



Draft Contract
701547527

Description:
Demonstration, Manufacture and In-Service Support
of Ground Based Surveillance Radar (GBSR)

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- J. GFE & GFI List
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- M. Key Performance & Performance Indicators
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- O. Document Review Form
- P. DEFORM 315 - Contract Data Requirement
- Q. Earned Value Management (EVM) Project Controls (PC) Industry Tailoring Guide
- R. Exit/Transition Management Plan
- S. Parent Company / Bank Guarantee [Placeholder]

Reference/ Guidance documents:

- Ref-1. Use Study
- Ref-2. Configuration Mgt Plan
- Ref-3. Reliability & Management Case
- Ref-4. Supply Support Plan
- Ref-5. Integrated Logistics Support Plan
- Ref-6. Logistic Commodities and Services Transformation Supplier Manual
- Ref-7. Concept of Employment (CONEMP)

Definitions of Contract

Articles

means the Contractor Deliverables (goods and/or the services), including Packaging (and Certificate(s) of Conformity and supplied in accordance with any QA requirements if specified) which the Contractor is required to provide under the Contract in accordance with Schedule of Requirements, but excluding incidentals outside Schedule of Requirements such as progress reports. **(This definition only applies when DEFCONs are added to these Conditions);**

Authority

means the Secretary of State for Defence acting on behalf of the Crown;

Authority's Representative(s)

shall be those person(s) defined in DEFFORM 111 who will act as the Authority's Representative(s) in connection with the Contract. Where the term "Authority's Representative(s)" in the Conditions is immediately followed by a functional description in brackets, the appropriate Authority's Representative(s) shall be the designated person(s) for the purposes of Condition 8;

Business Day	means 09:00 to 17:00 Monday to Friday, excluding public and statutory holidays;
Central Government Body	<p>a body listed in one of the following sub-categories of the Central Government classification of the Public Sector Classification Guide, as published and amended from time to time by the Office for National Statistics:</p> <ul style="list-style-type: none"> a. Government Department; b. Non-Departmental Public Body or Assembly Sponsored Public Body (advisory, executive, or tribunal); c. Non-Ministerial Department; or Executive Agency;
Collect	means pick up the Contractor Deliverables from the Consignor. This shall include loading, and any other specific arrangements, agreed in accordance with the terms and conditions of the contract and Collected and Collection shall be construed accordingly;
Commercial Packaging	means commercial Packaging for military use as described in Def Stan 81-041 (Part 1)
Conditions	means the terms and Conditions set out in this document;
Consignee	means that part of the Authority identified in DEFFORM 111 to whom the Contractor Deliverables are to be Delivered or on whose behalf they are to be Collected at the address specified in DEFFORM 111 or such other part of the Authority as may be instructed by the Authority by means of a Diversion Order;
Consignor	means the name and address specified in DEFFORM 111 from whom the Contractor Deliverables will be dispatched or Collected;
Contract	means the Contract including its Schedules and any amendments agreed by the Parties in accordance with Condition 6 (Amendments to Contract);
Contract Price	means the amount set out in Schedule of Requirements to be paid (inclusive of Packaging and exclusive of any applicable VAT) by the Authority to the Contractor, for the full and proper

performance by the Contractor of its obligations under the Contract.

Contractor

means the person who, by the Contract, undertakes to supply the Contractor Deliverables, for the Authority as is provided by the Contract. Where the Contractor is an individual or a partnership, the expression shall include the personal representatives of the individual or of the partners, as the case may be, and the expression shall also include any person to whom the benefit of the Contract may be assigned by the Contractor with the consent of the Authority;

Contractor Commercially Sensitive Information

means the Information listed in the completed Contractor's Commercially Sensitive Information Form, which is Information notified by the Contractor to the Authority, which is acknowledged by the Authority as being commercially sensitive;

Contractor Deliverables

means the goods and/or the services, including Packaging (and Certificate(s) of Conformity and supplied in accordance with any QA requirements if specified) which the Contractor is required to provide under the Contract;

Control

means the power of a person to secure that the affairs of the Contractor are conducted in accordance with the wishes of that person:

- a. by means of the holding of shares, or the possession of voting powers in, or in relation to, the Contractor; or
- b. by virtue of any powers conferred by the constitutional or corporate documents, or any other document, regulating the Contractor;

and a change of Control occurs if a person who Controls the Contractor ceases to do so or if another person acquires Control of the Contractor;

CPET

means the UK Government's Central Point of Expertise on Timber, which provides a free telephone helpline and website to support implementation of the UK Government timber procurement policy;

Crown Use

in relation to a patent means the doing of anything by virtue of Sections 55 to 57 of the Patents Act

1977 which otherwise would be an infringement of the patent and in relation to a Registered Design has the meaning given in paragraph 2A(6) of the First Schedule to the Registered Designs Act 1949;

Dangerous Goods

means those substances, preparations and articles that are capable of posing a risk to health, safety, property or the environment which are prohibited by regulation, or classified and authorised only under the Conditions prescribed by the:

- a. Carriage of Dangerous Goods and Use of Transportable Pressure Equipment Regulations 2009 (CDG) (as amended 2011);
- b. European Agreement Concerning the International Carriage of Dangerous Goods by Road (ADR);
- c. Regulations Concerning the International Carriage of Dangerous Goods by Rail (RID);
- d. International Maritime Dangerous Goods (IMDG) Code;
- e. International Civil Aviation Organisation (ICAO) Technical Instructions for the Safe Transport of Dangerous Goods by Air;
- f. International Air Transport Association (IATA) Dangerous Goods Regulations.

DBS Finance

means Defence Business Services Finance, at the address stated in Schedule 3 (Contract Data Sheet);

DEFFORM

means the MOD DEFFORM series which can be found at <https://www.aof.mod.uk>;

DEF STAN

means Defence Standards which can be accessed at <https://www.dstan.mod.uk>;

Deliver

means hand over the Contractor Deliverables to the Consignee. This shall include unloading, and any other specific arrangements, agreed in accordance with the terms and conditions of the contract and Delivered and Delivery shall be construed accordingly;

Delivery Date

means the date as specified in the Schedule of Requirements on which the Contractor

	Deliverables or the relevant portion of them are to be Delivered or made available for Collection;
Denomination of Quantity (D of Q)	means the quantity or measure by which an item of material is managed;
Design Right(s)	has the meaning ascribed to it by Section 213 of the Copyright, Designs and Patents Act 1988;
Diversion Order	means the Authority's written instruction (typically given by MOD Form 199) for urgent Delivery of specified quantities of Contractor Deliverables to a Consignee other than the Consignee stated in DEFFORM 111.
Effective Date of Contract	means the date specified on the Authority's acceptance letter;
Evidence	means either: <ul style="list-style-type: none"> a. an invoice or delivery note from the timber supplier or Subcontractor to the Contractor specifying that the product supplied to the Authority is FSC or PEFC certified; or b. other robust Evidence of sustainability or FLEGT licensed origin, as advised by CPET;
Firm Price	means a price (excluding VAT) which is not subject to variation;
FLEGT	means the Forest Law Enforcement, Governance and Trade initiative by the European Union to use the power of timber-consuming countries to reduce the extent of illegal logging;
Government Furnished Assets (GFA)	is a generic term for any MOD asset such as equipment, information or resources issued or made available to the Contractor in connection with the Contract by or on behalf of the Authority;
Hazardous Contractor Deliverable	means a Contractor Deliverable or a component of a Contractor Deliverable that is itself a hazardous material or substance or that may in the course of its use, maintenance, disposal, or in the event of an accident, release one or more hazardous materials or substances and each material or substance that may be so released;

Independent Verification

means that an evaluation is undertaken and reported by an individual or body whose organisation, systems and procedures conform to “ISO Guide 65:1996 (EN 45011:1998) General requirements for bodies operating product certification systems or equivalent”, and who is accredited to audit against forest management standards by a body whose organisation, systems and procedures conform to “ISO 17011: 2004 General Requirements for Providing Assessment and Accreditation of Conformity Assessment Bodies or equivalent”;

Information

means any Information in any written or other tangible form disclosed to one Party by or on behalf of the other Party under or in connection with the Contract;

Issued Property

means any item of Government Furnished Assets (GFA), including any materiel issued or otherwise furnished to the Contractor in connection with the Contract by or on behalf of the Authority;

Legal and Sustainable

means production and process methods, also referred to as timber production standards, as defined by the document titled “UK Government Timber Production Policy: Definition of legal and sustainable for timber procurement”. The edition current on the day the Contract documents are issued by the Authority shall apply;

