comply with their respective obligations under the Transfer Regulations including their obligations to inform and consult under Regulation 13 of the Transfer Regulations.

## 2.3 **Unexpected Transferring Employees**

- 2.3.1 If a claim or allegation is made by an employee or former employee of the Contractor or any Employing Sub-Contractor who is not named on the list of Transferring Employees provided under paragraph 2.1.3 (an "**Unexpected Transferring Employee**") that he has or should have transferred to the Authority and/or New Provider by virtue of the Transfer Regulations, the Party receiving the claim or allegation shall notify the other Party (or the Contractor shall notify the Authority on the Sub-Contractor's behalf and the Authority shall notify the Contractor on the New Provider's behalf) in writing as soon as reasonably practicable and no later than ten Business Days after receiving notification of the Unexpected Transferring Employee's claim or allegation, whereupon:

- (a) the Contractor shall (or shall procure that the Employing Sub-Contractor shall), as soon as reasonably practicable, offer and/or confirm continued employment to the Unexpected Transferring Employee or take such other steps so as to effect a written withdrawal of the claim or allegation; and
- (b) if the Unexpected Transferring Employee's claim or allegation is not withdrawn or resolved the Contractor shall notify the Authority (who will notify any New Provider who is a party to such claim or allegation), and the Authority (insofar as it is permitted) and/or New Provider (as appropriate) shall employ the Unexpected Transferring Employee or as soon as reasonably practicable, (subject to compliance with its obligations at paragraph 2.3.1(c)(iii)), serve notice to terminate the Unexpected Transferring Employee's employment in accordance with his contract of employment; and
- (c) the Contractor shall indemnify the Authority against all reasonable costs (including reasonable legal costs) losses and expenses and all damages, compensation, fines and liabilities arising out of or in connection with any of the following liabilities incurred by the Authority or New Provider in dealing with or disposing of the Unexpected Transferring Employee's claim or allegation:
  - (i) any additional costs of employing the Unexpected Transferring Employee up to the date of dismissal where the Unexpected Transferring Employee has been dismissed in accordance with paragraph 2.3.1(b);
  - (ii) any liabilities acquired by virtue of the Transfer Regulations in relation to the Unexpected Transferring Employee;
  - (iii) any liabilities relating to the termination of the Unexpected Transferring Employee's employment but excluding such proportion or amount of any liability for unfair dismissal, breach of contract or discrimination attributable:
    - (A) to a failure by the Authority or a New Provider to act reasonably to mitigate the costs of dismissing such person);
    - (B) directly or indirectly to the procedure followed by the Authority or a New Provider in dismissing the Unexpected Transferee; or
    - (C) to the acts/omissions of the Authority or a New Provider not wholly connected to the dismissal of that person;
  - (iv) any liabilities incurred under a settlement of the Unexpected Transferring Employee's claim which was reached with the express permission of the Contractor (not to be unreasonably withheld or delayed);
  - (v) reasonable administrative costs incurred by the Authority or New Provider in dealing with the Unexpected Transferring Employee's claim or allegation, subject to a

cap per Unexpected Transferring Employee of £5,000;  
and

(vi) legal and other professional costs reasonably incurred;

2.3.2 the Authority shall be deemed to have waived its right to an indemnity under paragraph 2.3.1(c) if it fails without reasonable cause to take, or fails to procure any New Provider takes, any action in accordance with any of the timescales referred to in this paragraph 2.3.

**2.4 Indemnities on transfer under the Transfer Regulations on Partial Termination, Termination or Expiry of the Contract**

2.4.1 If on the expiry, termination or partial termination of the Contract there is a Relevant Transfer, the Contractor shall indemnify the Authority and any New Provider against all reasonable costs (including reasonable legal costs) losses and expenses and all damages, compensation, fines and liabilities arising out of or in connection with any claim by any employee or trade union representative or employee representative arising whether before or after the Transfer Date out of any failure by the Contractor or any Sub-Contractor to comply with their obligations under Regulation 13 of the Transfer Regulations in relation to any Transferring Employee or any other employee of the Contractor or any Sub-Contractor affected by the Relevant Transfer (as defined by Regulation 13 of the Transfer Regulations), save to the extent that all reasonable costs (including reasonable legal costs), losses and expenses and all damages, compensation, fines and liabilities are a result of the act or omission of the Authority or the New Provider.

2.4.2 If there is a Relevant Transfer, the Authority shall indemnify the Contractor against all reasonable costs (including reasonable legal costs) losses and expenses and all damages, compensation, fines and liabilities arising out of, or in connection with:

(a) any claim or claims by a Transferring Employee at any time on or after the Transfer Date which arise as a result of an act or omission of the Authority or a New Provider or a sub-contractor of a New Provider during the period from and including the Transfer Date;

(b) subject to paragraph 2.4.1 any claim by any employee or trade union representative or employee representative arising whether before or after the Transfer Date out of any failure by the Authority or a New Provider or a sub-contractor of a New Provider to comply with their obligations under Regulation 13 of the Transfer Regulations in relation to any Transferring Employee or any other employee engaged wholly or mainly in connection with the Services by the New Provider or any other employee of the Authority or any New Provider affected by the Relevant Transfer effected by this Contract (as defined by Regulation 13 of the Transfer Regulations),

save to the extent that all reasonable costs (including reasonable legal costs), losses and expenses and all damages, compensation, fines and liabilities are a result of the act or omission of the Contractor or any Employing Sub-Contractor.



- 2.4.3 In the event of a Relevant Transfer, the Authority shall indemnify the Contractor in respect of all reasonable costs (including reasonable legal costs), losses and expenses and all damages, compensation, fines and other liabilities arising out of or in connection with or as a result of a substantial change by the Authority [or a New Provider or any sub-contractor of a New Provider] on or after the Transfer Date to the working conditions of any Transferring Employee to the material detriment of any such Transferring Employee. For the purposes of this paragraph 2.4.3, the expressions "substantial change" and "material detriment" shall have the meanings as are ascribed to them for the purposes of Regulation 4(9) of the Transfer Regulations.

**2.5 Contracts (Rights of Third Parties) Act 1999**

- 2.5.1 A New Provider may enforce the terms of paragraph 2.3 and 2.4 against the Contractor in accordance with the Contracts (Rights of Third Parties) Act 1999.
- 2.5.2 The consent of a New Provider (save where the New Provider is the Authority) is not required to rescind, vary or terminate this Contract.
- 2.5.3 Nothing in this paragraph 2.5 shall affect the accrued rights of the New Provider prior to the rescission, variation, expiry or termination of this Contract.

**2.6 General**

- 2.6.1 The Contractor shall not recover any Costs and/or other losses under this Schedule [X] where such Costs and/or losses are recoverable by the Contractor elsewhere in this Contract and/or are recoverable under the Transfer Regulations or otherwise.

**Appendix 1 to Annex D**

**CONTRACTOR PERSONNEL-RELATED INFORMATION TO BE RELEASED UPON RE-TENDERING WHERE THE TRANSFER REGULATIONS APPLIES**

1. Pursuant to paragraph 2.1.1(b) of this Schedule [X], the following information will be provided:
  - a) The total number of individual employees (including any employees of Sub-Contractors) that are currently engaged, assigned or employed in providing the Services and who may therefore be transferred. Alternatively the Contractor should provide information why any of their employees or those of their Sub-Contractors will not transfer;
  - b) The total number of posts or proportion of posts expressed as a full-time equivalent value that currently undertakes the work that is to transfer;
  - c) The preceding 12 months total pay costs – (Pay, benefits employee/employer ERNIC and Overtime);
  - d) Total redundancy liability including any enhanced contractual payments;
  
2. In respect of those employees included in the total at 1(a), the following information:
  - a) Age (not date of Birth);
  - b) Employment Status (i.e. Fixed Term, Casual, Permanent);
  - c) Length of current period of continuous employment (in years, months) and notice entitlement;
  - d) Weekly conditioned hours of attendance (gross);
  - e) Standard Annual Holiday Entitlement (not "in year" holiday entitlement that may contain carry over or deficit from previous leave years);
  - f) Pension Scheme Membership;
  - g) Pension and redundancy liability information;
  - h) Annual Salary;
  - i) Details of any regular overtime commitments (these may be weekly, monthly or annual commitments for which staff may receive an overtime payment);
  - j) Details of attendance patterns that attract enhanced rates of pay or allowances;
  - k) Regular/recurring allowances;
  - l) Outstanding financial claims arising from employment (i.e. season ticket loans, transfer grants);
  
3. The information to be provided under this Appendix 1 should not identify an individual employee by name or other unique personal identifier unless such information is being provided 28 days prior to the Transfer Date.
  
4. The Contractor will provide (and will procure that the Sub-Contractors provide) the Authority/tenderers with access to the Contractor's and Sub-Contractor's general employment terms and conditions applicable to those employees identified at paragraph 1(a) of this Appendix 1.

## **Appendix 2 to Annex D**

### **PERSONNEL INFORMATION TO BE RELEASED PURSUANT TO THIS CONTRACT**

## **Part A**

1. Pursuant to paragraph 2.1.2 of this Schedule [X], the written statement of employment particulars as required by section 1 of the Employment Rights Act 1996 together with the following information (save where that information is included within that statement) which will be provided to the extent it is not included within the written statement of employment particulars:

### **1.1 Personal, Employment and Career**

- a) Age;
- b) Security Vetting Clearance;
- c) Job title;
- d) Work location;
- e) Conditioned hours of work;
- f) Employment Status;
- g) Details of training and operating licensing required for Statutory and Health and Safety reasons;
- h) Details of training or sponsorship commitments;
- i) Standard Annual leave entitlement and current leave year entitlement and record;
- j) Annual leave reckonable service date;
- k) Details of disciplinary or grievance proceedings taken by or against transferring employees in the last two years;
- l) Information of any legal proceedings between employees and their employer within the previous two years or such proceedings that the transferor has reasonable grounds to believe that an employee may bring against the transferee arising out of their employment with the transferor;
- m) Issue of Uniform/Protective Clothing;
- n) Working Time Directive opt-out forms; and
- o) Date from which the latest period of continuous employment began.

### **1.2 Superannuation and Pay**

- a) Maternity leave or other long-term leave of absence (meaning more than 4 weeks) planned or taken during the last two years;
- b) Annual salary and rates of pay band/grade;
- c) Shifts, unsociable hours or other premium rates of pay;
- d) Overtime history for the preceding twelve-month period;
- e) Allowances and bonuses for the preceding twelve-month period;
- f) Details of outstanding loan, advances on salary or debts;
- g) Pension Scheme Membership;
- h) For pension purposes, the notional reckonable service date;
- i) Pensionable pay history for three years to date of transfer;
- j) Percentage of any pay currently contributed under additional voluntary contribution arrangements; and
- k) Percentage of pay currently contributed under any added years arrangements.

### **1.3 Medical**

- a) Details of any period of sickness absence of 3 months or more in the preceding period of 12 months; and
- b) Details of any active restoring efficiency case for health purposes.

#### 1.4 **Disciplinary**

- a) Details of any active restoring efficiency case for reasons of performance; and
- b) Details of any active disciplinary cases where corrective action is on going.

#### 1.5 **Further information**

- a) Information about specific adjustments that have been made for an individual under the Equality Act 2010;
- b) Short term variations to attendance hours to accommodate a domestic situation;
- c) Individuals that are members of the Reserves, or staff that may have been granted special leave for public duties such as a School Governor; and;
- d) Information about any current or expected maternity or other statutory leave or other absence from work.

### **Part B**

#### 1.6 **Information to be provided 28 days prior to the Transfer Date:**

- a) Employee's full name;
- b) Date of Birth
- c) Home address;
- d) Bank/building society account details for payroll purposes Tax Code.

### **PART C**

#### 1.7 **Information to be provided within 14 days following a Transfer Date:**

##### 1.7.1 Performance Appraisal

The current year's Performance Appraisal;

Current year's training plan (if it exists); and

Performance Pay Recommendations (PPR) forms completed in the current reporting year, or where relevant, any bonus entitlements;

##### Superannuation and Pay

Cumulative pay for tax and pension purposes;

Cumulative tax paid;

National Insurance Number;

National Insurance contribution rate;

Other payments or deductions being made for statutory reasons;

Any other voluntary deductions from pay;

## **ANNEX E - INSURANCE SCHEDULE**

### **THE INSURANCE SCHEDULE**

#### **REQUIRED INSURANCES**

Required Insurances referred to in Agreement Condition 2.25 – Insurance

This comprises four Parts:

**PART 1:** NOT USED

**PART 2:** Policies of insurance to be procured by the Contractor and maintained during the period of the services.

**PART 3:** United Kingdom compulsory insurances.

**PART 4:** Endorsements

## Part 1 – NOT USED

## Part 2

### Policies of insurance to be taken out or procured by the Contractor and maintained during the period of the services

#### 1 Third Party Public and Products Liability Insurance

##### 1.1 Insureds

Contractor

##### 1.2 Interest

To indemnify the Insured in respect of all sums that they may become legally liable to pay whether contractually or otherwise (including claimant's costs and expenses) as damages in respect of accidental:

1. death or bodily injury, illness or disease contracted by any person;
2. loss or damage to property;
3. interference to property or any easement right of air, light, water or way or the enjoyment or use thereof by obstruction, trespass, nuisance, loss or amenities; happening during the period of insurance and arising out of the services in connection with the Agreement.

##### 1.3 Limit of indemnity

Not less than **[REDACTED UNDER FOI SECTION 43 - COMMERCIAL INTERESTS EXEMPTION – COMMERCIAL SENSITIVE INFORMATION]** in respect of any one occurrence, the number of occurrences being unlimited, but in the aggregate in respect of pollution liability (to the extent insured by the policy) during the period of insurance.

##### 1.4 Maximum deductible threshold

Not to exceed **[REDACTED UNDER FOI SECTION 43 - COMMERCIAL INTERESTS EXEMPTION – COMMERCIAL SENSITIVE INFORMATION]** each and every occurrence of third party property damage.

##### 1.5 Territorial limits

United Kingdom and elsewhere in the world in respect of non manual visits.

##### 1.6 Choice of law

This insurance shall be governed in accordance with the laws of England and Wales.

##### 1.7 Period of insurance

From the date of the commencement of the services for the duration of the Agreement and renewable on an annual basis unless agreed otherwise.

##### 1.8 Cover features and extensions

1. Cross liability clause
2. Contingent motor vehicle liability
3. Legal defence costs
4. Indemnity to principals clause
5. Airside third party liability insurance in respect of any relevant risk

##### 1.9 Principal exclusions

1. War and related perils
2. Nuclear/radioactive risks
3. Liability for death, illness, disease or bodily injury sustained by employees of the insured arising out of the course of their employment.
4. Liability arising out of the use of mechanically propelled vehicles whilst required to be compulsorily insured by legislation in respect of such vehicles.
5. Liability in respect of predetermined penalties or liquidated damages imposed under any contract entered into by the Insured.