Legislation

means in relation to the United Kingdom any Act of Parliament, any subordinate legislation within the meaning of section 21 of the Interpretation Act 1978, any exercise of Royal Prerogative or any enforceable community right within the meaning of Section 2 of the European Communities Act 1972;

Military Level Packaging (MLP)

means Packaging that provides enhanced protection in accordance with Def Stan 81-041 (Part 1), beyond that which Commercial Packaging normally provides for the military supply chain;

Military Packager Approval Scheme (MPAS)

is a MOD sponsored scheme to certify military Packaging designers and register organisations, as capable of producing acceptable Services Packaging Instruction Sheet (SPIS) designs in accordance with Defence Standard (Def Stan) 81-041 (Part 4);

Military Packaging Level (MPL)	shall have the meaning described in Def Stan 81-041 (Part 1);
MPAS Registered Organisation	is a packaging organisation having one or more MPAS Certificated Designers capable of Military Level designs. A company capable of both Military Level and commercial Packaging designs including MOD labelling requirements;
MPAS Certificated Designer	shall mean an experienced Packaging designer trained and certified to MPAS requirements;
NATO	means the North Atlantic Treaty Organisation which is an inter-governmental military alliance based on the North Atlantic Treaty which was signed on 4 April 1949;
Notices	shall mean all Notices, orders, or other forms of communication required to be given in writing under or in connection with the Contract;
Overseas	shall mean non UK or foreign;
Packaging	Verb. The operations involved in the preparation of materiel for; transportation, handling, storage and Delivery to the user; Noun. The materials and components used for the preparation of the Contractor Deliverables for transportation and storage in accordance with the Contract;
Packaging Design Authority (PDA)	shall mean the organisation that is responsible for the original design of the Packaging except where transferred by agreement. The PDA shall be identified in the Contract, DEFFORM 111;
Parties	means the Contractor and the Authority, and Party shall be construed accordingly;
Primary Packaging Quantity(PPQ)	means the quantity of an item of material to be contained in an individual package, which has been selected as being the most suitable for issue(s) to the ultimate user, as described in Def Stan 81-041 (Part 1);
Recycled Timber	means recovered wood that prior to being supplied to the Authority had an end use as a standalone object or as part of a structure.

Recycled Timber covers:

- a. pre-consumer reclaimed wood and wood fibre and industrial by-products;
 - b. post-consumer reclaimed wood and wood fibre, and driftwood;
 - c. reclaimed timber abandoned or confiscated at least ten years previously;
- it excludes sawmill co-products;

Safety Data Sheet

has the meaning as defined in the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH) Regulations 2007 (as amended);

Schedule of Requirements

means Schedule of Requirements, which identifies, either directly or by reference, Contractor Deliverables to be provided, the quantities and dates involved and the price or pricing terms in relation to each Contractor Deliverable;

Short-Rotation Coppice

means a specific management regime whereby the poles of trees are cut every one to two years and which is aimed at producing biomass for energy. It is exempt from the UK Government timber procurement policy. For avoidance of doubt, Short-Rotation Coppice is not conventional coppice, which is subject to the timber policy;

Specification

means the description of the Contractor Deliverables, including any specifications, drawings, samples and / or patterns, referred to in Schedule of Requirements;

STANAG4329

means the publication NATO Standard Bar Code Symbolologies which can be sourced at <https://www.dstan.mod.uk/faqs.html>;

Subcontractor

means any subcontractor engaged by the Contractor or by any other subcontractor of the Contractor at any level of subcontracting to provide Contractor Deliverables wholly or substantially for the purpose of performing (or contributing to the performance of) the whole or any part of this Contract and 'Subcontract' shall be interpreted accordingly;

Transparency Information

means 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;

SCHEDULE OF REQUIREMENTS

Contractors Name and Address:	MINISTRY OF DEFENCE	Contract Number: 701547527
	SCHEDULE OF REQUIREMENTS	
Issued with Tender Ref 701547527	Demonstration, Manufacture and In-Service Support of Ground Base Surveillance Radar (GBSR)	Contract Start Date:

TABLE 1 – Demonstration and Manufacture (D&M) Phase In accordance with Annex A & C to the Contract

Contractor Deliverables – Goods and Services

Item No	Description	Delivery Date / Frequency	Total Qty	Price £GBP(EX VAT) (Total Incl Packaging & Delivery)
1.	<p>Delivery and Acceptance of the first quantity 5 Ground Based Surveillance Radar (GBSR) Systems in accordance with Work Packages (WP) 1 – 6.1 detailed in the D&M SoW at Annex A to the Contract as follows:</p> <ul style="list-style-type: none"> • Project Management in accordance with WP 1.1 – 1.8 • Engineering Safety in accordance with WP 1.9 – 2.2 • Engineering Quality in accordance with WP 2.3 – 2.5 • Engineering Security in accordance with WP 2.6 & 2.7 • Engineering System in accordance with Work Packages 2.8 – 3.9 • Integrated Logistic Support as detailed WP 4 – 4.8 & 5 - 6.1 		5	
2a	Develop and deliver an Initial Familiarisation Operator (IFO) course, to satisfy the Logistics Demonstration, in accordance with the Contractors ISP to support the User Acceptance Trials detailed in WP 3.6 & the Training and Training Equipment WP 4.9 of the D&M SoW at Annex A to the Contract	<p>IFO - Within 10 Business Days of Log Dem</p> <p>TP - Within 40 Business Days of Log Demo</p>		

2b	Provision of an initial Maintainer Training Course in support of the Logistic Demonstration in accordance with the Training and Training Equipment WP 4.9 & WP 5.4 as detailed in D&M SoW at Annex A to the Contract	Within 10 Business Days of Log Dem		
2c	Provision of qty (TBA) Train the Trainer (T3) Courses, including Training Course Materiel in accordance Training and Training equipment WP 4.9 as detailed in D&M SoW at Annex A to the Contract	TBA		
3	Supply of quantity 85 GBSR systems upon completion of Test Readiness Reviews (TRRs) Factory Acceptance Testing (FAT), Live Firing Trial, Support to User Acceptance Trials/Testing, Codification Data, Logistic Demo, as detailed in the TSoR at Annex C to the Contract.		85	
4	Supply of Initial Provisioning List as detailed in D&M WP 4.6 detailed at Annex A & Price list at Annex D to the Contract.	Year 2		Firm Prices detailed at Annex D to the Contract
		Year 3		
5.	Provision of Ad Hoc Tasks in accordance with the tasking process detailed at Condition 9.5, D&M SOW (WP 6.2 – 6.5) - Annex A & Ad Hoc Tasking Form – Annex K to the Contract The Ad Hoc Tasks may include but not limited to the following: i. Meetings ii Training iii. Train the Trainer Course iv. Government Quality Assurance Surveillance	As per the Delivery Schedule detailed in each agreed Ad Hoc Tasking Form		Firm Price Agreed on Ad Hoc Basis in accordance with DEFCON 127 utilising T&S Rates & Labour Rates detailed at Annex D to the Contract

TABLE 2 – In-Service Support (ISS) Phase In accordance with Annex B to the Contract

Contractor Deliverables – Goods and Services

Item No	Description	Delivery Date / Frequency	Total Qty	Firm Price £GBP (EX VAT) (Total Incl Packaging & Delivery)
6.	Provision of In-Service Support (ISS) of GBSR Systems shall be in accordance with Work Packages 1 – 1.3.3 detailed in the ISS SoW Annex B to the Contract <ul style="list-style-type: none"> • Project Management as detailed in the ISS SoW WP 1.1.1 – 1.1.6. • Engineering – Safety & Environmental as detailed in the ISS SoW WP 1.1.7 – 1.2.1 • Engineering Management as detailed in the ISS SoW 1.2.2 - 1.3.3 	Year 1		
		Year 2		
		Year 3		
7.	Supply of Re-Provisioning List in accordance with ISS SoW 1.3.1 - Annex B & Price List at Annex D to the Contract	Year 2	As detailed at Annex D to the Contract	Firm Prices detailed at Annex D to the Contract
		Year 3		
8.	Provision of Ad Hoc Tasks in accordance with the tasking process detailed at Condition 9.5, ISS SOW (WP1.3.4 - 1.3.9.) – Annex B & Tasking Form – Annex K to the Contract. Ad Hoc Tasks may include but are not limited to the following: <ul style="list-style-type: none"> i. Receipt and Inspection of Articles ii. Repair of Articles iii. Return of Repaired Articles iv. Post Design Services v. Operator Training vi. Maintainer Training 	As per the Delivery Schedule detailed in each agreed Ad Hoc Tasking Form		Firm Price Agreed on Ad Hoc Basis in accordance with DEFCON 127 utilising T&S & Labour Rates detailed at Annex D to the Contract

TOTAL FIRM PRICE OF CONTRACT (EX VAT): £

Options to Purchase additional Goods and Services

Item No	Description	Option to be Exercised by (Date)	Delivery Date	Quantity	Firm Price - Each £GBP (EX VAT) (Total Incl Packaging & Delivery)

A	<p>Manufacture and deliver up to an additional 40 GBSR systems, as per the D&M and ISS SoWs at Annexes A, B & C to the Contract and which shall incorporate the following requirements:</p> <ul style="list-style-type: none"> a. Training b. Spares c. ISS <p>Produce a delivery schedule and implement the GBSR Fielding Plan produced and issued by the Authority.</p> <p>Each system shall be shipped with an appropriate certificate of testing conformance in accordance with AQAP 2110 and DEFCON 627.</p> <p>For tax purposes the Pricing Schedule breaks down the elements of systems supplied, training, spares and ISS. This Line Item A constitutes the total value of those four elements.</p>	At Contract award		To be decided at Contract Award	
B	Provision of up to four (4) Training Needs Analysis (TNA) Working Groups throughout the duration of the D&M Phase and delivery of the TNA in accordance with the Training and Training Equipment WP 4.9 as detailed in D&M SoW at Annex A to the Contract	TBC		1	
				2	
				3	
				4	
C	Support up to four (4) Training Steering Groups throughout the D&M Phase in accordance with the Training and Training Equipment WP 4.9 as detailed in D&M SoW at Annex A to the Contract	TBC		1	
				2	
				3	
				4	

OPTION YEAR 1 – In-Service Support

Item No	Description	Option to be Exercised by (Date)	Delivery Date	Qty	Fixed Price – Each £GBP (EX VAT) in accordance with VOFP Condition 10.3
D	In Service Support of GBSR in accordance with SoW detailed Annex B to the Contract	3 months prior to commencement			

		of In-Service Support year 4			
E	Supply of Re-Provisioning List in accordance with ISS SoW 1.3.1 - Annex B & Price List at Annex D to the Contract	3 months prior to commencement of In-Service Support year 4			
F	<p>Provision of Ad Hoc Tasks in accordance with the tasking process detailed at Condition 9.5, ISS SOW (WP1.3.4 - 1.3.9.) – Annex B & Tasking Form – Annex K to the Contract. Ad Hoc Tasks may include but are not limited to the following:</p> <ul style="list-style-type: none"> i. Receipt and Inspection of Articles ii. Repair of Articles iii. Return of Repaired Articles iv. Post Design Services iv. Operator Training vi. Maintainer Training 	3 months prior to commencement of In-Service Support year 4			Fixed Price Agreed on Ad Hoc Basis in accordance with DEFCON 127 utilising T&S Rates & Labour Rates detailed at Annex D to the Contract

OPTION YEAR 2 – In-Service Support

Item No	Description	Option to be Exercised by (Date)	Delivery Date	Qty	Fixed Price - Each £GBP (EX VAT) in accordance with VOFP Condition 10.3
G	In Service Support of GBSR in accordance with SoW detailed Annex B to the Contract	3 months prior to commencement of In-Service Support year 5			
H	Supply of Re-Provisioning List in accordance with ISS SoW 1.3.1 - Annex B & Price List at Annex D to the Contract	3 months prior to commencement of In-Service Support year 4			
I	<p>In Service Support of GBSR in accordance with ISS SoW detailed at Condition 3.5, ISS SoW - Annex B (WP1.3.4 - 1.3.9.), & Tasking Form – Annex K to the Contract. Ad Hoc Tasks may include but are not limited to the following:</p> <ul style="list-style-type: none"> i. Receipt and Inspection of Articles ii. Repair of Articles iii. Return of Repaired Articles iv. Post Design Services v. Operator Training vi. Maintainer Training 	3 months prior to commencement of In-Service Support year 5			Fixed Price Agreed on Ad Hoc Basis in accordance with DEFCON 127 utilising T&S Rates & Labour Rates detailed at Annex D to the Contract

Annex A to Schedule of Requirements – Contractor Deliverable Plans and Reports

<p>The firm prices of the deliverable plans and reports detailed below are included in the Firm Prices Column of SOR Items 1,2, 3 & 6 in Tables 1 & 2 above.</p> <p>The Contractor shall produce and deliver quantity one (1) of the following documentation to the Authority's representative detailed in DEFFORM 11 and in accordance with the GBSR D&M SOW detailed at Annex A and the GBSR ISS SOW detailed at Annex B to the Contract as follows:</p>		
Item No	Description	Delivery and Frequency
A1	Joint Action Log (Annex D&M WP 1.1)	To be presented at PIM
A2	Project Management Plan (PMP) (D&M WP 1.2)	<p>PMP - with any agreed amendments completed 10 business days following the Project Initiation Meeting (PIM)</p> <p>PMP - 5 business days in advance of Test Readiness Review 1 (TRR1)</p>
A3	Quarterly Progress Reports (D&M WP1.3 & ISS WP 1.1.3)	10 business days in advance of each Quarterly Progress Meeting (QPM)
A4	Risk Register (D&M WP 1.5 & ISS WP 1.1.5)	5 business days in advance of the PIM & An up to date version within each QPR to discuss at each QPM
A5	Risk and Opportunity Management Plan (D&M WP1.6 & ISS WP 1.1.6)	5 business days in advance of the PIM
A6	Project Master Schedule (PMS) (D&M WP1.7)	60 business days following the PIM
A7	Earned Value Management (EVM) Data (D&M WP 1.8)	7 business days from the end of each month or at the request of the Authority within 10 days throughout the duration of the Contract
A8	Safety & Environmental Management Plan (SEMP)(D&M WP 1.9 & ISS WP 1.1.8)	10 business days following PIM and with any agreed amendments & annually thereafter
A9	<p>Safety Case (D&M WP 2.1)</p> <p>i. Hazard Assessment</p> <p>ii. Safety Case Report Hazard Log (Interim)</p> <p>iii. Safety Case Report & Hazard Log – Final</p>	<p>i. To be conducted Safety Case and Report and Hazard Log 20 business days in advance of Factory Acceptance Test</p> <p>ii. Interim to be issued 20 business days in advance of the Log Demo</p> <p>iii. 20 business days in advance of the Authority User Acceptance Trials</p>
A10	<p>Environmental Case (D&M WP 2.2)</p> <p>i. Environmental Impact Screening and Scoping Report (EISS), Impact Priority Evaluation & Part-2 ECR</p>	i. 20 business days in advance of TRRI

	ii Environmental risk & impact assessment results	ii 20 business days following the assessment being conducted
A11	Deliverable Quality Plan (D&M WP 2.3)	Issue to the Authority at the PIM QP to be reviewed & updated annually for the duration of the Contract
A12	Software Quality Plan (if applicable) (D&M WP 2.4)	Within 30 business days of Contract award
A13	Quality Management System Certificate (D&M WP 2.5)	Contract Award
A14	Security Management Plan (D&M WP 2.7 & ISS WP 1.2.4)	Issue to Authority at the PIM. Review & reissue to the Authority 30 business days from the D&M Logistic Demonstration & annually thereafter.
A15	Accreditation Document Set (D&M WP 2.7)	Within 15 business days of the final Security Working Group
A16	Cyber Implementation Plan (D&M WP2.7)	Within 20 business days of Contract Award
A17	Technical Solution Document Set (D&M WP2.8)	Within 10 business days in advance of the TRR1
A18	Electromagnetic Compatibility Control Plan (D&M WP2.9)	10 business days in advance of the TRR1
A19	System Architecture Overview, Interface Catalogue & Interface Description Document (D&M WP3.0)	In accordance with the Suppliers Engineering Management Plan (S-EMP)
A20	Suppliers Engineering Management Plan(S-EMP) (D&M WP 3.1)	i. Draft S-EMP within 10 business days of Contract Award ii. Final Version 5 business days in advance of TRR1
A21	System Readiness Review Report (D&M WP 3.2)	10 business days in advance of the System Readiness Review Meeting
A22	TRR1, TRR2, test scripts (D&M WP 3.3)	10 business days in advance of each TRR
A23	FAT Testing Reports (D&M WP 3.4)	Within 10 business days of completion of the FAT
A24	Live Firing Test Reports (D&M WP 3.5)	Within 10 business days of completion of Live Firing Trial