6. Liability in respect of loss or damage to property in the care, custody and control of the insured but this exclusion is not to apply to all property belonging to the Authority which is in the care, custody and control of the Insured.
7. Events more properly covered under a professional indemnity insurance policy.
8. Liability arising from the ownership, possession or use of any aircraft or marine vessels.
9. Liability arising from seepage and pollution unless caused by a sudden, unintended and unexpected occurrence.
10. Cyber risks

### **Part 3**

#### **Policies to be taken out as required by United Kingdom Law**

1. Parties to the Agreement are required to meet their United Kingdom statutory insurance obligations in full.
2. Insurances required to comply with all statutory requirements during the period of the Agreement including, but not limited to, employers' liability insurance and motor third party liability insurance and motor airside third party liability insurance with a limit of indemnity of not less than **[REDACTED UNDER FOI SECTION 43 - COMMERCIAL INTERESTS EXEMPTION – COMMERCIAL SENSITIVE INFORMATION]** respect of any relevant risk
3. The limit of indemnity for the employers' liability insurance be any one occurrence inclusive of costs, the number of occurrences being unlimited during the period of insurance.
4. Employers' liability insurance to contain an indemnity to principals clause in respect of claims made against the Authority arising out of the performance of the Contractor of his duties under this Agreement.
5. The statutory insurances shall be maintained throughout the period of the Agreement.

### **Part 4**

#### **Endorsements applicable to Part 1 Contractors "All Risks" Insurance**

Unless the context otherwise requires defined terms set out in the following endorsements shall have the meaning set out in the Agreement. The Endorsements are applicable only to the Construction "All Risks" Insurance, paragraph 1 of Part 1 of this Insurance Schedule

##### **Endorsement 1 – Cancellation**

This policy shall not be cancelled or terminated before the original expiry date is to take effect except in respect of non-payment of premium.

The insurer shall by written notice advise the Authority:

1. at least thirty (30) days before any such cancellation or termination is to take effect;
2. at least thirty (30) days before any reduction in limits or coverage or any increase in deductibles is to take effect; and
3. of any act or omission or any event of which the insurer has knowledge and which might invalidate or render unenforceable in whole or in part this policy.

##### **Endorsement 2 - Multiple Insured/Non-Vitiation**

Each of the parties comprising the insured shall for the purpose of this policy be considered a separate co-insured entity, insured on a composite basis, with the words "the insured" applying to each as if they were separately and individually insured provided that the total liability of the insurers under each section of this policy to the insured collectively shall not (unless the policy specifically permits otherwise) exceed the limit of indemnity or amount stated to be insured under that section or policy. Accordingly, the liability of the insurers under this policy to any one insured shall not be conditional upon the due observance and fulfilment by any other insured party of the terms and conditions of this policy or of any duties imposed upon that insured party relating thereto, and shall not be affected by any failure in such observance or fulfilment by any such other insured party.

It is understood and agreed that any payment or payments by insurers to any one or more of the insureds shall reduce, to the extent of that payment, insurers' liability to all such parties arising from any one event giving rise to a claim under this policy and (if applicable) in the aggregate.



Insurers shall be entitled to avoid liability to or (as may be appropriate) claim damages from any insured party in circumstances of fraud misrepresentation non-disclosure or material breach of warranty or condition of this policy (each referred to in this clause as a “**Vitiating Act**”) committed by that insured party save where such misrepresentation non-disclosure or breach of warranty or condition was committed innocently and in good faith.

For the avoidance of doubt it is however agreed that a Vitiating Act committed by one insured party shall not prejudice the right to indemnity of any other insured who has an insurable interest and who has not committed the Vitiating Act.

Insurers hereby agree to waive all rights of subrogation and/or recourse which they may have or acquire against any insured party (together with their employees and agents) except where the rights of subrogation or recourse are acquired in consequence of a Vitiating Act in which circumstances insurers may enforce such rights against the insured responsible for the Vitiating Act notwithstanding the continuing or former status of the vitiating party as an insured.

Notwithstanding any other provision of this policy or any other document or any act and/or omission by any insured party insurers agree that:

1. No party other than the Authority has any authority to make any warranty, disclosure or representation in connection with this policy on behalf of the Authority.
2. Where any warranty, disclosure or representation is required from the Authority in connection with this policy insurers will contact the Authority in writing (in accordance with Endorsement 3 to the Agreement) and set out expressly the warranty, disclosure and/or representation required within a reasonable period of time from the Authority (regarding itself); and
3. Save as set out in a request from insurers to the Authority in accordance with (2) above the Authority shall have no duty to disclose any fact or matter to insurers in connection with this policy save to the extent that for the Authority not to disclose a fact or matter would constitute fraudulent misrepresentation and/or fraudulent non-disclosure.

### **Endorsement 3 – Communications**

All notices or other communications under or in connection with this policy shall be given to each insured (and the Authority) in writing or by facsimile. Any such notice will be deemed to be given as follows:

- (a) if in writing, when delivered;
  - (b) if by facsimile, when transmitted but only if, immediately after transmission, the sender’s facsimile machine records a successful transmission has occurred.
- The address and facsimile number of the Authority for all notices under or in connection with this policy are those notified from time to time by the Authority for this purpose to the Contractor at the relevant time. The initial address and facsimile number of the Authority are as follows:

The Authority: Commercial Officer  
FsAST-Comrc14

Address:  
FsAST PT  
Walnut 2b  
DE&S Abbey Wood  
Bristol  
BS34 8JH

Attention: FsAST Commercial

It is further agreed that a notice of claim given by the Authority or any other insured shall in the absence of any manifest error be accepted by the insurer as a valid notification of a claim on behalf of all insureds

ANNEX G - GFA LIST

[REDACTED UNDER 'MILITARY SENSITIVE TECHNICAL INFORMATION' EXEMPTION]

**ANNEX H - DESIGNS RIGHTS AND PATENTS (SUB-CONTRACTOR'S AGREEMENT)**  
**Ministry of Defence**

**Design Rights and Patents  
(Sub-Contractor's Agreement)**

THIS AGREEMENT is made the \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_

BETWEEN

whose registered office is at

(hereinafter called "the Sub-Contractor") of the one part and

THE SECRETARY OF STATE FOR DEFENCE (hereinafter called "the Secretary of State") of the other part

WHEREAS:-

1. The Secretary of State has placed with  
(hereinafter called "the main contractor") a contract bearing the reference number \_\_\_\_\_  
(hereinafter called "the main contract") for the design and development of \_\_\_\_\_ the effect of which is that the costs of such design and development (including the cost referable to any sub-contracts hereinafter referred to) will be substantially borne by the Secretary of State.
2. The main contractor contemplates that the design development and supply of certain components needed for performance of the main contract will be undertaken by various third parties in pursuance of sub-contracts made between them and the main contractor.
3. With a view to securing to the Secretary of State rights as regards inventions designs and other related matters in respect of any sub-contract the main contract provides that the main contractor shall not enter into any sub-contract for any component aforesaid without obtaining the prior approval of the Secretary of State.
4. The main contractor has now informed the Secretary of State that for the purpose of performing the main contract he wishes to place with the Sub-Contractor a sub-contract for the design and development of the items described in the First Schedule (hereinafter called "the sub-contracted items") and has requested the Secretary of State's approval of the sub-contract accordingly.
5. The Secretary of State has signified his willingness to approve the sub-contract on condition that in consideration of his giving approval the Sub-Contractor enters into a direct Agreement with the Secretary of State concerning the matters hereinafter appearing and the Sub-Contractor has signified his willingness to enter into such an agreement.

NOW THIS AGREEMENT made in consideration of the premises and of the rights and liabilities hereunder mutually granted and undertaken WITNESSETH AND IT IS HEREBY AGREED AND DECLARED as follows:-

6. The Sub-Contractor and the Secretary of State hereby agree to be bound to each other by the provisions of the Conditions as set out in the Second Schedule hereto.
7. No extension alteration or variation in the terms of the sub-contract between the main contractor and the sub-contractor and no other agreement between the main contractor and the sub-contractor relating to the work to be done under the sub-contract or any modification now or hereafter made thereto shall prejudice the operation of this Agreement which shall in all respects apply to the sub-contract as so extended altered varied supplemented or modified as if such extension alteration variation supplementation or modification had been originally provided for in the sub-contract and the expression "the sub-contract items" shall have effect accordingly.

IN WITNESS whereof the parties hereto have set their hands the day and years first before written

Signed on behalf of  
the Sub-Contractor

(in capacity of )

Signed on behalf of  
The Secretary of  
State for Defence

## THE FIRST SCHEDULE

The Sub-Contract Items are:-

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## THE SECOND SCHEDULE

The Clauses which apply to this Agreement are:-

To be  
inserted as  
appropriate

except that:

- (i) Where "the Contractor" is stated "the Sub-Contractor" shall be substituted.
- (ii) Where "the Authority" is stated "the Secretary of State" shall be substituted.
- (iii) Where "Contract" is stated "sub-contract" shall be substituted.
- (iv) Where "sub-contractor" is stated "further sub-contractor" shall be substituted.
- (v) Where "sub-contract" is stated "further sub-contract" shall be substituted.

**ANNEX I - CONTRACTOR CHARGING RATES**

**[REDACTED IN ITS ENTIRETY UNDER FOI SECTION 41 - INFORMATION PROVIDED IN CONFIDENCE EXEMPTION]**

## **ANNEX J - PAYMENT AND PERFORMANCE MECHANISM**

### **Part A – Introduction**

#### **1 PURPOSE OF THIS ANNEX**

1.1 The purpose of this Annex J (Payment and Performance Mechanism) is to set out the provisions relating to:

- 1.1.1 payments associated with Milestones;
- 1.1.2 Liquidated Damages for delays;
- 1.1.3 the charges applicable for the Service; and
- 1.1.4 the Performance Deductions applicable to the Service.

#### **2 DEFINITIONS AND INTERPRETATION**

2.1 Where in this Annex J (Payment and Performance Mechanism) there is a reference to a "Table" such reference shall be construed as a reference to a table in this Annex J (Payment and Performance Mechanism).

2.2 References to Clauses in this Annex J (Payment and Performance Mechanism) are to Clauses within this Annex J (Payment and Performance Mechanism) unless specifically stated otherwise.

2.3 In this Annex J (Payment and Performance Mechanism), capitalised terms shall be as defined in the Contract unless the context otherwise requires:

**"Actual Operational Date"** means the actual date upon which the Authority issues a Milestone Achievement Certificate for FOC.

**"Contract Completion Date"** means the date specified in Clause 2.4 (Contract Duration) of the General Conditions of the Contract.

**"Core Hours"** means in respect of:

The Building Core Hours in respect of each Monday to Friday which is a working day the hours between 0800 hours to 1800 hours (inclusive). Such hours may be varied by mutual consent;

The Training and Test Equipment Core Hours in respect of each Monday to Friday which is a working day the hours between 0900 hours to 1700 hours (inclusive). Such hours may be varied by mutual consent;

**"Facility"** means in respect of the Building and its associated fittings, utilities including power supply, car parking and other elements of the Service not directly related to the Training and Test Equipment;

**"Facility Deficiencies"** means in respect of deficiencies in the Facility, examples of which are defined in Table E3;

**"First Qualifying Month"** means the period defined in Clause 7.4.1;

**"Milestone"** means in respect of a Milestone specified in either Table A1 or Table A2;

**"Milestone Achievement Certificate"** means in respect of a certified statement from the Authority that a Milestone has achieved its Milestone Acceptance Criteria specified in column 5 of Table A1, Table A2 or Table A3;

**"Non-Core Hours"** means all hours which are not Core Hours;

**"Payment Period"** means in respect of a calendar month commencing from the 1<sup>st</sup> calendar day of the month;

**"Performance Deductions"** has the meaning given in Clause 7.1;

**"Premium Payment"** means any payment for Non-Core usage, as set out in Table D;

**"Relief Events"** means an event as defined in Clause 8 whereby the Contractor shall receive alleviation from Performance Deductions when calculating the Contractor's level of performance

**"Scheduled Milestone Date"** means the agreed date for the delivery of a Milestone as set out in column 3 of Table A;

**"Service"** means the availability of the Facility and the Training and Test Equipment as defined in Annex A and Annex W (Statement of Work);

**"Service Availability Payment"** means the monthly payment for the Service calculated in accordance with paragraph 5.2, which the Authority is committed to pay for whether any Services are used or not;



**"Service Credit"** means a point which is awarded to the Authority in accordance with Clause 7.2;

**"Service Credit Value"** has the meaning given in Clause 7.4;

**"Service Failure"** means any defect in or failure of the Service which results (or would result if the Authority was, at the relevant time, using that Service) in a failure to provide the Service in accordance with the requirements of this Contract or which results in the provision of Services to the Authority which do not comply with the requirements of this Contract;

**"Total Monthly Payment"** or **"TMP"** means the amount calculated in accordance with Clause 5.1;

**"Training Hour(s)"** means hours booked by the Authority for the provision of the Service outside of Core Hours;

**"Training Session"** means a period of time used to deliver Training and / or Equipment Testing, conducted within the Training and Test Equipment Core Hours. There shall be no more than two Training Sessions per Business Day.

## **Part B- Milestone Payments and Liquidated Damages**

### **3 MILESTONE PAYMENTS**

3.1 The Authority shall pay the Contractor the Milestone Payments as set out in this Part B of Annex J (Payment and Performance Mechanism).

3.1.1 On the issue of a Milestone Achievement Certificate in relation to a Milestone the Contractor will be entitled to deliver an invoice to the Authority in respect of the charges associated with that Milestone as set out in Table A1, Table A2 and Table A3 below:

3.1.2 The criteria which must be satisfied for achievement of a Milestone are set out in the Milestone Acceptance Criteria columns.

Table A1 – Schedule Item 1 (Infrastructure Milestone Payments)

<b>Milestone Number</b>	<b>Infrastructure Milestone Description</b>	<b>Scheduled Milestone Date</b>	<b>Amount Due (£)</b>	<b>Milestone Acceptance Criteria</b>
1	Thales formal notification of siting & planning approval & power to HV switch	15 <sup>th</sup> April 2016	<b>REDACTED UNDER FOI SECTION 41 - INFORMATION PROVIDED IN CONFIDENCE EXEMPTION</b>	Report provided by Thales including copies of relevant plans and approvals.
2	Completion of Preliminary Design Review (PDR)	14 <sup>th</sup> June 2016		Successful completion of PDR and issuance of agreed PDR minutes by Thales.
3	Design of external power substation complete.	31 <sup>st</sup> July 2016		Design certificate issued by Thales to Authority.
4	Appointment of infrastructure contractor	9 <sup>th</sup> November 2016		In accordance with Appendix 4 to Annex A (IDAP)
5	Completion of Critical Design Review (CDR)	22 <sup>nd</sup> February 2017		Successful completion of CDR and issuance of agreed CDR minutes by Thales.
6	Completion of excavation	4 <sup>th</sup> May 2017		Completion Certificate issued by infrastructure contractor provided to Authority by Thales.
7	Completion of foundations	6 <sup>th</sup> July 2017		Completion Certificate issued by infrastructure contractor provided to Authority by Thales.

8	Completion of basement	3 <sup>rd</sup> August 2017		Completion Certificate issued by infrastructure contractor provided to Authority by Thales.
9	Completion of building frame	28 <sup>th</sup> September 2017		Completion Certificate issued by infrastructure contractor provided to Authority by Thales.
10	Completion of external walling	7 <sup>th</sup> December 2017		Completion Certificate issued by infrastructure contractor provided to Authority by Thales.
11	Completion of High G support area	1 <sup>st</sup> February 2018		Completion Certificate issued by infrastructure contractor provided to Authority by Thales.
12	Completion of test & commissioning	27 <sup>th</sup> March 2018		Test certificate issued by Authority based on test report provided by Thales.
13	Handover to Authority	30 <sup>th</sup> May 2018		In accordance with Appendix 4 Annex A, to SOW, Infrastructure Design And Acceptance process (IDAP) for High G Training and Test Capability.
14	Full Operating Capability	1 <sup>st</sup> October 2018		In accordance with Clause 2.2 of Appendix 3 (ITEAP) and Appendix 4 (IDAP) to Annex A (SOW)*

Table A2 – Schedule Item 2 (Equipment Milestone Payments)

Milestone Number	Equipment Milestone	Scheduled Milestone	Amount Due (£)	Milestone Acceptance Criteria
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	Description	Date		
1	PDR	18 <sup>th</sup> August 2016	<b>REDACTED UNDER FOI SECTION 41 - INFORMATION PROVIDED IN CONFIDENCE EXEMPTION</b>	Successful completion of PDR and issuance of agreed PDR minutes by Thales
2	Critical Design Review 1	15 <sup>th</sup> September 2016		Successful completion of CDR 1 and issuance of agreed CDR 1 minutes by Thales
3	Critical Design Review 2	5 <sup>th</sup> January 2017		Successful completion of CDR 2 and issuance of agreed CDR 2 minutes by Thales
4	Manufacturing Progress Review (MPR)	28 <sup>th</sup> June 2017		Successful completion of MPR and issuance of agreed MPR minutes by Thales
5	Factory Acceptance Test (FAT)	2 <sup>nd</sup> February 2018		Successful completion of FAT and issuance of agreed FAT minutes by Thales
6	Delivery of Equipment to RAF Cranwell	27 <sup>th</sup> March 2018		Delivery Note and covering letter by AMST
7	Site Acceptance Testing Test (SAT)	3 <sup>rd</sup> September 2018		In accordance with Appendix 3 (ITEAP) to Annex A (SOW)
8	Full Operating Capability	1 <sup>st</sup> October 2018		In accordance with Clause 2.2 of Appendix 3 (ITEAP) and Appendix 4 (IDAP) to Annex A (SOW)*

\*For the avoidance of doubt, FOC can only be achieved by acceptance of both the Infrastructure and Equipment FOC Milestones.

Table A3 – Schedule Item 3 (Transition Option Milestone Payment)

Milestone Number	Milestone Description	Scheduled Milestone Date	Amount Due (£)	Milestone Acceptance Criteria
1	Successful completion of Transition activities.  This Milestone Payment is only applicable if Option at Line 10 of the Schedule of Requirements is enacted.	30 November 2024 or 2025*	<b>REDACTED UNDER FOI SECTION 41 - INFORMATION PROVIDED IN CONFIDENCE EXEMPTION</b>	Successful completion of activities detailed in Issue 1 of the Transition Plan delivered under Table 2 of the SOW at Annex W

\* 30 November 2025 if Option at Item 8 of the Schedule of Requirements is exercised

#### Schedule Item 1 (Infrastructure)

- 3.2 Following achievement of FOC there will be a Compliance and Defect Liability Period of six months in accordance with Appendix 4 (IDAP) to Annex A (SOW) to the Draft Contract. An appropriate retention from the FOC Milestone Payment will be withheld until satisfactory completion / rectification of all outstanding work. The value of the retention shall be agreed between both parties at FOC and will be the greater of the value of the work outstanding or 5% of the value of the Infrastructure FOC Milestone Payment.

#### Schedule Item 2 (Equipment)

- 3.3 If FOC is declared by the Authority with defects / deficiencies / performance shortfalls, in accordance with the Acceptance Process defined at Appendix 3 (ITEAP) to Annex A (SOW) to the Draft Contract, an appropriate retention from the FOC Milestone Payment will be withheld until satisfactory completion / rectification of all outstanding work. The value of the retention will be agreed between both parties at FOC and will be commensurate with the value of the work outstanding.

- 3.4 The Authority shall, subject to the following provisions of this Clause, make to the Contractor advances against the price payable for Items 1 and 2 of the Schedule of Requirements ("Milestone payments"), in accordance with the Milestone Payment Tables A1 and A2 above
- 3.5 The Contractor shall be entitled to Milestone payments, to be claimed in accordance with this Clause 3 for each Milestone included in the Milestone Payment Tables, provided that;
- 3.5.1 the Contractor has completed all work comprised in the Milestone for which the Milestone payment is sought in accordance with Annex J of the Contract - Payment and Performance Mechanism;
- 3.5.2 all previous Milestones have been completed, unless the parties expressly agree otherwise; and
- 3.5.3 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.
- 3.6 Notwithstanding 3.5 above, the Authority shall not be obliged to make a Milestone payment to the Contractor if it has reasonable cause to believe that the Contractor will be unlikely to render complete performance of its obligations in respect of Items 1, 2 and 7 of the Schedule of Requirements
- 3.7 Where the Authority intends to rely on 3.6 above as the basis for rejecting any claim for a Milestone payment which the Contractor may make, the Authority shall give to the Contractor notice in writing of its intention together with the Authority's reasons for the rejection
- 3.8 The Authority shall without prejudice to any other right / remedy of either Party be entitled to recover in full all Milestone payments made under the Contract where:
- 3.8.1 the Contract, or the part of the Contract under which Items 1, 2 and 7 of the Schedule of Requirements are to be provided, is terminated otherwise than in accordance with DEFCON 656, or expires by reason of passing of time; and
- 3.8.2 the Contractor has failed to complete performance of Schedule of Requirements Item 1 2, and/or 7.
- 3.9 In the event of repayment to the Authority under the provisions of 3.8 above then all that which vested in the Authority under the provisions of DEFCON 649 and which related to

Items 1, 2 and/or 7 of the Schedule of Requirements shall re-vest in and become the absolute property of the Contractor.

3.10 Payment of a Milestone payment by the Authority under this Clause 3 shall not, unless expressly stated to do so, constitute:

3.10.1 acceptance by the Authority of any contractual deliverable;

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

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

#### **4 LIQUIDATED DAMAGES**

4.1 It is recognised by the Parties that if the Contractor fails to achieve Full Operating Capability (FOC) to the satisfaction of the Authority by the contracted FOC date of 1<sup>st</sup> October 2018 the Authority will suffer loss and damage.

4.2 Accordingly, for each day's delay (including bank holidays and weekends) the Contractor shall pay the Authority £3,835 up to a maximum of £1,400,000 (1 Year) as Liquidated Damages.

4.3 Alternatively, the Contractor can offer to the Authority an alternative Human Centrifuge facility to deliver the Authority's training and testing requirements. All associated costs including travel and subsistence would be paid by the Contractor. However, the Authority shall have the right to decline such an offer whereupon the provisions of Clause 4.2 above shall apply.

4.4 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 Clause 2.24 of the Contract (Termination). Accordingly, in the event that the Authority terminates the Contract, Liquidated Damages shall be payable under this Clause 4 until the date of such termination.

4.5 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.

## Part C- Services Performance and Availability

- 5** The Service delivery phase of this Contract shall commence upon the achievement of Full Operating Capability (FOC)

### **5.1 Total Monthly Payment**

5.1.1 The Contractor shall be entitled to invoice the Authority for the Total Monthly Payment. in respect of each Payment Period from and including the Payment Period in which FOC achieves its Actual Operational Date.

5.1.2 The "**Total Monthly Payment**" or "**TMP**" in respect of Payment Period (n) shall be calculated using the following formula:

$$\text{TMPn} = (\text{SAPn} + \text{PPn} - \text{PDn-1})$$

where:

SAPn = the Service Availability Payment in respect of Payment Period (n) calculated in accordance with paragraph 5.2 below;

PPn = any Premium Payments due in respect of Payment Period (n) calculated in accordance with paragraph 5.3 below;

PDn-1 = the Performance Deductions for Payment Period (n-1) calculated in accordance with paragraph 7 below;

### **5.2 Service Availability Payment**

The Service Availability Payment shall be as specified in Table C. Where immediately following the Actual Operational Date or at the end of the Contract Period the Service is provided for part of a Payment Period the Service Availability Payment shall be adjusted in proportion to that part of the Payment Period during which that Service is provided based on the number of Business Days in the part of the Payment Period as a proportion of the total number of Business Days in the full Payment Period.

### **5.3 Premium Payments**

For each hour for which the Contractor was required to provide additional availability of the Service outside of the Core Hours, the Contractor shall be entitled to a Premium Payment, such payment to be determined by reference to Table D.

## **6 AUTHORITY USE**



## 6.1 Core Usage

- 6.1.1 From the Actual Operational Date, the Contractor shall make available to the Authority Services in respect of each Core Hour whether or not the Authority provides the Contractor with notice of such use.

## 6.2 Non-Core Usage

- 6.2.1 From the Actual Operational Date, the Contractor shall provide the Authority with additional Training Hour(s) within Non-Core Hours provided that the Authority books the use of a Training Hour(s) seven (7) calendar days or more prior to such Training Hour(s). In respect of any such Training Hour(s) provided to the Authority, the Authority shall pay to the Contractor, a premium (the "**Premium Payment**") which will be calculated in accordance with Table D.

# 7 PERFORMANCE DEDUCTIONS

## 7.1 Introduction

- 7.1.1 This Clause 7 sets out the mechanism by which Service Failures and Facilities Deficiencies will be managed and is without prejudice to the Authority's rights pursuant to Clause 2.26 (Termination).
- 7.1.2 The amount of any applicable reduction in the amount payable to the Contractor as a result of Service Credits ("**Performance Deduction**") to be included in the calculation of the Total Monthly Payment shall be calculated as follows:

$$PD = SC \times SCV \times MF$$

where:

PD	=	Performance Deduction
SC	=	the aggregate number of Service Credits awarded to the Authority pursuant to paragraph 7.2 below
SCV	=	the Service Credit Value for each Service Credit calculated in accordance with paragraph 7.3 below.
MF	=	the Multiplying Factor determined in accordance with Clause 7.4 (Table B) below

## 7.2 Service Credit

7.2.1 Service Credits shall be awarded for deficiencies in Training Sessions and the Facility. The quantity of Service Credits shall be determined in accordance with Clauses 7.2.2 and 7.2.3 below. For the avoidance of doubt, if a Facility Deficiency has an impact on the delivery of a Training Session(s) that Facility Deficiency will be treated as a Training Session deficiency.

#### 7.2.2 Service Credits for Training Sessions

7.2.2.1 If the Authority considers that the standard of the Training Session fails to meet the requirements of Annex A or Annex W (Statement of Work) of the Contract, the Authority (acting reasonably) following consultation with the Contractor at the monthly liaison meeting shall determine the quantity of Service Credits in accordance with Table E1 and the flow diagram at Figure 1 to Table E1.

#### 7.2.3 Service Credits for the Facility

7.2.3.1 In respect of the Facility Deficiencies expressly stated in Table E3, the relevant time periods for rectification and Service Credit levels are as set out in Table E3.

7.2.3.2 In relation to Facility Deficiencies which are not rectified within an agreed period, the Authority shall be awarded Service Credits as set out in Table E3.

7.2.3.3 In respect of the Facility Deficiencies which are not expressly stated in Table E3, the relevant time periods for rectification and Service Credit levels shall be agreed by the Parties at the monthly liaison meeting or otherwise determined in accordance with the following principles:

7.2.3.3.1 The time periods and Service Credit levels in Table E3 shall be used as a guideline for application in respect of Facility Deficiencies analogous to those expressly referred to in Table E3.

7.2.3.3.2 Service Credits shall only be awarded where the Facility Deficiency affects the Authority or Authority personnel.

### 7.3 Service Credits Values

7.3.1 Where in any Payment Period (n) a number of Service Credits is awarded to the Authority in respect of the Contractor's performance in Payment Period (n-1), then for each of those

Service Credits awarded the value in Pounds Sterling for the purposes of calculating the Performance Deduction (the “**Service Credit Value**”) shall be calculated in accordance with Table F.

- 7.3.2 Any Service Credits not taken into account in calculating the Performance Deduction shall be carried forward to the next Payment Period.

#### 7.4 Continuing Poor Performance

- 7.4.1 If in any month the Authority is awarded 40 or more Service Credits (the “**First Qualifying Month**”) then, for each successive month in which the Authority is awarded 40 or more Service Credits the Performance Deduction, calculated in accordance with Clause 7.1 above, shall include the “**Multiplying Factor**” or “**MF**” determined in accordance with the following table.

**TABLE B – Multiplying Factor**

Number of successive Payment Periods after the First Qualifying Month	Multiplier
1	REDACTED UNDER FOI SECTION 41 - INFORMATIO N PROVIDED IN CONFIDENCE EXEMPTION
2	
3	
4	
5	

- 7.4.2 The Authority shall, subject to the provisions of DEFCON 530 (Dispute Resolution) and Annex U to the Contract, Dispute Resolution, be entitled to terminate the Contract if the total number of Service Credits awarded to the Authority achieve the levels specified in Sub-Clauses 2.24.1.4 and / or 2.24.1.5 of Clause 2.24 (Termination).