A25	Integrated Support Plan (D&M WP4.0)	Within 40 business days after Contract Award
A26	Supportability Analysis Plan (ISP) (D&M WP4.1)	Within 40 business days after Contract Award
A27	Reliability & Maintainability Plan (D&M WP4.2)	15 business days in advance of FAT
A28	Support and Test Equipment (S&TE) Plan (D&M WP4.3)	Within 10 business days in advance of TRR1 Test Program sets within 10 business days of LSD
A29	Maintenance Plan (D&M WP4.4)	Within 10 business days in advance of TRR1
A30	i. Obsolescence Management Plan (OMP) (D&M WP4.5) & ii. Obsolescence Report (ISS WP 1.2.7)	i. Within 10 business days in advance of TRR1 ii. at 6 monthly intervals throughout the duration of the contract
A31	Supply Support Plan (D&M WP 4.6)	Within 10 business days following the System Capability / Functionality Review
A32	Codification Data (D&M WP4.7)	Within 20 business days following the System Capability / Functionality Review
	Material Deliverable Spreadsheets (WP4.7)	Within 5 business days of FAT
A33	Configuration Management Plan & Change management Strategy (D&M WP 4.8 & ISS WP 1.2.5)	Within 20 business days after Contract Award
A34	Training Plan (D&M WP 4.9)	40 business days in advance of Logistics Demonstration
A35	Technical Document Management Plan (TDMP) (D&M WP5.0)	Within 10 business days in advance of System Capability / Functionality Review
A36	Technical Publications (AESPs) (D&M WP5.1 & ISS WP 1.2.9)	Draft within 3 months prior to Log Demo & final version 15 business days prior to Log Demo
A37	Packaging, Handling, Storage and Transportation (PHS&T) Plan (D&M WP 5.2)	Within 10 business days following the System Capability / Functionality Review
A38	Software Support Plan (D&M WP 5.3 & ISS WP 1.2.8)	Draft SSP before TRR1 & final version within 10 business days following FAT
A39	Log Demo Plan (D&M WP 5.4)	Within 10 business days in advance of System Capability / Functionality Review
A40	Disposal Plan (D&M WP 5.5 & ISS WP 1.3.2)	Issue Draft Plan at System Capability / Functionality Review & Final Plan within 30 business days following FAT

A41	Logistics Information Management (LIM) Plan (D&M WP5.6)	Draft within 40 business days after Contract Award & Final version within 40 business days following Authority's Approval of LIM Plan
A42	Exit Management Plan (D&M WP 5.8)	Within 12 months of Contract Award
A43	Human Factors Integration Evidence Pack (D&M WP5.9)	Within 10 business days in advance of System Capability / Functionality Review
A44	Government Furnished Assets (GFA) Plan (D&M WP 6)	Issue to Authority at the PIM
A45	Contractors Service Delivery Plan (SDP WP 1.1.1)	30 business days in advance of Logistics Demonstration

1. GENERAL CONDITIONS

1.1. The defined terms in the Contract shall be as set out in the Contract Terms and Conditions and its associated Annexes.

1.2. The Contractor shall comply with all applicable Legislation, whether specifically referenced in this Contract or not.

1.3. The Contractor warrants and represents, that:

- 1.3.1. it has the full capacity and authority to enter into, and to exercise its rights and perform its obligations under the Contract;
- 1.3.2. from the Effective Date of Contract and for so long as the Contract remains in force it shall give the Authority Notice of any litigation, arbitration (unless expressly prohibited from doing so in accordance with the terms of the arbitration), administrative or adjudication or mediation proceedings before any court, tribunal, arbitrator, administrator or adjudicator or mediator or relevant authority against itself or a Subcontractor which would adversely affect the Contractor's ability to perform its obligations under the Contract;
- 1.3.3. as at the Effective Date of Contract no proceedings or other steps have been taken and not discharged (nor, to the best of the knowledge of the Contractor, threatened) for its winding-up or dissolution or for the appointment of a receiver, administrative receiver, administrator, liquidator, trustee or similar officer in relation to any of its assets or revenues;
- 1.3.4. for so long as the Contract remains in force it shall give the Authority Notice of any proceedings or other steps that have been taken but not discharged (nor to the best of the knowledge of the Contractor, threatened) for its winding-up or dissolution or for the appointment of a receiver, administrator, liquidator, trustee or similar officer in relation to any of its assets or revenues.

1.4. Unless the context otherwise requires:

- 1.4.1. the singular includes the plural and vice versa, and the masculine includes the feminine and vice versa;
- 1.4.2. the words "include", "includes", "including" and "included" are to be construed as if they were immediately followed by the words "without limitation", except where explicitly stated otherwise;
- 1.4.3. the expression "person" means any individual, firm, body corporate, unincorporated association or partnership, government, state or agency of a state or joint venture.

1.5 References to any statute, enactment, order, regulation, or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation, or instrument as amended, supplemented, replaced or consolidated by any subsequent statute, enactment, order, regulation, or instrument.

1.6. The heading to any Contract provision shall not affect the interpretation of that provision.

1.7 Any decision, act or thing which the Authority is required or authorised to take or do under the Contract may be taken or done only by the person (or their nominated deputy) authorised in DEFFORM 111 to take or do that decision, act, or thing on behalf of the Authority.

1.7.1. unless excluded within the Conditions of the Contract or required by law, references to submission of documents in writing shall include electronic submission.

2. DURATION OF CONTRACT

2.1 This Contract comes into effect on the Effective Date of Contract and will expire automatically on the (to be agreed) unless it is otherwise terminated in accordance with the provisions of the Contract, or otherwise lawfully terminated.

3. ENTIRE AGREEMENT

3.1. This Contract constitutes the entire agreement between the Parties relating to the subject matter of the Contract. The Contract supersedes, and neither Party has relied upon, any prior negotiations, representations and undertakings, whether written or oral, except that this Condition shall not exclude liability in respect of any fraudulent misrepresentation.

4. GOVERNING LAW

4.1. Subject to Condition 4.4, the Contract shall be considered as a contract made in England and subject to English Law.

4.2. Subject to Condition 4.4 and DEFCON 530 and without prejudice to the dispute resolution process set out therein, each Party submits and agrees to the exclusive jurisdiction of the Courts of England to resolve, and the laws of England to govern, any actions proceedings, controversy or claim of whatever nature arising out of or relating to the Contract or breach thereof.

4.3. Subject to Condition 4.4 any dispute arising out of or in connection with the Contract shall be determined within the English jurisdiction and to the exclusion of all other jurisdictions save that other jurisdictions may apply solely for the purpose of giving effect to this Condition 4 and for the enforcement of any judgment, order or award given under English jurisdiction.

4.4. If the Parties agree pursuant to the Contract that Scots Law should apply, then the following amendments shall apply to the Contract:

4.4.1. Condition 4.1, 4.2 and 4.3 shall be amended to read:

4.4.2. The Contract shall be considered as a contract made in Scotland and subject to Scots Law.

- 4.4.3. Subject to DEFCON 530 and without prejudice to the dispute resolution process set out therein, each Party submits and agrees to the exclusive jurisdiction of the Courts of Scotland to resolve, and the laws of Scotland to govern, any actions, proceedings, controversy or claim of whatever nature arising out of or relating to the Contract or breach thereof.
- 4.4.4. Any dispute arising out of or in connection with the Contract shall be determined within the Scottish jurisdiction and to the exclusion of all other jurisdictions save that other jurisdictions may apply solely for the purpose of giving effect to this Condition 4 and for the enforcement of any judgment, order or award given under Scottish jurisdiction.”

4.5. For the purposes of any dispute resolution:

- 4.5.1. Each Party warrants to each other that entry into the Contract does not, and the performance of the Contract will not, in any way violate or conflict with any provision of law, statute, rule, regulation, judgement, writ, injunction, decree or order applicable to it. Each Party also warrants that the Contract does not conflict with or result in a breach or termination of any provision of, or constitute a default under, any mortgage, contract or other liability, charge or encumbrance upon any of its properties or other assets.
- 4.5.2. Each Party agrees with each other Party that the provisions of this Condition 4 shall survive any termination of the Contract for any reason whatsoever and shall remain fully enforceable as between the Parties notwithstanding such a termination.
- 4.5.3. Where the Contractor's place of business is not in England or Wales (or Scotland where the Parties agree pursuant to this Contract that Scots Law should apply), the Contractor irrevocably appoints the solicitors or other persons in England and Wales (or Scotland where the Parties agree pursuant to the Contract that Scots Law should apply) detailed in this Condition 4 as its agents to accept on its behalf service of all process and other documents of whatever description to be served on the Contractor in connection with any litigation or arbitration within the English jurisdiction (or Scottish jurisdiction where the Parties agree pursuant to this Contract that Scots Law should apply) arising out of or relating to the Contract or any issue connected there with.