## 8. Relief Events

- 8.1. Pursuant to Clause 7 above, the following events shall be regarded as Relief Events for the purposes of calculating the Contractor’s level of performance:

- 8.1.1. Misuse or improper use of the facilities or equipment by the Authority, its employees, representatives or sub-contractors.
- 8.1.2. Fire, flood, water ingress or explosion or any similar event, to the extent that such occurrence has not arisen as a result of the Contractor's own acts, omissions or negligence.
- 8.1.3. Changes in security arrangements which restrict or inhibit access or egress to the Facility, so as to prevent the Contractor from being able to adequately discharge its obligations under this Contract.
- 8.1.4. Loss of power or other utilities to be provided by the Authority that have a material effect on the delivery of the Service.
- 8.1.5. Late arrival or absence of personnel to be trained or equipment to be tested during a particular Training Session where that late arrival or absence is the sole reason that prevents completion of the Training Session.
- 8.1.6. Where the Authority fails to provide a suitably qualified Medical Officer to support the Training Programme.
- 8.1.7. Unavailability and/or failure of GFA which the Authority had committed to provide, or has provided, to the extent that such unavailability or failure has not arisen as a result of the Contractor's own acts, omissions or negligence.
- 8.1.8. Requirement to vacate the Facility due to air displays taking place at RAF Cranwell, so as to prevent the Contractor from being able to adequately discharge its obligations under this Contract.
- 8.2. Where it is practicable and reasonable to do so, the Contractor shall demonstrate to the Authority that the occurrence of the event impacted on its ability to deliver the required Training Session.
- 8.3. Relief from the provisions of the Service Performance Regime shall apply only for the period during which the occurrence of each event affects the Contractors ability to deliver the required Training Session. Upon cessation of the cause of each Relief Event the Service Performance Regime will apply.
- 8.4. In the event of one or more of the events identified in Clause 8.1 occurring, the Contractor shall provide a formal written statement to the Authority's designated representative confirming:-

- 8.4.1 The times during which such event occurred;
- 8.4.2 The impact the occurrence had on the planned Training Session, and the details of the Service which was unavailable as a consequence
- 8.4.3 An estimate as to when the Service will be available for use once again

## Part D– Performance Monitoring

### 9. PERFORMANCE MONITORING

- 9.1 The Contractor shall provide a Monthly Performance Report, appropriately signed and dated by an Authority Representative. This report will provide details of all Hours / Sessions carried out, Premium Hours carried out, the number of proposed Service Credits to be awarded due to failures in performance including the reasons why and any other relevant information pertaining to the service delivery in that period. The information contained within the Monthly Performance Report will be agreed at the Monthly Performance Reporting Meeting and will inform the Contract payment for that month.

**TABLE C – Schedule Item 3 - Service Availability Payment**

<b>Payment Period</b>	<b>Payment £ (per Calendar Month)</b>
Year 1 - Actual Operational Date for a period of 12 months	<b>REDACTED UNDER FOI SECTION 41 - INFORMATION PROVIDED IN CONFIDENCE EXEMPTION</b>
Year 2 - Month 13 to Month 24	
Year 3 - Month 25 to the Contract Completion Date	
2 Month Short Term Extension – Month 37 to 38 (1 October 2021 – 30 November 2021)	
Bid Costs for QDC Extension – Month 39 (December 2021)	
Year 4 – Month 39 to Month 50  (1 December 2021 – 30 November 2022)	
Year 5 – Month 51 to 62	

(1 December 2022 – 30 November 2023)	
Year 6 – Month 63 to 74 (1 December 2023 – 30 November 2024)	
Year 7 (if Option at Item 9 of the Schedule of Requirements is exercised) – Month 75 to Month 86 (1 December 2024 – 30 November 2025)	

**TABLE D – Premium Payments**

<b>Payment Period</b>	<b>Mid Week Non-Core Hours Premium £ per Hour</b>
Year 1 - Actual Operational Date for a period of 12 months	<b>REDACTED UNDER FOI SECTION 41 - INFORMATION PROVIDED IN CONFIDENCE EXEMPTION</b>
Year 2 - Month 13 to Month 24	
Year 3 - Month 25 to the Contract Completion Date	
2 Month Short Term Extension – Month 37 to 38	
Year 4 – Month 39 to Month 50 (1 December 2021 – 30 November 2022)	
Year 5 – Month 51 to 62 (1 December 2022 – 30 November 2023)	
Year 6 – Month 63 to 74 (1 December 2023 – 30 November 2024)	
Year 7 (if Option at Item 9 of the Schedule of	

Requirements is exercised) – Month 75 to Month 86  (1 December 2024 – 30 November 2025)	
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**Table E1 – Service Credits for Training Sessions**

	DUTY CARRIED OUT (DCO)	DUTY CARRIED OUT WITH FAULTS / DEFICIENCY (DCOF)	DUTY PARTIALLY CARRIED OUT (DPCO)	DUTY NOT CARRIED OUT (DNCO)
	<b>[REDACTED UNDER FOI SECTION 43 - COMMERCIAL INTERESTS EXEMPTION]</b>	<b>[REDACTED UNDER FOI SECTION 43 - COMMERCIAL INTERESTS EXEMPTION]</b>	<b>[REDACTED UNDER FOI SECTION 43 - COMMERCIAL INTERESTS EXEMPTION]</b>	<b>[REDACTED UNDER FOI SECTION 43 - COMMERCIAL INTERESTS EXEMPTION]</b>
Effect on delivery of requirement as defined in Appendix 2 to Annex A (SOW)	Service delivered in accordance with requirements of Contract and all objectives for the relevant Training / Test Session achieved without any limitations.	Service not delivered in accordance with requirements of Contract, but all training objectives for the relevant Training / Test Session achieved albeit with minor faults.	Service not delivered in accordance with requirements of Contract and only limited objectives for the relevant Training / Test Session achieved.	Service not delivered in accordance with requirements of Contract and objectives for the relevant Training / Test Session NOT achieved or Session abandoned.
Non-exhaustive examples of faults	No limitations.	Minor effect on ability to complete planned tasks. Examples may include but are not limited to: Minor defects that do not affect training or testing but require repair..	Major effect on ability to complete planned tasks. Examples may include but are not limited to: Defects to building that affect ability to provide training or testing; defects to equipment that reduce training effect; incorrect gondola available; inability for student to control gondola; inability to complete full session.	Failure to complete the planned tasks. Examples may include but are not limited to: Defects to Building prevent training or testing from occurring. Defects to equipment prevent session from occurring; staff shortages result in training or testing not occurring.

**Table E2 – Service Credits for Transition Period in accordance with Clause 9.1 of the Contract Terms and Conditions.**

	INFORMATION PROVIDED WITHIN 30 WORKING DAYS OF REQUEST	INFORMATION PROVIDED WITHIN 30-60 WORKING DAYS OF REQUEST	INFORMATION PROVIDED WITHIN 60-90 WORKING DAYS OF REQUEST	INFORMATION PROVIDED AFTER 90 WORKING DAYS OF REQUEST
	[REDACTED UNDER FOI SECTION 43 - COMMERCIAL INTERESTS EXEMPTION]	[REDACTED UNDER FOI SECTION 43 - COMMERCIAL INTERESTS EXEMPTION]	[REDACTED UNDER FOI SECTION 43 - COMMERCIAL INTERESTS EXEMPTION]	[REDACTED UNDER FOI SECTION 43 - COMMERCIAL INTERESTS EXEMPTION]
DELIVERY OF THE AUTHORITY'S REQUESTED INFORMATION IN ACCORDANCE WITH CLAUSE 9.1.				



Figure 1 to Table E. Fault Assessment

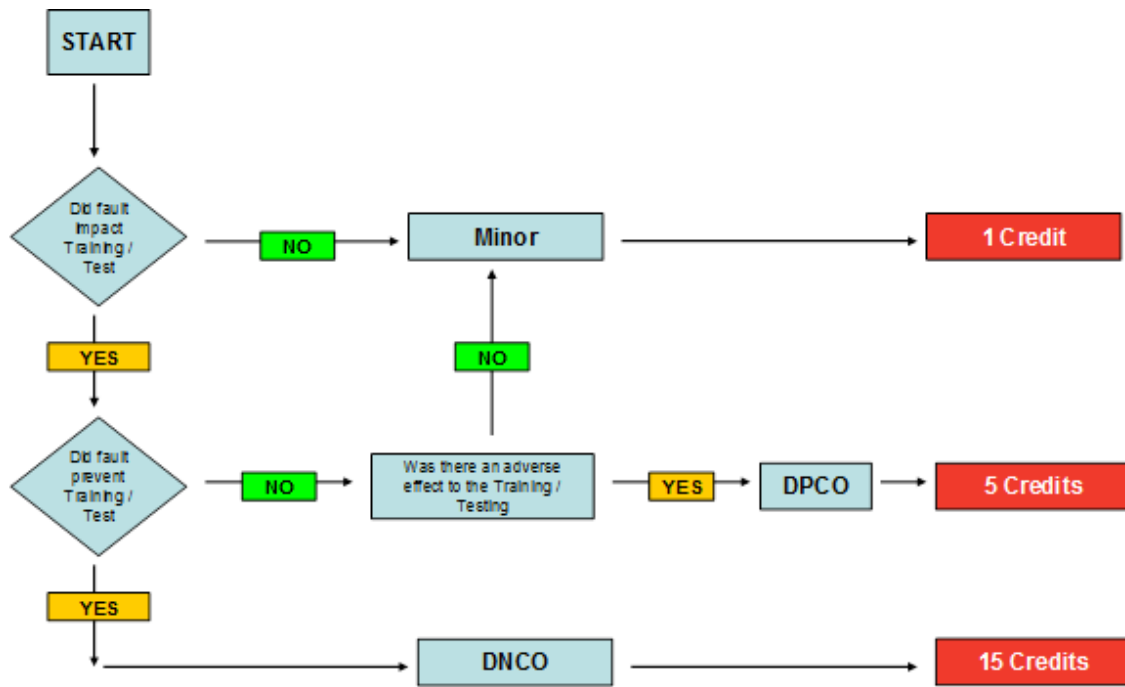


Table E3 – Service Credits for Facility Deficiencies

Deficiency	Remedial Action	Timescale	Service Credits
TMIS not functioning	Provide alternative booking system	Within 2 hours	[REDACTED UNDER FOI SECTION 43 - COMMERCIAL INTERESTS EXEMPTION]
	Reinstate TMIS	Within 10 days	
Room Temperature outside limits of 21 degrees Celsius +/-	Provide temporary air conditioning / Heating	Within 2 days	

Deficiency	Remedial Action	Timescale	Service Credits
3 degrees			
	Repair/replace air conditioning / Heating	Within 4 weeks	
Defective washrooms/showers	Provide alternative facilities	Within 1 day	
	Repair facilities	Within 5 days	
PA system u/s (if Contractor's Responsibility)	Provide alternative communications	Within 2 hours	
	Repair PA system	Within 5 days	
Station phones u/s (if Contractor's Responsibility)	Provide alternative communications	Within 2 hours	
	Repair phone system	Within 3 days	
Loss of electrical power (if Contractor's Responsibility)	Restore supply	Within 1 day	
<b>Building in poor repair:</b>			
Major defect (e.g. broken Window, leaking roof)	Effect temporary remedial action	Within 5 days	
	Effect permanent remedial action	Within 3 months	
Superficial damage to floors/doors/walls/ceilings (internal or external)	Effect permanent remedial action	Within 6 months	
Defective Lighting	Replace/repair lighting	Within 2 days	

**TABLE F – Service Credit Values**

Service Credits in Payment Period	Service Credit Value (£ for each Service Credit)
Year 1 - Contract Commencement Date for a period of 12 months	<b>REDACTED UNDER FOI SECTION 41 - INFORMATION PROVIDED IN CONFIDENCE EXEMPTION</b>
Year 2 - Month 13 to Month 24	
Year 3 - Month 25 to the Contract Completion Date	
2 Month Extension – Month	

37 and 38  (1 October 2021 to 30 November 2021)	
Year 4 – Month 39 to Month 50  (1 December 2021 – 30 November 2022)	
Year 5 – Month 51 to 62  (1 December 2022 – 30 November 2023)	
Year 6 – Month 63 to 74  (1 December 2023 – 30 November 2024)	
Year 7 (if Option at Item 9 of the Schedule of Requirements is exercised) – Month 75 to Month 86  (1 December 2024 – 30 November 2025)	

## ANNEX L - COMMERCIAL EXPLOITATION LEVY HARDWARE

### Commercial Exploitation Agreement for Hardware

#### Interpretation etc

1. In this Agreement the following shall have the effect with respect to interpretation:

- a. "the Contract" means Contract No FsASTC/00114 between the Authority and the Contractor relating to the design, development, manufacture, build and support of a High G Training and Research Centrifuge Facility at RAF Cranwell.
- b. "Contract Article" means any article which uses the design produced under the Contract and includes any sub-assemblies, components or spares thereof;
- c. "Government-funded tooling" means jigs and tools, etc, provided or paid for by the Authority and required for the production of a Contract Article;
- d. the "Contractor" includes any subsidiary or associated company of the Contractor;
- e. "leviable transaction" means a sale or any other transaction giving rise to levy under this Agreement;
- f. the "Contractor's selling price" means, subject to the proviso hereto, the price for which the Contractor invoices his customer but excluding the cost of such of the following elements as are applicable and can be identified to the satisfaction of the Authority:
  - (1) Freight costs and insurance
  - (2) Cost of packing not developed at UK Government expense
  - (3) The cost of ECGD servicing and other sales finance charges including interest on customer credit
  - (4) The cost of any MOD inspection
  - (5) Installation and commissioning costs where installation and commissioning form no part of the work under the development contract(s)
  - (6) Agents' fees and commission
  - (7) The price paid by the Contractor for an article or articles supplied to him by a third party for incorporation in the Contract Article, but only if such third party has a separate commercial exploitation agreement with the Authority relating to such article or articles and has been informed by the Contractor that such article or articles are being used for a leviable transaction
  - (8) Value Added Tax where applicable.

Provided that any element of profit which the contractor has included in the above items (1) - (8) shall not be so included.

g. "Profit" other than for the purposes of the proviso to sub-clause (f) of this Clause means the difference between the Contractor's selling price and the allowable costs prescribed by the Authority for the purpose of the sale in question, provided such difference is a positive sum.

#### Sales and Licences

2. Should the Contractor sell any Contract Article, other than for any purpose set out in Clauses 5 and 6 hereof, the Contractor shall pay to the Authority:

- a. a levy for the use of the design to be calculated at 7.5 per cent of the Contractor's selling price [except that the percentage rate of levy may be revised at the end of the development contract if the Contractor or the Authority can demonstrate that the design relied more, or less, on private venture research and development than was assumed in agreeing the levy rate]\*.

b. a levy of 2.5 per cent of the Contractor's selling price for the use of Government-funded tooling except that the rate of 2.5 per cent shall be reduced appropriately where a substantial part of jigs and tools etc used in connection with a sale or other transaction has not been provided or paid for by the Authority:

except that, unless otherwise agreed by the Authority, levy on individual sales above £5M in value (for which purpose contemporaneous sales of the same equipment to the same customer will count as one sale) will be payable on an appropriate profit-sharing basis to be agreed between the Contractor and the Authority before the contract of sale is entered into. The threshold of £5M may be increased from time to time by the Authority, in relation to future sales, to take account of inflation.

3. Should the Contractor grant a licence to manufacture Contract Articles, the Contractor shall pay to the Authority a levy calculated at 33.3 per cent of the gross receipts of the Contractor in money by way of royalties, licence fees or otherwise in respect thereof:

Provided that:

- a. where the consideration consists wholly or in part of some benefit other than money the levy shall, in lieu of or in addition to such payments (as the case may be), consist of or include a sum representing 33.3 per cent of what may reasonably be regarded as the value of the said benefit; and
- b. the Contractor shall not grant any licence for which there is no consideration, or only nominal consideration, without first agreeing with the Authority what levy if any should reasonably be paid to the Authority in respect of such licence; and
- c. where the licensee pays for parts supplied in addition to paying his licence fee for manufacturing Contract Articles, levy on such parts shall be due in accordance with Clause 2 above in addition to the rate due under this clause. The receipts by the Contractor in respect of such parts shall not be regarded as receipts in respect of the licence on which the levy of 33.3 per cent is charged.

4. Payment of levy is deemed to include payment for the use of any industrial property rights owned by the Authority in connection with a sale or other transaction giving rise to levy under this Agreement.

5. No levy shall be payable in respect of:

- a. purchases by the Authority;
- b. sales to another UK Government Contractor or sub-contractor when the Contract Articles concerned can be clearly identified as being supplied to meet the requirements of the Authority ;
- c. substantial individual equipments not developed at UK Government expense.

6. In the case of sales to the Government of Australia, whether directly or under a sub-contract, of Contract Articles which are Guided Weapons or other items which have been developed with the aid of the Joint Project facilities at the Weapons Research Establishment, Woomera, and of spares for elements of such systems, the levy shall be restricted to a charge for the use of Government-funded tooling in accordance with Clause 2(b).

### **Sales of or Licensing of Spares or Parts**

7. The sale of or licence to manufacture spares or parts of Contract Articles shall attract levy in accordance with this Agreement unless the Authority agrees that an allowance may be made for any elements of the design of any such spare or part that were not developed at UK Government expense or a reduced rate of levy shall apply on all such spares and parts where there are practical difficulties in distinguishing between those which attract the full rate of levy, those which attract a reduced rate of levy and those on which no levy is due.

### **Derivatives**

8. Should the Contractor sell, refurnish, recondition, maintain, lend, hire, or grant a licence to manufacture any articles in any further stage of development or articles based on the design of, or using design features of, or being a scaled version of, the Contract Article, levy

calculated in accordance with this Agreement shall be due to the Ministry only to such extent as shall be reasonable in the circumstances. Subject to this the provisions of this Agreement shall apply.

### **Refurbishing or Reconditioning**

9. Should the Contractor for resale or otherwise refurbish or recondition any Contract Articles (except at no charge to the customer under defects liability obligations) the Contractor shall pay to the Authority a levy consisting of:

- a. a sum calculated in accordance with this Agreement on the selling price of any new sub-assemblies, components and spare parts embodied in the reconditioned or refurbished Contract Articles; and
- b. a sum for any use of Government-funded tooling (other than any used only in the manufacture of the said new sub-assemblies, components and spare parts) calculated as in Clause 2(b) on the Contractor's selling price of the said reconditioned or refurbished Contract Articles after deduction of the selling price of any new sub-assemblies, components and spare parts embodied in the reconditioned or refurbished Contract Articles.

### **Maintenance Agreements**

10. Where an agreement for the maintenance of Contract Articles between the Contractor and another party for a fee includes the provision of parts and spares of such Contract Articles not separately invoiced, a levy calculated in accordance with this Agreement will be due on that proportion of the maintenance fee which represents a reasonable estimate for the provision of such parts and spares.

### **Loan or Hire of Contract Articles**

11. Should the Contractor enter into any Agreement for lending any Contract Articles or for otherwise making such Articles available to a third party except by way of sale, the Contractor shall pay to the Authority a levy calculated as specified under Clause 2 hereof of the gross receipts of the Contractor.

Provided that:

- a. where the consideration consists wholly or in part of some benefit other than money the levy shall, in lieu of or in addition to such payment (as the case may be), consist of or include a sum calculated in accordance with Clause 2 hereof and based on what may be reasonably regarded as the value of the said benefit; and
- b. the Contractor shall not enter into any Agreement (as set out in this clause) for which there is no consideration, or only nominal consideration, unless the Authority has agreed what levy, if any, should reasonably be paid to the Authority in respect of such Agreement.

### **Contract Articles for Contractor's Own Use**

12. Unless the Contract Article is subsequently sold, no levy shall be due where the Contractor makes a Contract Article solely for his own research or development purposes or for his own demonstration or sales promotion purposes, except in respect of use of Government-funded tooling. Contract Articles made and used by the Contractor for any other purpose shall attract levy at normal rates in accordance with Clause 2.

### **Abatement of Levy**

13. Where, in the circumstances of an individual sale, the Contractor considers that the effect upon his selling price of inclusion of levy rates calculated in accordance with Clause 2 would be such as to prejudice his chances of completing the sale, or would result in an unreasonably low profit, it shall be open to the Contractor before the sale contract is entered into to seek the approval of the Authority to an abatement scheme in accordance with the provisions of Clauses 14 and 15 herein. Provided that the Contractor's cost accounting system is adequate in the opinion of the Authority to provide the statements of allowable costs necessary to implement the scheme such approval will not be unreasonably withheld.

14. The abatement scheme shall generally determine levy on the basis of outturn profitability

of the sale in question expressed as a percentage on the allowable costs as prescribed for this purpose by the Authority and shall apply as follows:

- a. where Government-funded tooling is used, the first half percent of profit on cost shall be payable to the Authority;
- b. the next 5% of profit on cost (or the initial 5% where sub-clause 14(a) does not apply) shall be retained by the Contractor;
- c. the remaining profit, without upper limit, shall be shared between the Authority and the Contractor in the ratio of 1:1 until a total profit of 25% on cost has been reached, and thereafter in the ratio of X:1.

(Note: X should be one-fifth of the total normal unabated levy rates, but never less than 1).

15. Once a request to apply the abatement scheme has been approved by the Authority it shall not thereafter be revoked by either party for the sale in question. The Contractor shall provide on request and in a specified form a certified statement of costs and profitability and such facilities as may be necessary for the Authority, if it so desires, to verify the statements. Where the value of the sale is less than £500,000 any abatement of levy may at the discretion of the Authority, be settled (before the sale contract entered into is concluded) on the basis of the expected outturn profitability provided the request for abatement is supported by adequate evidence and reasonable notice is given to the Authority.

### **Notification of Leviable Transactions**

16. The Contractor shall notify details including, where appropriate, the expected value of the sale, to FsASTC5 quoting the number of the Contract/CEL Agreement No.:

- a. in respect of a sale of any Contract Articles or of a development or derivation thereof
  - (1) as soon as it becomes apparent that a sale (or contemporaneous sales of the same equipment to the same customer) above £5M in value (or such higher value as may be notified by the Authority from time to time) may arise;
  - (2) immediately a first sale of lesser value is entered into;
- b. immediately any negotiations for the grant of a licence for the manufacture of any Contract Articles, or of a development or derivation thereof, is entered into (the Authority reserves the right in this connection to be supplied with a copy of the terms of the licence agreement); or
- c. in respect of any leviable transaction other than a sale or licence relating to any Contract Articles, or to a development or derivation thereof
  - (1) immediately the transaction is entered into where the rate of levy is laid down in this Agreement;
  - (2) immediately negotiations are entered into where the appropriate rate of levy has not been agreed;
- d. when any proposed extension or alteration to the transactions set out in (a) (1), (b) or (c) (2) is considered.

### **Cancelled Orders**

17. Where a sale is cancelled after some work in aid of the sale involving the use of Government-funded tooling has been undertaken, a levy shall be due in respect of such use calculated on a fair and reasonable basis. Where the Contractor has received any payments, whether from his customer or otherwise which he is entitled to retain, in respect of work done or in hand, or in respect of any claim arising out of the cancellation, levy shall also be due on a fair and reasonable basis having regard to the reasonable costs and claims which the Contractor may have to meet therefrom. The Contractor shall notify any such cancellation to FsASTC5 and shall provide such information as may reasonably be required for the determination of the levies payable under this Clause. Should any Contract Article (or article falling under Clause 8) manufactured or in course of manufacture prior to cancellation subsequently be re-sold levy will again be due on the normal basis.

## **Liability Date**

18. The liability of the Contractor to the Authority for any sum due under this Agreement shall accrue :

- a. in respect of sales, on the date of delivery ex-Contractor's works or, where the sale contract so prescribes, upon shipment;
- b. in respect of cancelled sales, six months after the date of cancellation or such longer period as may be agreed;
- c. in the case of licences, and in any other case in which levy is based on gross receipts by the Contractor in respect of an agreement relating to Contract Articles, on the date of receipt by the Contractor of each payment;
- d. in respect of the use of Government-funded tooling where no other liability for levy arises, upon completion of the work in question, except that if the work takes longer than a year interim payments of levy will accrue as deliveries take place. In the event of cancellation of the sale liability will accrue six months thereafter;
- e. in respect of any Variation of Price settlements on receipt of payment by the Contractor.

Payment of levy shall be in accordance with the Accounting provisions at Clauses 21-24 below.

19. Where an abatement scheme has been approved in accordance with Clauses 13-15 the Contractor shall be liable for interim payment of levy in accordance with the provisions of Clause 18 at one half the appropriate unabated levy rate unless the Authority agrees otherwise. A final adjustment to or from the Authority shall be made as soon as it is practicable after completion of the sale. The Authority reserves the right to review and alter interim rates of levy from time to time and agrees to carry out such a review upon request by the Contractor.

20. Should the Contractor fail to provide statements under Clause 22 within a reasonable time the Authority reserves the right to assess the levy payable and to recover the same.

## **Accounting**

21. The Contractor shall supply to DBA, Receipts, Group 4, Mersey House, The Strand, Liverpool L2 7PX, two copies of a statement (see clause 22) at yearly intervals commencing with first sale or licensing arrangements (see Clause 16)

22. The statement shall contain information concerning every sale, licence or other transaction in respect of which levy accruing during the period to which the statement relates is payable, and in particular shall specify:

- a. the nature of the transaction (making clear under which of the Clauses 2-12 hereof it falls) and the date thereof and the name and address of the other party or parties thereto;
- b. in the case of a sale, the quantity and type of equipment sold, the selling price, and in any other case, the gross receipts in money in respect thereof and the nature and value of any consideration other than money;
- c. any other matters relevant to determining the levy payable;
- d. the sum (to the nearest pound) computer to be payable by the Contractor to the Authority in respect of each transactions (including a provisional sum in any case in which the sum depends upon a reasonable figure yet to be agreed with the Authority).

23. The statement shall be provided not later than two months after the close of the period to which it relates once a first sale or licensing has been agreed and "nil" statements shall thereafter be provided whenever appropriate. Where there are NIL returns over a number of years and no evident prospect of a future leviable activity or receipt the contractor should approach FsASTC5 regarding future reporting and future CEL arrangements.



24. Each statement shall be accompanied by a payment covering the accrued levy calculated by the Contractor to be due and set out in the statement (plus VAT where applicable). Invoices in respect of any other accrued levy will be issued to the Contractor by DBA, Receipts, Group 4, Ministry of Defence. Payments (including VAT where applicable) shall be made to the Secretary of State for Defence at the address to which statements are to be supplied, or at the address stated on the invoice, as appropriate.

25. Two copies of an annual certificate that the sums reported on the statements are correct and complete and in accordance with the Contractor's books of account and records or that no sales have been made or licences granted or other leviable transactions entered into, shall be obtained by the Contractor from his Auditors and shall be forwarded to the DBA, Acs(Bills)Receipts not later than six months after the end of the Contractor's financial year.

26. For the purpose of verifying the statements the Contractor shall maintain proper books of account and records at his premises and shall make them available for inspection at all reasonable times by the representatives of the Authority and of the National Audit Office.

### **Recovery of Sums Due**

27. Whenever under this Agreement any sum of money shall be recoverable from or payable by the Contractor, the same may be deducted from any sum then due, or which at any time thereafter may become due, to the Contractor under any contract with the Authority or with any Department or Office of Her Majesty's Government.

### **Arbitration etc**

28. This Agreement shall be considered as an agreement made in England and subject to English Law.

29. All disputes, differences or questions between the parties to this Agreement with respect to any matter arising out of or relating to this Agreement shall be referred to the arbitration of two persons (one to be appointed by the Authority and one by the Contractor) or their Umpire, in accordance with the provisions of the Arbitration Act 1950.

30. Nothing in this Agreement shall be construed as relieving the Contractor from responsibility for:

- a. obtaining the necessary export licence as applicable to any overseas sale;
- b. obtaining any necessary release from security restrictions in force for the Contract Articles.

31. Contractors are advised to consult the appropriate Regional Director of Marketing in St Christopher House, Southwark Street, London SE1 0TE, on a case by case basis before making offers to sell Contract Articles overseas.

Signed: (FsASTC4)  
Date

Signed: (Contractor)  
Date

## **ANNEX M - TASKING FORM**

### **TASK AUTHORISATION FORM**

Contractor	Project Management Branch	Contract No:	
	DE&S Project Manager – FsAST Project Team Walnut 3A#1317 MoD Abbey Wood BRISTOL BS34 8JH  Tel: 030 679	Task No:	
		Issue No:	

#### **Part 1: TASK REQUIREMENT (to be completed by Project Officer)**

Request for quotation on the work to be carried out under the above Contract. *(Use separate sheet if required)*

Required deliverables and interdependencies

Required Completion Date

Signature

Name

Appointment

Date

Authority's Project Officer

#### **Part 2: FIRM PRICE QUOTATION BY CONTRACTOR *(Use separate sheet if required)***

Detailed description of the work that the contractor intends to carry out to meet the requirement at Part 1.

Comprehensive breakdown of all cost components including materials/sub contractors against task follows. A copy of the sub-contractor quotations shall support tasks where the sub-contractor proposals exceed £5k.

## Part 2: Price Breakdown

Details of the individual elements of work to be carried out, including travel and subsistence and sub-contractors		Material Costs	No. of Labour Hours	Hourly Rate	Firm Price
<b>Task Completion Date</b>			<b>Total Firm Price</b>		

Signature		Name		Appointment		Date	
<i>Once completed return to the Commercial Office</i>							

### Part 3: PROJECT OFFICER AUTHORISATION

The statement of work and associated cost breakdown at Part 2 reflects the most effective means available to satisfy the requirement at Part A.

Signature		Name		Appointment		Date	
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## Part 4: COMMERCIAL BRANCH AUTHORISATION.

The work detailed is unique to this task and not covered by other commercial agreements between the MOD and the contractor. The price breakdown above is of sufficient detail and is acceptable.