5. PRECEDENCE

5.1. If there is any inconsistency between the different provisions of the Contract the inconsistency shall be resolved according to the following descending order of precedence:

- 5.1.1. Conditions 1 – 26 of the Conditions of the Contract shall be given equal precedence with Definitions of Contract;
- 5.1.2. **Schedule of Requirements;**
- 5.1.3. the remaining Annexes, and;

5.1.4. any other documents expressly referred to in the Contract.

5.2. If either Party becomes aware of any inconsistency within or between the documents referred to in Condition 5.1 such Party shall notify the other Party forthwith and the Parties will seek to resolve that inconsistency on the basis of the order of precedence set out in Condition 5.1. Where the Parties fail to reach agreement, and if either Party considers the inconsistency to be material to its rights and obligations under the Contract, then the matter will be referred to the dispute resolution procedure in accordance with DEFCON 530.

6. AMENDMENTS TO CONTRACT

6.1. Except as provided in Condition 25 all amendments to this Contract shall be serially numbered, in writing, issued only by the Authority's Representative (Commercial), and agreed by both Parties.

6.2. Where the Authority or the Contractor wishes to introduce a change which is not minor or which is likely to involve a change to the Contract Price, the provisions of Condition 7 (Contract Change Control Procedure) shall apply. The Contractor shall not carry out any work until any necessary change to the Contract Price has been agreed and a written amendment in accordance with Condition 6.1 above has been issued.

7. CONTRACT CHANGE CONTROL PROCEDURE (i.a.w. Condition 6.2)

7.1. Authority changes

7.1.1. Subject always to Condition 6 (Amendments to Contract), the Authority shall be entitled, acting reasonably, to require changes to the Contractor Deliverables (a "Change") in accordance with this Condition 7.

7.2. Notice of change

7.2.1. If the Authority requires a Change, it shall serve a Notice (an "Authority Notice of Change") on the Contractor.

7.2.3. The Authority Notice of Change shall set out the change required to the Contractor Deliverables in sufficient detail to enable the Contractor to provide a written proposal (a "Contractor Change Proposal") in accordance with Condition 7.3 below.

7.3. Contractor Change Proposal

7.3.1. As soon as practicable, and in any event within fifteen (15) Business Days (or such other period as the Parties may agree) after having received the Authority Notice of Change, the Contractor shall deliver to the Authority a Contractor Change Proposal.

7.3.2. The Contractor Change Proposal shall include:

7.3.2.1. the effect of the Change on the Contractor's obligations under the Contract;

7.3.2.2. a detailed breakdown of any costs which result from the Change;

7.3.2.3. the programme for implementing the Change;

7.3.2.4. any amendment required to this Contract as a result of the Change, including, where appropriate, to the Contract Price; and

7.3.2.5. such other information as the Authority may reasonably require.

7.3.3. The price for any Change shall be based on the prices (including all rates) already agreed for the Contract and shall include, without double recovery, only such charges that are fairly and properly attributable to the Change.

7.4. Contractor Change Proposal – Process and Implementation

7.4.1. As soon as practicable after the Authority receives a Contractor Change Proposal, the Authority shall:

7.4.1.1. evaluate the Contractor Change Proposal;

7.4.1.2. where necessary, discuss with the Contractor any issues arising and following such discussions the Authority may modify the Authority Notice of Change and the Contractor shall as soon as practicable, and in any event not more than ten (10) Business Days (or such other period as the Parties may agree) after receipt of such modification, submit an amended Contractor Change Proposal.

7.4.1.3. as soon as practicable after the Authority has evaluated the Contractor Change Proposal (amended as necessary) the Authority shall:

7.4.1.4. indicate its acceptance of the Change Proposal by issuing an amendment to the Contract in accordance with Condition 6 (Amendments to Contract); or

7.4.1.5. serve a Notice on the Contractor rejecting the Contractor Change Proposal and withdrawing (where issued) the Authority Notice of Change.

7.4.2. If the Authority rejects the Change Proposal, it shall not be obliged to give its reasons for such rejection.

7.4.3. The Authority shall not be liable to the Contractor for any additional work undertaken or expense incurred unless a Contractor Change Proposal has been accepted in accordance with Condition (7.4.1) above.

7.5. Contractor changes

7.5.1. If the Contractor wishes to propose a Change, it shall serve a Contractor Change Proposal on the Authority, which shall include all of the information required by Condition 7.3 above, and the process at Condition 7.4 above shall apply.

8. PUBLICITY AND COMMUNICATIONS WITH THE MEDIA

8.1. The Contractor shall not and shall ensure that any employee or Subcontractor shall not communicate with representatives of the press, television, radio or other media on any matter concerning the Contract unless the Authority has given its prior written consent.

9. PROJECT SPECIFIC DEFCONS THAT APPLY TO THIS CONTRACT

DEFCON 068 (Edn. 05/21) - Supply of Data for Hazardous Articles, Materials and Substances

DEFCON 082 (Edn. 06/21) - Special Procedure For Initial Spares

DEFCON 117 (Edn. 07/21) - Supply Of Information For NATO Codification And Defence Inventory Introduction

DEFCON 129 ((Edn. 07/21) - Packaging (For Articles Other Than Munitions)

DEFCON 514 (Edn. 08/15) - Material Breach

DEFCON 524A (Edn. 02/20) – Counterfeit Materiel

DEFCON 530 (Edn.12/14) - Dispute Resolution (English Law)

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

DEFCON 602A (Edn 12/17) Deliverable Quality Plan

DEFCON 608 (Edn. 07/21) - Access and Facilities to be Provided by the Contractor

DEFCON 624 (Edn. 11/13) - Use of Asbestos

DEFCON 644 (Edn. 07/18) - Marking of Articles

DEFCON 656B (Edn.08/16) - Termination for Convenience - £5M and over

9.1. Specifications

9.1.1. The Contractor shall provide the Contractor Deliverables in accordance with the Technical Statement of Requirement at Annex C, the D&M Statement of Work at Annex A and the ISS Statement of Work at Annex B, good industry practice, all necessary consents, legislation and British standards that are appropriate to the provision of the Contractor Deliverables.

9.2. Quality Assurance Requirements

9.2.2. The following quality assurance requirements shall apply to the Contract:

AQAP 2070

NATO Mutual Government Quality Assurance (GQA)
Edition B Version 4

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AQAP 2105

NATO Requirements for Deliverable Quality Plans
Edition C Version 1

AQAP 2110

NATO Quality Assurance Requirements for Design, Development and Production.
Edition D Version 1

AQAP 2210

NATO Supplementary Software Quality Assurance Requirements to AQAP 2110 and
AQAP 2310
Edition A Version 2

DEFSTAN 05-061 Pt 1

Quality Assurance Procedural Requirements - Concessions
Issue 6

DEFSTAN 05-061 Pt 4

Quality Assurance Procedural Requirements - Contractor Working Parties
Issue 3

DEFSTAN 05-061 Pt 9

Quality Assurance Procedural Requirements - Independent Inspection Requirements
for Safety Critical Items
Issue 5

DEFSTAN 05-135

Avoidance of Counterfeit materiel
Issue 2

9.3. Supply of contractor deliverables and quality assurance

9.3.1 The Contractor shall provide the Contractor Deliverables to the Authority, in accordance with the Schedule of Requirements and the D&M SOW at Annex A, ISS SOW at Annex B and the TSOR at Annex C, and shall allocate sufficient resource to the provision of the Contractor Deliverables to enable it to comply with this obligation.

9.3.2. The Contractor shall:

9.3.2.1. comply with any applicable quality assurance requirements specified in Condition 9.2 above in providing the Contractor Deliverables; and

9.3.2.2. discharge its obligations under the Contract with all due skill, care, diligence and operating practice by appropriately experienced, qualified and trained personnel.

9.3.3. The Contractor shall:

9.3.3.1. observe, and ensure that the Contractor's Team observe, all health and safety rules and regulations and any other security requirements that apply at any of the Authority's premises.

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- 9.3.3.2. notify the Authority as soon as it becomes aware of any health and safety hazards or issues which arise in relation to the Contractor Deliverables; and
- 9.3.3.3. before the date on which the Contractor Deliverables are to start, obtain, and at all times maintain, all necessary licences and consents in relation to the Contractor Deliverables.

9.4. Safety and Environmental Management

9.4.1. Safety and Environmental Management shall be conducted in accordance with Defence Standard 00-056 and Defence Standard 00-051, as tailored to the Contract by the agreed Safety and Environmental Management Plan and in accordance with Annex A (D&M SOW) WP to the Contract.

9.4.2. The Contractor shall provide access to records and shall secure access to sub-contractor records in sub-contracts, for contract purposes, to enable the Authority-appointed Independent Safety Advisor (ISA) to carry out safety audits and other assessment activities to meet the Authority's safety and environmental requirements.