The Contractor is duly authorised to carry out the work detailed in Part 2, for the firm price detailed at Part 2 of this form and within the agreed time-scale, in accordance with the Contract Terms and Conditions.

Signature		Name		Appointment		Date	
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Once approved at Parts 3 and 4 pass a copy to the Project Officer

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Part 5: TASK COMPLETION.

This is to certify that the Task requirement at Part A has been completed to the satisfaction of the Project Officer and payment can be claimed.

Signature		Name		Appointment		Date	
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**APPENDIX 1 to ANNEX M – TASKING RECORD**

**[REDACTED UNDER FOI SECTION 41 - INFORMATION PROVIDED IN CONFIDENCE EXEMPTION]**

## **ANNEX N - BACKGROUND AND COTS DELIVERABLE SOFTWARE**

**Table 1 - Thales Background Software**

<b>No</b>	<b>Software/Application</b>	<b>Licensor</b>
1	Thales Building Information System AddOn (and scripts)	Thales UK
2	Thales Course Instructions AddOn	Thales UK
3	Thales ICS Export AddOn	Thales UK
4	Thales LMS Bridge AddOn	Thales UK
5	Thales Role Name Writer AddOn	Thales UK
6	TMIS Utility AddOn	Thales UK
7	MINT JIRA AddOn	Thales UK
8	MINT JIRA Plugin	Thales UK

**Table 2 - AMST Background Software**

<b>No</b>	<b>Software/Application</b>	<b>Licensor</b>
1	Engineering GUI	AMST-Systemtechnik
2	Medical GUI	AMST-Systemtechnik
3	Limit and Warning Panel	AMST-Systemtechnik
4	Video Overlay	AMST-Systemtechnik
5	Technical Subsystem Monitoring Unit (TSMU)	AMST-Systemtechnik
6	Profile Generator	AMST-Systemtechnik
7	Data Recording	AMST-Systemtechnik
8	Dynamic Flight Simulation GUI	AMST-Systemtechnik
9	Video Recording	AMST-Systemtechnik
10	Data Replay	AMST-Systemtechnik
11	Video Replay	AMST-Systemtechnik
12	Data Debriefing GUI	AMST-Systemtechnik
13	Control Computer	AMST-Systemtechnik
14	Drive PLC	AMST-Systemtechnik
15	Control PLC	AMST-Systemtechnik
16	Safety Integrated PLC	AMST-Systemtechnik
17	SIG Server	AMST-Systemtechnik
18	Instrument Display SW	AMST-Systemtechnik
19	Instrument Display Model	AMST-Systemtechnik
20	Visual System IG	AMST-Systemtechnik
21	Profile Validator	AMST-Systemtechnik
22	Recording Manager	AMST-Systemtechnik
23	Shutdown Daemon	AMST-Systemtechnik
24	Component Monitoring System	AMST-Systemtechnik
25	Launcher	AMST-Systemtechnik
26	Sound Application	AMST-Systemtechnik
27	Fly-By-Wire Fast Jet Flight Model	AMST-Systemtechnik
28	Non-Fly-By-Wire Jet Trainer	AMST-Systemtechnik

**Table 3 - Thales Third Party Software**

<b>No</b>	<b>Software/Application</b>	<b>Licensor</b>
1	Windows 10	Microsoft
2	Windows Server	Microsoft

3	Oracle 12c R1 Standard Edition One Oracle Java	Oracle
4	Oracle 12c R1 Client	Oracle
5	Oracle SQL Developer (64-bit) Oracle Java	Oracle
6	MINT	MINT
7	Apache Tomcat	Open Source
8	Oracle Java	Open Source
9	Moodle PHP MySQL	Open Source
10	Atlassian Confluence Apache Tomcat Oracle Java	Atlassian
11	Atlassian JIRA Apache Tomcat	Atlassian
12	Apache HTTP Server	Open Source
13	Adobe Flash Player	Adobe
14	Adobe Reader	Adobe

**Table 4 - AMST Third Party Software**

No	Software/Application	Licensor
1	Windows 10	Microsoft
2	Windows Server	Microsoft
3	Windows SQL Server	Microsoft
4	.Net Framework	Microsoft
5	DirectX	Microsoft
6	VC++ Runtimes	Microsoft
7	QNX Operating System	BlackBerry
8	Samba	Samba-Team
9	SimVisual	ImmersaView
10	Zenon	CopaData
11	PVI Manager	Bernecker & Rainer
12	Dameware Mini Remote Control	Solarwinds
13	Synergy	Synergy
14	Ghost Solution Suite	Symantec
15	WinMerge	WinMerge
16	Notepad++	Don Ho
17	Acrobat DC	Adobe
18	Graphic Drivers	Nvidia
19	HW Drivers	HW Manufacturer
20	Java Runtime	Oracle

## **ANNEX O - CONTRACT DATA REQUIREMENT**

### **DEFFORM 315**

**(Edn 2/98)**

**Ministry of Defence**

### **CONTRACT DATA REQUIREMENT**

1. <u>ITT/Contract Number</u>  FsASTC/00114	2. <u>CDR Number</u>  001	3. <u>Data Category</u>  • Maintenance	4. <u>Contract Delivery Date</u>  30/11/2022
5. <u>Equipment/Equipment Subsystem Description</u>  High G Centrifuge Training & Test Equipment including infrastructure.		6. <u>General Description of Data Deliverable</u>  Maintenance Manuals etc. as detailed in Annex A (Statement of Work) and Annex W (Statement of Work), including documentation in Table 2 information presented as part of QPM, PESC or included in monthly reports and SR 999.	
7. <u>Purpose for which data is required</u>  Information sufficient to enable the Authority or a Contractor acting on behalf of the Authority to provide future support of the system including competitive tendering for maintenance of the Equipment and infrastructure.		8. <u>Intellectual Property Rights</u>  a. <u>Applicable DEFCONs</u>  DEFCON 16 (Edn 10/04) - Repair and Maintenance Information.  DEFCON 21 (Edn 10/04) – Retention of Records  b. <u>Special IP Conditions</u>  Technical Publications Narrative	
9. <u>Update/Further Submission Requirements</u>  On completion of any upgrade / modification to the Equipment When reviewed in line with review period previous version of document archived on defence share and new document uploaded.			



10. <u>Medium of Delivery</u>  Uploaded to Defence Share	11. <u>Number of Copies</u>  1 X Copy uploaded to Defence Share
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**DEFFORM 315**  
**(Edn 2/98)**  
**Ministry of Defence**  
**CONTRACT DATA REQUIREMENT**

1. <u>ITT/Contract Number</u>  FsASTC/00114	2. <u>CDR Number</u>  002	3. <u>Data Category</u>  • Operation	4. <u>Contract Delivery Date</u>  30/11/2022
5. <u>Equipment/Equipment Subsystem Description</u>  High G Centrifuge Training & Test Equipment including infrastructure.		6. <u>General Description of Data Deliverable</u>  Operating Manuals as detailed in Annex A (Statement of Work) Annex W (Statement of Work), including documentation in Table 2, information presented as part of QPM, PESC or included in monthly reports and SR 999.	
7. <u>Purpose for which data is required</u>  Information sufficient to enable the Authority or a Contractor acting on behalf of the Authority to provide future support of the system including competitive tendering for operation of the Equipment and infrastructure.		8. <u>Intellectual Property Rights</u>  a. <u>Applicable DEFCONs</u>  DEFCON 16 (Edn 10/04) - Repair and Maintenance Information.  DEFCON 21 (Edn 10/04) – Retention of Records  b. <u>Special IP Conditions</u>  Technical Publications Narrative	

9. Update/Further Submission Requirements

On completion of any upgrade / modification to the System  
When reviewed in line with review period previous version of document archived on defence share and new document uploaded.

10. Medium of Delivery

Uploaded to Defence Share

11. Number of Copies

1 X Copy uploaded to Defence Share

**DEFFORM 315**  
**(Edn 2/98)**  
**Ministry of Defence**  
**CONTRACT DATA REQUIREMENT**

1. <u>ITT/Contract Number</u> FsASTC/00114	2. <u>CDR Number</u> 003	3. <u>Data Category</u> <ul style="list-style-type: none"><li>• Technical</li></ul>	4. <u>Contract Delivery Date</u> 30/11/2022
5. <u>Equipment/Equipment Subsystem Description</u>  High G Centrifuge Training & Test Equipment		6. <u>General Description of Data Deliverable</u>  Technical Documentation as detailed in Annex A (Statement of Work) Annex W (Statement of Work), including documentation in Table 2, information presented as part of QPM, PESC or included in monthly reports and SR 999 and SR669	
7. <u>Purpose for which data is required</u>  Information sufficient to enable the Authority or a Contractor acting on behalf of the Authority to provide future support of the system including competitive tendering to support the operation and maintenance of the Equipment and infrastructure.		8. <u>Intellectual Property Rights</u>  a. <u>Applicable DEFCONs</u>  DEFCON 16 (Edn 10/04) - Repair and Maintenance Information.  DEFCON 21 (Edn 10/04) – Retention of Records  b. <u>Special IP Conditions</u>  Technical Publications Narrative	

9. Update/Further Submission Requirements

On completion of any upgrade / modification to the System

When reviewed in line with review period previous version of document archived on defence share and new document uploaded.

10. Medium of Delivery

Uploaded to Defence Share

11. Number of Copies

1 X Copy uploaded to Defence Share

**DEFFORM 315**  
**(Edn 2/98)**  
**Ministry of Defence**  
**CONTRACT DATA REQUIREMENT**

1. <u>ITT/Contract Number</u>  FsASTC/00114	2. <u>CDR Number</u>  004	3. <u>Data Category</u>  • Support	4. <u>Contract Delivery Date</u>  30/11/2022
5. <u>Equipment/Equipment Subsystem Description</u>  High G Centrifuge Training & Test Capability – Support Systems (incl IT)		6. <u>General Description of Data Deliverable</u>  Operating Manuals and User Manuals etc as detailed in Annex A (Statement of Work) Annex W (Statement of Work) including documentation in Table 2, information presented as part of QPM, PESC or included in monthly reports and SR 999 and SR669.	
7. <u>Purpose for which data is required</u>  Information sufficient to enable the Authority or a Contractor acting on behalf of the Authority to provide future support of the Capability including competitive tendering for follow-on contracts.		8. <u>Intellectual Property Rights</u>  a. <u>Applicable DEFCONs</u>  DEFCON 16 (Edn 10/04) - Repair and Maintenance Information.  DEFCON 21 (Edn 10/04) – Retention of Records  b. <u>Special IP Conditions</u>	

	Technical Publications Narrative
<b>9. <u>Update/Further Submission Requirements</u></b>  On completion of any upgrade / modification to the Equipment When reviewed in line with review period previous version of document archived on defence share and new document uploaded.	
<b>10. <u>Medium of Delivery</u></b>  Uploaded to Defence Share	<b>11. <u>Number of Copies</u></b>  1 X Copy uploaded to Defence Share

**DEFFORM 315**  
**(Edn 2/98)**  
**Ministry of Defence**  
**CONTRACT DATA REQUIREMENT**

<b>1. <u>ITT/Contract Number</u></b>  FsASTC/00114	<b>2. <u>CDR Number</u></b>  005	<b>3. <u>Data Category</u></b>  Authority training and testing data	<b>4. <u>Contract Delivery Date</u></b>  30/11/2022
<b>5. <u>Equipment/Equipment Subsystem Description</u></b>  Results/Outputs from Training and Testing		<b>6. <u>General Description of Data Outputs</u></b>  Results/Outputs from Training and Testing. Information presented as part of QPM/PESC.	
<b>7. <u>Purpose for which data is required</u></b>  For evaluation, monitoring, analysis and recording		<b>8. <u>Intellectual Property Rights</u></b>  a. <u>Applicable DEFCONs</u>  DEFCON 703 (Edn 08/13)	

	b. <u>Special IP Conditions</u>
9. <u>Update/Further Submission Requirements</u>	
10. <u>Medium of Delivery</u>  In format agreed by Authority	11. <u>Number of Copies</u>  As agreed

## ANNEX P - CERTIFICATE OF CONFORMITY

<b>Certificate of Conformity</b>			1. Supplier CoC Serial No.	
2. Supplier Name and Address:		3. Contract Number:		
		4. Contract Modification Number:		
		5. Details of Concessions:		
6. Acquirer Name and Address:		7. Deliver Address:		
8. Contract item number	9. Product Description and/or part number	10. Quantity	11. Shipment Document Numbers	12. Undelivered Quantity
13.  N/A <input type="checkbox"/>	Traceability Information reference DEFCON 627 (Check the N/A box to indicate no traceability requirements)			
	a. Sub-contract / Order Number			
	b. Specification / Drawing number including issue			
	c. Identification Marks and/or serial number(s)			
	d. Material Cast number			
	e. Batch and/or Lot number			
	f. Test and/or Inspection Report(s)			
g. Incoming Release Note number / Reference				
14. Other Remarks or Comments: (e.g. Cure date. Shelf life.)				
15. Supplier Statement of Quality: It is certified that apart from the concessions noted in block #5 above, the products listed above conform in all respects to the contract requirements.				
Date:	Name and Post Title:		Signature:	

## **ANNEX Q - STRUCTURAL WARRANTY FOR CENTRIFUGE**

This Direct Agreement is dated [DATE]

### **PARTIES**

- (1) AMST-SYSTEMTECHNIK GMBH a company registered in Austria under number FN 224519a having its registered office at, Lamprechtschausener Strasse 63, 5282 Ranshofen, Austria; (**AMST**).
- (2) THE SECRETARY OF STATE FOR DEFENCE (**Authority**).

### **BACKGROUND**

- (A) The Authority requires AMST to enter into this Direct Agreement to provide a structural warranty, as further described herein, and AMST has agreed to enter into this Direct Agreement.
- (B) The Authority has paid £1 to AMST as consideration under this Direct Agreement.

### **AGREED TERMS**

#### **1. Interpretation**

The following definitions and rules of interpretation apply in this Direct Agreement.

##### **1.1 Definitions:**

**Dimensioning Guidelines:** the document with the reference A-HTC-02134-REV.4 dated 28.05.2010 as may be amended from time to time.

**Direct Agreement:** this agreement between the Authority and AMST.

**Equipment:** the human High G Centrifuge, Training Equipment and Test Equipment.

**Load Spectra:** are set out in the Dimensioning Guidelines and consisting of fatigue loading cycles on a structure (structural component) in service, characterized by individual G-load parameters, in particular Gz\_minimu, Gz\_maximum, G-onset rate, Gx, Gy and cycles per time unit (e.g. day).

**Repair and Maintenance Manuals:** the repair and maintenance manuals supplied to the Authority under the Prime Contract.

**Prime Contract:** the contract FsASTC/00114 for the supply of the Equipment and service provision..

**Relevant Components:** Pedestal (Part No. 2300128); Main Bearing (Part No. 2301870); Drive Train (including mechanical drive components): couplings (Part No. 2301867, Part No. 2301868, Part No. 2301869), gearbox (Part No. 2303154), drive shaft (Part No. 2300740), brake disc (Part No. 2300745); Main Arm (Part No. 2300913); Roll Ring (Part No. 2301156); and Gondola Structure (Part No. 2301090). The Part Numbers may be amended by AMST from time to time.

**Potential Structural Event:** includes any cracks, defects or failures in the Relevant Components irrespective of whether they may prevent the safe operation of the Equipment.

**Structural Event:** includes cracks or a material failure in the Relevant Components that prevent the safe operation of the Equipment.

**Structural Monitoring System:** the Equipment sub-system that observes physical properties by means of suitable sensors along the centrifuge structure and stores the values in a database.

**Utilisation Conditions:** the usage parameters defined in the Dimensioning Guidelines.

**Warranty Period:** a period commencing upon the Full Operating Capability of the Equipment (as defined in the Prime Contract) and expiring twenty-five (25) years therefrom.

- 1.2 Clause headings shall not affect the interpretation of this Direct Agreement.
- 1.3 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.4 A reference to a **company** includes any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.5 Unless the context otherwise requires, words in the singular shall include the plural and in the plural include the singular.
- 1.6 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.7 This Direct Agreement shall be binding on, and enure to the benefit of, the parties to this Direct Agreement and their respective personal representatives, successors and permitted assigns, and references to any party shall include that party's personal representatives, successors and permitted assigns.
- 1.8 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.
- 1.9 A reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision.
- 1.10 Any obligation on a party not to do something includes an obligation not to allow that thing to be done.
- 1.11 A reference to **writing** or **written** includes fax but not email.
- 1.12 References to clauses are to the clauses of this Direct Agreement.

## **2. Structural Warranty**

- 2.1 Subject to the provisions of Clause 2.3, AMST hereby warrants to the Authority that during the Warranty Period the Relevant Components shall be free from Structural Events.
- 2.2 Subject to the provisions of Clause 2.3, if:
- (a) AMST is given a reasonable opportunity of examining the Equipment (including without limitation reasonable access to the facilities within which the Equipment is installed); and
  - (b) the Authority (if asked to do so by AMST) provides reasonable assistance to AMST in the return of Relevant Components to AMST's place of business at AMST's cost,

AMST shall repair or, at its option, replace, a defective Relevant Component within a reasonable time (having regard to the nature and severity of the defect), prior to the defect becoming a Structural Event.

- 2.3 The warranty specified in Clause 2.1 and 2.2 shall not apply where:
- (a) the Structural Monitoring System on the Equipment has at any time during the operation of the Equipment been deactivated;
  - (b) any warranty seal on any part of the Equipment has been broken or tampered with;



- (c) the Authority fails to notify AMST in writing of a Potential Structural Event within thirty (30) days after becoming aware of the Potential Structural Event;
- (d) unless otherwise agreed in writing with AMST, the Authority or any third party makes any further use of the Equipment after becoming aware of the Potential Structural Event;
- (e) the Structural Event arises because the Authority, a contractor of the Authority or a third party failed to follow AMST's oral or written instructions as to the storage, commissioning, installation, use and maintenance of the Equipment, including without limitation any instructions contained within Repair and Maintenance Manuals, or (if there are none) good trade practice regarding the same;
- (f) the Load Spectra or Utilisation Conditions have been exceeded;.
- (g) the Equipment has not been repaired or maintained in accordance with the Repair Maintenance Manuals; or
- (h) the Structural Event arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions.

### 3. **Assignment**

Neither party shall assign or transfer any or all of its rights and obligations under this Direct Agreement.

### 4. **Notices**

The provisions of DEFCON526 (Edn.08/02) shall apply.

### 5. **Third party rights**

The provisions of DEFCON537 (Edn.06/17) shall apply.

### 6. **Governing law**

The provisions of DEFCON529 (Edn.09/97) shall apply.

### 7. **Jurisdiction**

The provisions of DEFCON530 (Edn.12/14) shall apply.

This Direct Agreement has been entered into on the date stated at the beginning of it

Executed by AMST-Systemtechnik GmbH:

.....  
 Dipl.-Ing. Richard Schlüsselberger  
 Managing Director

Executed by the Authority in the presence of:

.....  
DES FsAST-Comrcl  
Senior Commercial Officer

## **ANNEX R - LEASE FOR EXTENSION**

For Period 1 December 2021 to 30 November 2024.

**ANNEX S – NOT USED**

**ANNEX T - CONTRACTOR'S TECHNICAL SOLUTION**

**[REDACTED IN ITS ENTIRETY UNDER FOI SECTION 41 - INFORMATION PROVIDED IN  
CONFIDENCE EXEMPTION]**

## **ANNEX U - DISPUTE RESOLUTION**

### **1. Referrals to the Commercial Representative**

- 1.1. Unless the parties otherwise agree, no referral for a decision in accordance with this paragraph shall be made after the completion, or abandonment of the Works or the termination of the Contract and no referral for a decision in accordance with this paragraph shall be made in relation to any matter or thing as to which a decision of the Authority under the Contract is expressed by the Contract to be final and conclusive.
- 1.2. Where, in accordance with these Conditions of Contract, a matter has been referred to the Commercial Representative, the party referring the dispute shall, within 7 days of the notice of referral, provide to the Commercial Representative a written statement specifying the nature of the matter in dispute, together with all supporting information and documents on which he intends to rely. The party referring the dispute shall, at the same time, send a copy of the statement and the enclosures to the other party.
- 1.3. Within 7 days of receipt of the statement from the party referring the dispute, the other party, if he so chooses, may provide his own statement, together with any supporting information upon which he intends to rely, to the Commercial Representative. The other party shall, at the same time, send a copy of the statement and the supporting information on which he intends to rely to the party referring the dispute.
- 1.4. The Contractor and the DIO PM shall attend any meeting called by the Commercial Representative.
- 1.5. The Contractor and the DIO PM shall, within 14 days, provide to the Commercial Representative any further information and/or documents which the Commercial Representative may request. If either the Contractor or the DIO PM is unable to provide the information and/or documents requested, he shall provide a written statement, within Fourteen (14) days of the request for the information and/or documents, stating why the information and/or documents cannot be provided.
- 1.6. The Contractor shall continue to proceed with the Contractor's Design and/or the Works throughout the period of the referral. During the period of the referral, any DIO PM's Direction or Change Order shall remain in force notwithstanding that such DIO PM's Direction or Change Order was the cause of the referral.
- 1.7. Having received all relevant and/or requested information, the Commercial Representative shall make a decision and shall notify the parties accordingly. The decision of the Commercial Representative shall not include any reasons for his decision unless he chooses otherwise.
- 1.8. Subject to paragraphs 3 and 4 of this Schedule (Adjudication and Arbitration respectively), the decision of the Commercial Representative on the matter of the referral shall be binding on the Contractor and the DIO PM until completion, or abandonment of the Works or the termination of the Contract.
- 1.9. Each party shall bear their own costs and/or disbursements in connection with a referral under this paragraph.

## 2. Mediation

- 2.1. Unless the parties otherwise agree, no mediation in accordance with this paragraph shall be made after completion, or abandonment of the Works or the termination of the Contract and no mediation in accordance with this paragraph shall be made in relation to any matter or thing as to which a decision of the Authority under the Contract is expressed by the Contract to be final and conclusive.
- 2.2. A single mediator shall be jointly appointed by the Authority and the Contractor, or in default of such agreement shall be appointed at the request of the Authority by the Chief Executive of the Centre for Effective Dispute Resolution ("CEDR") in accordance with the following provisions of this paragraph.
- 2.3. Unless the parties otherwise agree, no mediation shall take place in relation to a matter which is the subject of a referral to the Commercial Representative for a decision in accordance with paragraph 1 (Referrals to the Commercial Representative) of this Schedule.
- 2.4. The mediator shall start the mediation as soon as possible after his appointment and shall fix a procedure and a timetable for the conduct of the mediation. He shall use his best endeavours to conclude the mediation within Two (2) months of his appointment unless the parties otherwise agree.
- 2.5. All discussions and negotiations during the mediation shall be on a privileged 'without prejudice' basis, unless such privilege is waived by the parties by agreement either generally or in relation to any specific aspect. No party may refer, in any proceeding that may subsequently take place, to any such privileged discussion and the mediator shall not be joined as a party to, nor shall he be subpoenaed or otherwise required to give evidence or provide his notes in, any such proceedings.
- 2.6. The mediator shall not be liable for anything done or not done in the discharge or purported discharge of his functions as mediator, whether in negligence or otherwise, unless the act or omission is in bad faith.
- 2.7. Each party shall bear their own costs and/or disbursements in connection with the mediation and the parties shall be jointly and severally liable for the mediator's fees.

## 3. Adjudication

- 3.1. Either party to the Contract may at any time refer any dispute arising under the Contract to adjudication in accordance with this paragraph notwithstanding that any legal proceedings have been commenced in respect of such dispute.
- 3.2. Any decision of the Authority, the Commercial Representative or any DIO PM's Direction or Change Order which is the subject of adjudication shall remain in force until the decision of the Adjudicator.
- 3.3. For the purposes of this paragraph the term "dispute" shall include any difference as defined by the Housing Grants, Construction and Regeneration Act 1996.
- 3.4. If either party requires adjudication they shall notify the Adjudicator. The notice shall:-
  - 3.4.1 specify the matter in dispute;
  - 3.4.2 set out the principal facts and arguments relating to the dispute; and
  - 3.4.3 have appended all relevant documents which the party referring the disputes relies upon.
- 3.5. A copy of the notice referred to in paragraph 3.4 above and the appended relevant documents shall be sent to the other party at the same time.
- 3.6. The Adjudicator shall indicate, within Four (4) days of receipt of a copy of the notice under paragraph 3.4 above, his willingness to act.
- 3.7. Where the Adjudicator has not indicated his willingness to act in accordance with paragraph 3.5 above or where no Adjudicator has been named in the Agreement, either party may apply to the Chairman of

The Technology and Construction Solicitors Association ("TeCSA") for a nomination, in which case, the following procedure will apply:-

- 3.7.1 the application shall be in writing, accompanied by a copy of these Conditions of Contract and the Agreement (without copies of any annexed documents, unless they are relevant to the dispute), a copy of the written notice requiring adjudication, and TeCSA's appropriate appointment fee;
  - 3.7.2 the Chairman of TeCSA shall endeavour to secure the appointment of an Adjudicator and the referral to him of the dispute within Seven (7) days from the notice requiring adjudication; and
  - 3.7.3 any person so appointed, and not any person named in the Agreement whose readiness or willingness is in question, shall be the Adjudicator.
- 3.8. The Chairman of TeCSA shall have the power by written notice to the parties to replace the Adjudicator with another nominated person if and when it appears necessary to him to do so. The Chairman of TeCSA shall consider whether to exercise such power if any party shall represent to him that the Adjudicator is not acting impartially, or that the Adjudicator is physically or mentally incapable of conducting the adjudication, or that the Adjudicator is failing with necessary dispatch to proceed with the adjudication or make his decision. In the event of a replacement under this paragraph, directions and decisions of the previous Adjudicator shall remain in effect unless reviewed and replaced by the new Adjudicator, and all timescales shall be recalculated from the date of the replacement.
- 3.9. Where an adjudicator has already been appointed in relation to another dispute arising out of the Contract, the Chairman of TeCSA may appoint either the same or a different person as the Adjudicator.
- 3.10. Within Seven (7) days of receipt of the notice referred to in paragraph 3.3 above, the other party may submit to the Adjudicator any statement, representations or documents which that party relies upon relating to the dispute.
- 3.11. The scope of the Adjudication shall be the matters identified in the notice requiring adjudication, together with:-
- 3.11.1 any further matters which all parties agree should be within the scope of the Adjudication; and
  - 3.11.2 any further matters which the Adjudicator determines must be included in order that the adjudication may be effective and/or meaningful.
- 3.12. The Adjudicator may rule upon his own substantive jurisdiction, and as to the scope of the adjudication.
- 3.13. The underlying purpose of the adjudication is to resolve disputes between the parties that are within the scope of the adjudication as rapidly and economically as is reasonably possible.
- 3.14. Decisions of the Adjudicator shall be binding until the dispute is finally determined by legal proceedings, by arbitration under paragraph 4 (Arbitration) of this Schedule or by agreement (as the case may be).
- 3.15. The Adjudicator shall have the power to review and revise any certificates or other things issued or made in accordance with the Contract.
- 3.16. The Adjudicator shall act fairly and impartially, but shall not be obliged or empowered to act as though he were an arbitrator.
- 3.17. The Adjudicator shall establish the procedure and timetable for the adjudication.
- 3.18. Without prejudice to the generality of paragraph 3.16 above, the Adjudicator may if he thinks fit:-
- 3.18.1 require the delivery of written statements of case;



- 3.18.2 require any party to produce a bundle of key documents, whether helpful or otherwise to that party's case, and to draw such inferences as may seem proper from any imbalance in such bundle that may become apparent;
- 3.18.3 require the delivery to him and/or the other parties of copies of any documents other than documents that would be privileged from production to a court;
- 3.18.4 limit the length of any written or oral submission;
- 3.18.5 require the attendance before him for questioning of any party or employee or agent of any party;
  - 3.18.5.1 make site visits;
  - 3.18.5.2 make use of his own specialist knowledge;
  - 3.18.5.3 obtain advice from specialist consultants, provided that at least one of the parties so requests or consents;
  - 3.18.5.4 meet and otherwise communicate with any party without the presence of other parties;
    - 3.18.5.4.1 make directions for the conduct of the adjudication orally or in writing;
    - 3.18.5.4.2 review and revise any of his own previous directions;
    - 3.18.5.4.3 conduct the adjudication inquisitorially, and take the initiative in ascertaining the facts and the law; and
    - 3.18.5.4.4 reach his decision with or without holding an oral hearing, and with or without having endeavoured to facilitate an agreement between the parties.
- 3.19 he Adjudicator shall exercise such powers with a view of fairness and impartiality, giving each party a reasonable opportunity, in light of the timetable, of putting his case and dealing with that of his opponent.
- 3.20 The Adjudicator may not:-
  - 3.20.1 require any advance payment of, or security for, his fees;
  - 3.20.2 receive any written submissions from one party that are not also made available to the other;
  - 3.20.3 refuse any party the right at any hearing or meeting to be represented by any representative of that party's choosing who is present;
  - 3.20.4 act or continue to act in the face of a conflict of interest; or
  - 3.20.5 require any party to pay, or make contribution to, the legal costs of another party arising in the adjudication.
- 3.21 The Adjudicator shall reach a decision within Twenty Eight (28) days of referral or such longer period as is agreed by the parties after the said dispute has been referred to him. The Adjudicator shall be entitled to extend the said period of Twenty Eight (28) days by up to Fourteen (14) days with the consent of the party by whom the dispute was referred.
- 3.22 Not Used.
- 3.23 After service of a notice referred to in paragraph 3.3 above, the parties may agree in writing the allocation of costs relating to the adjudication.
- 3.24 The Adjudicator may in any decision direct the payment of such compound or simple interest as may be commercially reasonable.