9.4.3. The Contractor shall manage Safety in accordance with its Safety and Environmental Management Plan once formally accepted by the Authority.

9.5. Task Authorisation Form (TAF) Process

9.5.1. All tasks shall be initiated and defined using a Task Authorisation Form (TAF) at Annex K to the Contract. Following formal agreement of the task the TAF shall be added to the TAF Register at Annex L to the Contract at the next suitable Amendment.

9.5.2. Tasks may be proposed by the Contractor or the Authority. All tasks shall use a uniquely numbered serial number following a similar format listed at Annex L e.g. a sequential number allocated by the Authority. The Contractor may allocate additional references numbers for the convenience of their own internal systems.

9.5.3. The Contractor shall, upon receipt of a TAF Part 1, submit a Firm Price quotation at TAF Part 2, valid for acceptance by the Authority for at least 30 working days. This quotation will be signed and submitted in soft copy (MS Office/PDF format) and be capable of being easily printed. An acceptance process shall be agreed by both parties for each TAF. The TAF Part 2 quotation shall include:

- 9.5.3.1. a full cost breakdown including direct labour hours, materials, expenses, T&S, sub-contract elements, identifying the applicable labour rates at Annex D to the Contract;
- 9.5.3.2. an overall timescale/completion date, detailing dates of all deliverables required/proposed to be supplied which shall remain achievable during the validity of the quotation. Tasks are to be supported by a project schedule where appropriate; and Contract;

- 9.5.3.3. a compliance matrix showing the extent of the Contractor's compliance with the requirements detailed at Part 1 or a suitable statement confirming full compliance;
- 9.5.3.4. proposed packaging specifications, if appropriate;
- 9.5.3.5. any applicable assumptions, dependencies or exclusions and;
- 9.5.3.6. details of any requirements for GFA detailing description of item, quantity required, start and finish dates required to be provided, location required, type of loan required, and any other information necessary to fully define the required dependency;
- 9.5.3.7. a statement about any IPR or export restrictions applying to any deliverables, and;
- 9.5.3.8. a statement confirming compliance with any new or existing terms and Conditions of the Contract or identifying any proposed changes for the Authority's consideration.

9.5.4. On receipt of a completed TAF Part 2, the Authority shall review the proposal and issue a TAF Part 3, signed at sections 3, 4, 5 and 6 following any clarification or negotiations.

9.5.5. As an authorisation of the work detailed under the TAF Part 2 to proceed, to be followed up by an Amendment to Contract in accordance with Condition 6 to add a summary of the task to the list detailed at Annex L to the Contract;

- 9.5.5.1. or to reject the task and either request a revised time/cost quotation or a new time/cost quotation or order no further action; or
- 9.5.5.2. to order no further action; or
- 9.5.5.3. the Contractor shall not undertake work on a proposed task until the labour rates quoted have been verified by the Authority's representative to be in accordance with the labour rates at Annex D to the Contract and the task has been verified by the Authority at Sections 3, 4, 5 and 6 of the TAF. The Contractor shall, on completion of the Task, complete and return the TAF Section 4 to the Authority.

9.5.6. In certain circumstances, it may be necessary to terminate or postpone any work previously authorised and negotiate an appropriate cancellation or change to the TAF to be implemented by an Amendment to Contract in accordance with Condition 6.

9.5.7. Milestone Payments – Exceptionally, where a task is of a high value (over £250K) and/or long duration (over 9 months) the Authority may consider the inclusion of a Milestone Payment Plan against a specific task. The Contractor shall submit any proposed Milestone Payment Plan with the Firm Price quotation on the TAF Section 2 for the Authority's agreement, providing a description, success criteria, and value in percentage terms and dates of each proposed Key Milestone.

9.5.8. The Contractor shall update the TAF Register with all TAFs authorised under Table 1 –

Demonstration and Manufacture Phase - Line Item 5 and Table 2 – In-Service Support Phase - Line Item 8 of the **Schedule of Requirements** to the Contract, at quarterly intervals. The Authority will issue a Contract Amendment yearly, consolidating TAFs in Annex L.

9.6. Obsolescence management

9.6.1 The Contractor shall be responsible for managing obsolescence over the entire period of the contract and, notwithstanding any Obsolescence Risks and Issues or problems; the Contractor remains responsible for meeting all performance and other requirements of this contract.

9.6.2 The Contractor shall implement a proactive Obsolescence Management strategy in accordance with IEC 62402:2019 Obsolescence management This shall include as a minimum: - the ongoing identification and review of Obsolescence Risks and Obsolescence Issues over [period to be defined]; - the identification of mitigation action for Obsolescence Risks over [period to be defined]; - the identification of resolution action for Obsolescence Issues. This strategy shall include, but is not limited to, obsolescence of components, assemblies, sub-assemblies, piece parts, and material (hereafter referred to for purposes of this section only as "parts and / or material").

9.6.3 The Contractor shall liaise with the Authority to ensure Obsolescence Management plans and mitigation / resolution of Obsolescence Risks and Obsolescence Issues are appropriately aligned with the Authority's Future Capability Upgrade Programme.

9.6.4 Any configuration changes due to obsolescence shall be approved in accordance with the Configuration Management process defined in this contract.

9.6.5 The Contractor shall provide the Authority with obsolescence status briefs, to the agreed periodicity as part of the periodic programme reviews.

10. PRICE

10.1. Table 1 – Demonstration and Manufacture (D&M) Phase In accordance with Annex A to the Contract

10.1.2. Schedule of Requirements (SOR) Line Item 1:

10.1.2.1. The prices set out at ANNEX D – Pricing Schedule, for SOR Line Item 1 shall be Firm (not subject to variation of any kind) for Contract Year 1.

10.1.3. Schedule of Requirements (SOR) Line Item 2a-2d:

10.1.3.1. The prices set out at ANNEX D – Pricing Schedule, for SOR Line Item 2a-2d shall be Firm (not subject to variation of any kind) for Contract Year1.

10.1.4. Schedule of Requirements (SOR) Line Item 3:

10.1.4.1. The prices set out at ANNEX D – Pricing Schedule, for SOR Line Item 3 shall be Firm (not subject to variation of any kind) for Contract Year 1.

10.1.5. Schedule of Requirements (SOR) Line Item 4:

10.1.5.1. The prices set out at ANNEX D - Pricing, for SOR Line Item 4 shall be Firm (not subject to variation of any kind) for Contract Year 1.

10.1.6 Schedule of Requirements (SOR) Line Item 5:

10.1.6.1. The prices set out at ANNEX D - Pricing, for SOR Line Item 5 shall be Firm (not subject to variation of any kind) for Contract Years 1-4 and for Option Years 5-6.

10.2. Table 2: in-service support

10.2.1. Schedule of Requirements (SOR) Line Item 6:

10.2.1.1. The prices set out at ANNEX D - Pricing, for SOR Line Item 6 shall be Firm (not subject to variation of any kind) for Contract Years 1-3.

10.2.1.2. The prices set out in ANNEX D – Pricing **Schedule**, for SOR Line Item 6 for Contract Year 4 and for Option Years 5 - 6 shall be Fixed **price and calculated** subject to Variation of Price using the Variation of Price Indices detailed at **condition 10.4 below**.

10.2.2. Schedule of Requirements (SOR) Line Item 7:

10.2.2.1. The prices set out at ANNEX D- Pricing Schedule, for SOR Line Item 7 shall be Firm (not subject to variation of any kind) for Contract Years 2-3.

10.2.2.2. The prices set out in ANNEX D – Pricing Schedule, for SOR Line Item 7 for Contract Year 4 and for Option Years 5 - 6 shall be Fixed price and calculated subject to Variation of Price using the Variation of Price Indices detailed at condition 10.4 below.

10.3 – Not used

10.4. Variation of Fixed Prices

10.4.1. The prices for Option years 5-6 are Fixed Prices which shall be varied using the following variation of price Indices:

Item	VOP Indices
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SOR Line Item 7	K386 - Fabricated metal products, except machinery and equipment
SOR Line Item 6	K8ZU - Top Level Service Producer Price Index (SPPI)
SOR Line Item 8	K8ZU - Top Level Service Producer Price Index (SPPI)

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

Where:

V represents the variation of price.

P represents the fixed price at base date Conditions.

O represents the index K386 or K8ZU

O₀ represents the 12-month average value of the index for the base date period.

O_i represents the 12-month average value of the index for the payment date period.

a represents the Non- Variable Element (NVE) which shall be 0.1 (10%).

b represents the Variable Element which shall be 0.9 (90%).

a+b=1

10.4.1.2. For the purposes of this Contract a variation modifier can be derived by completing the operation (O_i/O₀). This variation modifier shall then be applied to Activity 2 and 3 Firm Price each (the first repair delivery) in ANNEX D hereto to calculate prices for Years 4 to 5 of the Contract.

10.4.1.3. The Index referred to in Condition 10.4.1 above shall be taken from the following Table: Output Producer Price Indices - K386 for Line Item 7 and K8ZU for Line Item 6

10.4.1.3. For the purposes of this Contract a variation modifier can be derived by completing the operation (O_i/O₀). This variation modifier shall then be applied to each Year 1 Firm Price in ANNEX D hereto to calculate prices for Years 3 to 4 of the Contract.

10.4.1.4. Indices published with a 'B' or 'F' marker, or a suppressed value, in the last 3 years are not valid for Variation of Price Conditions and shall not be used. Where the price index has an 'F' marker or suppression applied to it during the Term of the Contract, the Authority and the Contractor shall agree an appropriate replacement index or indices. The replacement index or indices shall cover, to the maximum extent possible, the same economic activities as the original index or indices.

10.4.1.5. In the event that any material changes are made to the indices (e.g. a revised statistical base date) during the period of the Contract and before final adjustment of the final Contract price, then the re-basing methodology outlined by the Office for National Statistics (ONS, the series providers) to match the original index to the new series shall be applied.

10.4.1.6. In the event the agreed index or indices cease to be published (e.g. because of a change in the Standard Industrial Classification) the Authority and the Contractor shall agree an appropriate replacement index or indices, which shall cover to the maximum extent possible

the same economic activities as the original index or indices. The methodology outlined by the Office for National Statistics used for rebasing indices shall then be applied.

10.4.1.7. Notwithstanding the above, any extant index / indices agreed in the Contract shall continue to be used as long as it is / they are available and subject to ONS revisions policy. Payments calculated using the extant index / indices during its / their currency shall not be amended retrospectively as a result of any change to the index or indices.

10.4.1.8. The Contractor shall notify the Authority of any significant changes in the purchasing / manufacturing plan on the basis of which these provisions were drawn up and agreed, or of any other factor having a material bearing on the operation of these provisions such as to cause a significant divergence from their intended purpose, in order that both Parties may consider whether any change in this provision would be appropriate.

10.4.1.9. Prices shall be adjusted taking into account the effect of the above formula as soon as possible after publication of the relevant indices or at a later date if so agreed between the Authority and the Contractor. Where an index value is subsequently amended, the Authority and the Contractor shall agree a fair and reasonable adjustment to the price, as necessary.

10.5. Exercise of options

10.5.1 The Authority shall have the right to exercise the options by the specified dates or within such further period as corresponds to the aggregate of any period(s):

10.5.2 of delay in the delivery programme whether constituting any breach of the Contract, or

10.5.3 for the duration of which the Authority is prevented from exercising any such option due to any other breach of the Contract by the Contractor.

10.5.4 The Authority shall not be obliged to exercise the options.

11. IMPORT AND EXPORT LICENCES

11.1. If, in the performance of the Contract, the Contractor needs to import into the UK or export out of the UK anything not supplied by or on behalf of the Authority and for which a UK import or export licence is required, the responsibility for applying for the licence shall rest with the Contractor.

11.2 The Authority shall provide the Contractor with sufficient information, certification, documentation and other reasonable assistance in obtaining any necessary UK import or export licence.

11.3. When an export licence or import licence or authorisation either singularly or in combination is required from a foreign government for the performance of the Contract, the Contractor shall as soon as reasonably practicable consult with the Authority on the licence requirements. Where the Contractor is the applicant for the licence or authorisation the Contractor shall:

11.3.1. ensure that when end use or end user restrictions, or both, apply to all or part of any Contractor Deliverable (which for the purposes of this Condition shall also include information, technical data and software), the Contractor, unless otherwise agreed with the Authority, shall identify in the application:

11.3.1.1. the end user as: Her Britannic Majesty's Government of the United Kingdom of Great Britain and Northern Ireland (hereinafter "HM Government"); and

11.3.1.2. the end use as: For the Purposes of HM Government; and

11.3.1.3. include in the submission for the licence or authorisation a statement that "information on the status of processing this application may be shared with the Ministry of Defence of the United Kingdom".

11.4. If the Contractor or any subcontractor in the performance of the Contract needs to export materiel not previously supplied by or on behalf of the Authority for which an export licence or import licence or authorisation from a foreign government is required, the responsibility for instituting expeditious action to apply for and obtain the licence shall rest with the Contractor or that subcontractor. For the purposes of this Condition materiel shall mean information, technical data and items, including Contractor Deliverables, components of Contractor Deliverables and software.

11.4.1. Where the Contract performance requires the export of materiel for which a foreign export licence or import licence or authorisation is required, the Contractor shall include the dependencies for the export licence or import licence or authorisation application, grant and maintenance in the Contract risk register and in the risk management plan for the Contract, with appropriate review points. Where there is no requirement under the Contract for a risk management plan the Contractor shall submit this information to the Authority's representative.

11.5. During the term of the Contract and for a period of up to 2 years from completion of the Contract, the Authority may make a written request to the Contractor to seek a variation to the Conditions to a foreign export licence or import licence or authorisation to enable the Authority to re-export or re-transfer a licensed or authorised item or licensed or authorised information from the UK to a non-licensed or unauthorised third party. If the Authority makes such a request it will consult with the Contractor before making a determination of whether the Authority or the Contractor is best placed in all the circumstance to make the request. Where, subsequent to such consultation the Authority notifies the Contractor that the Contractor is best placed to make such request:

11.5.1. the Contractor shall, or procure that the Contractor's subcontractor shall, expeditiously consider whether or not there is any reason why it should object to making the request and, where it has no objection, file an application to seek a variation of the applicable export licence or import licence or authorisation in accordance with the procedures of the licensing authority. Where the contractor has an objection, the Parties shall meet within five (5) working days to resolve the issue

and should they fail the matter shall be escalated to an appropriate level within both Parties' organisations, to include their respective export licensing subject matter experts; and

11.5.2. the Authority shall provide sufficient information, certification, documentation and other reasonable assistance as may be necessary to support the application for the requested variation.

11.6. Where the Authority determines that it is best placed to make such request the Contractor shall provide sufficient information, certification, documentation and other reasonable assistance as may be necessary to support the Authority to make the application for the requested variation.

11.7. Where the Authority invokes Condition 11.5 or 11.6 the Authority will pay the Contractor a fair and reasonable charge for this service based on the cost of providing it.

11.8. Where the Contractor subcontracts work under the Contract, which is likely to be subject to foreign export control, import control or both the Contractor shall use reasonable endeavours to incorporate in each subcontract equivalent obligations to those set out in this Condition. Where it is not possible to include equivalent terms to those set out in this Condition, the Contractor shall report that fact and the circumstances to the Authority.

11.9. Without prejudice to HM Government's position on the validity of any claim by a foreign government to extra-territoriality, the Authority shall provide the Contractor with sufficient information, certification, documentation and other reasonable assistance to facilitate the granting of export licences or import licences or authorisations by a foreign Government in respect of the performance of the Contract.

11.9.1. The Authority shall provide such assistance as the Contractor may reasonably require in obtaining any UK export licences necessary for the performance of the Contract.

11.9.2. The Contractor shall use reasonable endeavours to identify whether any Contractor Deliverable is subject to:

11.9.3. a non-UK export licence, authorisation or exemption; or

11.9.4. any other related transfer or export control, that imposes or will impose end use, end user or re-transfer or re-export restrictions, or restrictions on disclosure to individuals based upon their nationality. This does not include the Intellectual Property-specific restrictions of the type referred to in Condition 12.2 (Third Party Intellectual Property – Rights and Restrictions).

11.10. If at any time during the term of the Contract the Contractor becomes aware that all or any part of the Contractor Deliverables are subject to Condition 11.9.2, it shall notify the Authority of this as soon as reasonably practicable by providing details in the DEFFORM 528 or other mutually agreed alternative format. Such notification shall be

no later than thirty (30) days of knowledge of any affected Contractor Deliverable and in any event such notification shall be not less than thirty (30) days prior to delivery of the Contractor Deliverables.

11.11. If the information to be provided under Condition 11 has been provided previously to the Authority by the Contractor under the Contract, the Contractor may satisfy these requirements by giving details of the previous notification and confirming they remain valid and satisfy the provisions of Condition 11.