- 3.25 All decisions of the Adjudicator shall be in writing and shall include his reasons for his decision.
- 3.26 The Adjudicator shall be entitled to allocate his fees and expenses as between the parties and to correct any decision he has made to remove clerical or typographical error arising by accident or omission.
- 3.27 Every decision of the Adjudicator shall be implemented without delay. The parties shall be entitled to such reliefs and remedies as are set out in the decision, and shall be entitled to summary enforcement of any such reliefs and remedies, regardless of whether such decision is, or is to be, the subject of any challenge or review. No party shall be entitled to raise any right of set-off, counterclaim or abatement in connection with any enforcement proceedings.
- 3.28 Neither TeCSA, nor its Chairman, nor deputy, nor the Adjudicator nor any employee or agent of any of them shall be liable for anything done or not done in the discharge or purported discharge of his functions as Adjudicator, whether in negligence or otherwise, unless the act or omission is in bad faith.
- 3.29 The adjudication and all matters arising in the course of it are and will be kept confidential by the parties except insofar as necessary to implement or enforce any decision of the Adjudicator or as may be required for the purpose of any subsequent legal proceedings.
- 3.30 In the event that any party seeks to challenge or review any decision of the Adjudicator in any subsequent arbitration, the Adjudicator shall not be joined as a party to, nor shall he be subpoenaed or otherwise required to give evidence or provide his notes in, such arbitration.
- 3.31 No party shall, save in case of bad faith on the part of the Adjudicator, make any application to the courts whatsoever in relation to the conduct of the adjudication or the decision of the Adjudicator until such time as the Adjudicator has made his decision, or refused to make a decision, and until the party making the application has complied with any such decision.
- 3.32 In relation to any matter or thing as to which a decision of the Authority under the Contract is by the Contract expressed to be final and conclusive, the Adjudicator shall not be entitled to vary or overrule any such decision and the Contractor's only remedy (if at all) shall be to financial compensation.

#### 4 Arbitration

- 4.1 Any dispute, difference or question arising between the parties that is not finally resolved in accordance with paragraphs 1 to 3 of this Schedule or by any agreement shall be finally settled by arbitration in accordance with the following procedure.
- 4.2 A single arbitrator shall be chosen by the parties or, in the absence of agreement, shall be nominated by the president for the time being of the Chartered Institute of Arbitrators or his or her deputy on the application of either party. The place of arbitration shall be England unless otherwise stated in the Agreement and the governing law of the arbitration shall be the substantive law of England unless otherwise stated in the Agreement.
- 4.3 The arbitrator shall have the power to rule on his own substantive jurisdiction as to:-
- 4.3.1 whether there is a valid arbitration agreement;
  - 4.3.2 whether he is properly appointed;
  - 4.3.3 whether there is a dispute or difference capable of being referred to arbitration and whether it has been validly referred; and
  - 4.3.4 what matters had been submitted to him in accordance with these Conditions of Contract.
- 4.4 The Arbitrator shall have the power to:-
- 4.4.1 order the preservation of evidence;

- 4.4.2 make orders relating to property which is the subject of the proceedings including:-
  - 4.4.3 inspection, photographing, preservation, custody or detention of the property; or
  - 4.4.4 ordering that samples be taken from, or any observation be made of, or experiment conducted upon, the property;
  - 4.4.5 give directions for the detention, storage, sale or disposal of the part or any part of the subject matter of the dispute at the expense of one or both of the parties; or
  - 4.4.6 grant injunctive remedies and relief.
- 4.5 With the written consent of the Authority, the arbitrator shall have the power to order the consolidation of the arbitral proceedings with other arbitral proceedings or to order that concurrent hearing shall be held on such terms as the arbitrator deems fit.
- 4.6 If the arbitrator is satisfied that there has been inordinate and excusable delay on the part of the claimant in pursuing his claim and that delay:-
- 4.6.1 gives rise, or is likely to give rise, to a substantial risk that it is not possible to have a fair resolution of the issues in that claim; or
  - 4.6.2 has caused, or is likely to cause, serious prejudice to the respondent,
- 4.7 the arbitrator may make an award dismissing the claim. If, without showing sufficient cause, a party:-
- 4.7.1 fails to attend or be represented at an oral hearing of which due notice was given; or
  - 4.7.2 where matters are to be dealt with in writing, fails after due notice to submit written evidence or make written submissions,
- 4.8 the arbitrator may continue the proceedings in the absence of that party.
- 4.9 If, without showing sufficient cause, a party fails to comply with any order or directions of the arbitrator, the arbitrator may make a peremptory order to the same effect, prescribing such time for compliance with it as the arbitrator considers appropriate.
- 4.9.1 If a claimant fails to comply with a peremptory order of the arbitrator to provide security for costs, the arbitrator may make an award dismissing its claim.
  - 4.9.2 If a party fails to comply with any kind of peremptory order, the arbitrator may do any of the following:-
    - 4.9.3 direct that the party in default shall not be entitled to rely upon any allegations or materials which are the subject matter of the order;
      - 4.9.3.1 draw such adverse inferences from the act of non-compliance as the circumstances justify;
      - 4.9.3.2 proceed to an award on the basis of such materials as have been properly provided to it;
      - 4.9.3.3 make such order as it deems fit as to the payment of costs of the arbitration incurred in consequence of the non-compliance.
  - 4.9.4 The arbitrator shall have power to decide all procedural and evidential matters including but not limited to:-
    - 4.9.4.1 Pleadings: deciding whether formal pleadings are to be used, and if so, what form of statements of claim or defence are to be used (e.g. summary or abbreviated form) and the timetable for their supply and the extent to which they can be amended;

- 4.9.4.2 Discovery: deciding on the need for and/or extent of, discovery and which documents or classes of documents should be disclosed and at what stage;
- 4.9.4.3 Experts: deciding whether there is any need for parties to incur costs of having to produce expert witnesses and, if there are to be experts, whether each party should have its own experts or whether the arbitrator should appoint a single expert. The arbitrator may also decide who should pay for the expert and the procedure for presenting expert evidence;
- 4.9.4.4 Arbitrator's powers: the arbitrator shall be entitled to take the initiative and ascertain the facts and law and shall be entitled to rely on his own knowledge and expertise;
- 4.9.4.5 Evidence: the arbitrator shall decide whether the strict rules of evidence shall apply and to what extent evidence may be given under oath or affirmation and whether the arbitration should be a 'paper only' procedure;
- 4.9.4.6 Security for Costs: the arbitrator shall have power to order security for costs or order for his own costs to be secured;
- 4.9.4.7 Costs: the arbitrator shall be entitled to limit recoverable costs of the parties to a specific amount;
- 4.9.4.8 Representation: the arbitrator shall be entitled to decide whether the parties wish to allow other representation in addition to legal representation.
- 4.9.4.9 The arbitrator may at any time make an award, and may make more than one award at different times and for different aspects of the matters to be determined. The award shall be in writing signed by the arbitrator and shall state the date upon which the award is made. Once the award is made the award shall be notified to the parties by service on them of copies of the award.
- 4.9.4.10 The arbitrator may:-
- 4.9.4.10.1 make a declaration as to any matter to be determined in the proceedings;
  - 4.9.4.10.2 order the payment of a sum of money in any currency;
  - 4.9.4.10.3 order a party to do or refrain from doing anything;
  - 4.9.4.10.4 order specific performance of a contract (other than a contract relating to land);
  - 4.9.4.10.5 order the rectification, setting aside or cancellation of a deed or other document;
  - 4.9.4.10.6 award simple or compound interest from such dates, at such rates as the arbitrator thinks fit subject to any express terms of these Conditions of Contract providing for a specified rate of interest to be payable.
- 4.9.4.11 The arbitrator shall include in his award reasons for the award unless it is a consent award or the parties have agreed that the arbitrator may dispense with reasons.
- 4.9.4.12 If, during the arbitral proceedings, the parties settle the dispute, the arbitrator shall terminate the substantive proceedings and shall record the settlement in the form of an agreed award.
- 4.9.4.13 The parties shall be free to agree how the costs of an arbitration are to be borne. If there is no agreement between the parties, the arbitrator shall award the costs on the principle that costs should follow the event except in circumstances where that is not

appropriate. The parties are also free to agree what costs of the arbitration are recoverable.

- 4.9.4.14 Save to the extent that they are inconsistent with any of the express provisions of this paragraph 4, the provisions of the Arbitration Act 1996 shall apply to any arbitration in accordance with these Conditions of Contract

## ANNEX V - DATA PROTECTION

### DATA PROTECTION CONTRACTUAL COMPLIANCE CHECKLIST

<b>SECTION 1 – Background information</b> What is the name of your company/business?	<i>Please provide details including the Company name, registered address and Company Number:</i>
<b>SECTION 2 - Data Protection Officers</b> Have you appointed a Data Protection Officer in line with requirements set out in Data Protection legislation?	<div style="margin-bottom: 10px;"> <input type="checkbox"/> Yes  <input type="checkbox"/> No         </div> <p><i>If No, please explain your response:</i></p>  <p><i>If Yes,</i>          Please provide contact details for the Data Protection Officer:          Name:            Contact details: (Email, postal address, telephone no:):</p>
<b>SECTION 3 – Protective Measures</b> A. Has your company/business assessed or started to assess your current compliance with the Data Protection legislation?           B. Do you have in place appropriate technical and organisational measures to account for security risk, respond to and assist the Controller in responding to requests by individuals?	<div style="margin-bottom: 10px;"> <input type="checkbox"/> Yes  <input type="checkbox"/> No         </div> <p><i>If No, please explain your response:</i></p>  <p><i>If yes, please provide details:</i></p>          <div style="margin-bottom: 10px;"> <input type="checkbox"/> Yes  <input type="checkbox"/> No         </div> <p><i>If no, please explain your response:</i></p>  <p><i>If yes, please provide details:</i></p>
<b>SECTION 3 – Protective Measures (Cont'd)</b>	



<p><b>SECTION 4 – CONSENT (Cont’d)</b></p> <p>B. Where you use consent as the sole lawful basis for processing please confirm (<i>tick if appropriate</i>)</p>	<p><input type="checkbox"/> Records are kept of when and how the company obtained the consent from the individual and exactly what the individual was told at the time.</p> <p><input type="checkbox"/> The company has procedures in place to review consents to check that the relationship, the processing and the purposes have not changed.</p> <p><input type="checkbox"/> There are processes in place to refresh consent at appropriate intervals, including any parental consents.</p> <p><input type="checkbox"/> There is an easy process in place for individuals to withdraw their consent at any time, and it publicises how to do so.</p> <p><input type="checkbox"/> Act on the withdrawals (without data subject suffering a detriment) of consent as soon as it can.</p>
<p><b>SECTION 5 – DATA SUBJECT RIGHTS</b></p> <p>A. Has your company updated internal policies and put procedures in place to enable it to comply with data subjects’ rights under the Data Protection legislation (e.g. deleting or rectification information)?</p> <p>B. Does your company have processes to allow individuals to move, copy or transfer their personal data from one I.T. environment to another in a safe and secure way without hindrance to usability?</p>	<p><input type="checkbox"/> Yes</p> <p><input type="checkbox"/> No</p> <p><b><i>Please explain your response:</i></b></p> <p><input type="checkbox"/> Yes</p> <p><input type="checkbox"/> No</p> <p><b><i>Please explain your response:</i></b></p>



**SECTION 6 – RECORD KEEPING**

Do you keep written records and will you be able to make these records available to the Controller and Regulator as and when required in line with Data Protection legislation?

☐ Yes

☐ No

***If No, please explain your response:***

**SECTION 7 – DECLARATION**

**Please confirm that you agree to the following conditions:**

- ☐ Process the personal data only on documented instruction from the Data Controller, unless otherwise required by the UK law or applicable EU law.
- ☐ Ensure that the persons authorised to process the personal data have committed to confidentiality obligations.
- ☐ Take all security measures required pursuant to Data Protection legislation.
- ☐ Not use a sub-processor without prior written consent of the Data Controller.
- ☐ Assist the Controller in meeting data subject rights when they are invoked.
- ☐ Permit and contribute to audits and inspections that the Data Controller or its appointed auditors carry out.
- ☐ Assist with the Data Controller with its obligations relating to security, data breach notification requirements and Data Protection Impact Assessments (DPIA) under the Data Protection legislation.
- ☐ Return to the Data Controller or delete, at request, all Personal Data when services are completed, unless otherwise required by the UK law or applicable EU law.
- ☐ Make information available to demonstrate compliance with the requirements of Data Protection legislation.

Signed:

Full Name: (CAPITALS)

Role/Position:

Date:

## DEFINITIONS:

**Data Protection Legislation:** (i) the GDPR, the LED and any applicable national implementing Laws as amended from time to time (ii) the DPA 2018 [subject to Royal Assent] to the extent that it relates to processing of personal data and privacy; (iii) all applicable Law about the processing of personal data and privacy.

**Data Protection Impact Assessment:** an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data.

**Controller and Processor** take the meaning given in the GDPR:

a **Controller** is a natural or legal person or organisation which determines the purposes and means of processing personal data; and

a **Processor** is a natural or legal person or organisation which processes personal data on behalf of the Controller.

**Data Subject Access Request:** a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data.

**DPA 2018:** the Data Protection Act 2018.

**Protective Measures:** appropriate technical and organisational measures which may include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the such measures adopted by it.

**Sub-processor:** any third Party appointed to process Personal Data on behalf of the Contractor related to this Agreement.

## **ANNEX W - EXTENSION STATEMENT OF WORK**

REFERENCE: 20211111-Annex W -Statement of Work-Final\_Version-Issue\_1-CA08-OSC



20211109-Annex W  
-Statement of Work

## **APPENDIX 1 – SRD**

**[REDACTED UNDER 'MILITARY SENSITIVE TECHNICAL INFORMATION' EXEMPTION]**

## **ANNEX X – SECURITY ASPECTS LETTER (SAL)**

REFERENCE: 20201130-FsASTC00114 High G Extension-SAL-OSC



20201130-FsASTC00  
114 High G Extensio

## **ANNEX Y – CONTRACTOR ASSUMPTIONS, DEPENDENCIES & EXCLUSIONS**

**[REDACTED IN ITS ENTIRETY UNDER FOI SECTION 41 - INFORMATION PROVIDED IN CONFIDENCE EXEMPTION]**