11.12. During the term of the Contract, the Contractor shall notify the Authority as soon as reasonably practicable of any changes in the information notified previously under Conditions 11.10 or 11.11 of which it becomes or is aware that would affect the Authority's ability to use, disclose, re-transfer or re-export an item or part of it as is referred to in those Conditions by issuing an updated DEFFORM 528 to the Authority.

11.13. For a period of up to 2 years from completion of the Contract and in response to a specific request by the Authority, the Contractor shall notify the Authority as soon as reasonably practicable of any changes in the information notified previously under Condition 11.10 or 11.11 of which it becomes aware that would affect the Authority's ability to use, disclose, re-transfer or reexport an item or part of it as is referred to in those Conditions by issuing an updated DEFFORM 528 to the Authority.

11.14. Where following receipt of materiel from a subcontractor or any of its other suppliers restrictions are notified to the Contractor by that subcontractor, 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 30 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 30 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.

11.15. If the restrictions prevent the Contractor from performing its obligations under the Contract and have not been removed, modified or otherwise satisfactorily managed within a reasonable time, the Authority may at its absolute discretion elect to amend the contract in accordance with Condition 6 or 7 or as otherwise may be provided by the Contract, or to terminate the Contract. Except as set out in this Condition 11.16, in the event of termination in these circumstances termination shall be on fair and reasonable terms having regard to all the circumstances including payments already made and that would otherwise be due under the Contract, costs incurred by the Contractor and benefits received by the Authority. The Parties, acting in good faith, will use all reasonable endeavours to agree such fair and reasonable terms failing which either Party may refer the matter to dispute resolution in accordance with the provisions in the Contract.

11.16. In the event that the restrictions notified to the Authority pursuant to Condition 11.10 were known or ought reasonably have been known by the Contractor (but were not disclosed) at contract award or if restrictions notified to the Authority pursuant to Conditions 11.12 or 11.14 were known or ought reasonably to have been known by the Contractor at

the date of submission of the most recent DEFFORM 528 submitted to the Authority in accordance with Condition 11.10, termination under Condition 11.18 will be in accordance with Condition 16.3 (Material Breach) and the provisions of Condition 11.19 will not apply.

11.17, The Authority shall use reasonable endeavours to identify any export control restrictions applying to materiel to be provided to the Contractor as Government Furnished Assets (GFA). Where the Authority is to provide materiel necessary to enable the Contractor to perform the Contract or in respect of which the Services are to be provided, and that materiel is subject to a non-UK export licence, authorisation, exemption or other related transfer or export control as described in the provisions of Condition 11.9.2, the Authority shall provide a completed DEFFORM 528 or will provide a new or updated DEFFORM 528 to the Contractor within thirty (30) days of the date of knowledge and in any case not later than thirty (30) days prior to the delivery of such materiel to the Contractor.

11.18. In the event that the Authority becomes aware that the DEFFORM 528 disclosure was incomplete or inaccurate or in the event additional such materiel is identified then the Authority shall provide, as soon as reasonably practicable a new or revised DEFFORM 528. In the event that the Authority becomes aware that a prior disclosure included in DEFFORM 528 submitted to the Contractor was incomplete or inaccurate less than thirty (30) days prior to the delivery to the Contractor of any material to which the updated or new disclosure relates, the Parties will meet as soon as reasonably practicable to discuss how to mitigate the impact of the incomplete or inaccurate disclosure.

11.18.1 Where restrictions are advised by the Authority to the Contractor in a DEFFORM 528 provided pursuant to Conditions 11.17 or 11.18 or both; or

11.18.2. any of the information provided by the Authority in any DEFFORM 528 proves to be incorrect or inaccurate;

11.18.3. the Authority and the Contractor shall act promptly to mitigate the impact of such restrictions or incorrect or inaccurate information. Such mitigation shall include, where appropriate, mutually supported attempts to obtain removal or modification to the restrictions or to obtain appropriate authorisations from the relevant foreign government. If the restrictions or incorrect or inaccurate information adversely affect the ability of the Contractor to perform its obligations under the Contract, the matter shall be handled under the terms of Condition 6 (Amendments to Contract) or as may otherwise be provided by the Contract as appropriate and if no alternative solution satisfies the essential terms of the Contract and the restrictions have not been removed, modified or otherwise satisfactorily managed within a reasonable time the Authority may terminate the Contract. Termination under these circumstances will be under the terms of DEFCON 565b and as referenced in the Contract.

11.19 Pending agreement of any amendment of the Contract as set out in Condition 11.15 or 11.18.3, provided the Contractor takes such steps as are reasonable to mitigate the impact, the Contractor shall be relieved from its obligations to perform those elements of the Contract directly affected by the restrictions or provision of incorrect or incomplete information.

12. INTELLECTUAL PROPERTY RIGHTS

DEFCON 014 (Edn. 06/21) - Inventions and Designs Crown Rights and Ownership of Patents and Registered Designs

DEFCON 015 (Edn. 06/21) - Design Rights and Rights to Use Design Information

DEFCON 016 (Edn. 06/21) - Repair and Maintenance Information

DEFCON 021 (Edn. 06/21) - Retention of Records

DEFCON 090 (Edn. 06/21) - Copyright

DEFCON 091 (Edn. 06/21) - Intellectual Property Rights in Software

DEFCON 531 (Edn. 09/21) – Disclosure of Information

DEFCON 632 (Edn. 06/21) – Third Party Intellectual Property - Rights and Restrictions

DEFCON 703 (Edn. 06/21) – Intellectual Property Rights – Vesting In The Authority

12.1. Rights in Technical Data

Definitions

12.1.2. “Technical Data” means information of a scientific, or technical or programme/project management nature which is recorded or documented in any medium and whether or not in human readable format, but excluding unrecorded information communicated solely by oral communications and excluding computer software that is subject to other licensing arrangements as agreed with the Authority.

12.1.3. “Article” includes part or the whole of any item, component or process which the Contractor is required under the Contract to supply or in connection with which it is required under the Contract to carry out any service and any other article or part thereof to the same design as that article.

12.1.4. “Commercially-available Off-The-Shelf Item”, or “COTS Item” means an item that is freely available on the open market to any entity and is supplied with sufficient Technical Data to enable it to be installed, operated and replaced without reference to the Contractor or any sub-contractor.

12.1.5. “Interface Data” means Technical Data that describes the overall physical, functional and performance characteristics (for example, “form, fit and function” information) of an Article that is a Contractor Deliverable and is sufficient to enable physical and functional interchangeability, or replacement with interchangeable items, or to enable the Article to interoperate with other items, components or processes.

12.1.6. “Intellectual Property Rights” or “IPR” means all patents, utility models, or rights (registered and unregistered) in any designs; applications for any of the foregoing; copyright; database rights; semiconductor chip topography rights; rights in confidential information and trade secrets; and all rights and forms of protection of a similar nature to these or having equivalent effect anywhere in the world.

12.1.7. “HMG” means Her Majesty’s Government of the United Kingdom of Great Britain and Northern Ireland.

12.1.8. “Government Licence Rights” means rights to copy, use, modify, reproduce, or disclose Technical Data in whole or in part, and to authorise third parties to do so, in any manner, and for any UK Governmental Purpose; but, for the avoidance of doubt, such purposes shall not extend to commercial sales of Articles except for the disposal of outworn or surplus items, nor to licensing of Contractor-owned IPR for revenue generation.

12.1.9. “Government Licence Rights Technical Data” means Technical Data in which the Authority has Government Licence Rights.

12.1.10. “Limited Rights” means rights to copy, use, modify or disclose Technical Data, in whole or in part, only within HMG for any UK Governmental Purpose or as otherwise agreed with the Contractor.

12.1.11. “Limited Rights Technical Data” means Technical Data in which the Authority has Limited Rights.

12.1.12. “UK Governmental Purposes” means anything done by or for HMG under the authority of a Minister of the Crown.

12.1.13. “Background Patents and Designs” means patents or registered designs granted in respect of any patent or registered design applications made before the date of issue of the Authority’s first written invitation to tender (“ITT”) for the Contract and any such applications made after that date in respect of inventions or designs first reduced to writing by the inventor(s) or designer(s) before that date.

12.2. Ownership of IPR

12.2.1 Subject to any existing rights of the Authority or any third party, the ownership of IPR in Technical Data and any other IPR generated by the Contractor in the course of work under the Contract shall, as between the Authority and the Contractor, belong to the Contractor.

12.3. Rights in Technical Data

Government Licence Rights

12.3.1. The Authority shall have a royalty-free, worldwide, non-exclusive, perpetual and irrevocable Government Licence Rights licence for all Technical Data, which is a Contractor Deliverable, or has otherwise been delivered to the Authority as part of the work carried out under the Contract, and has been generated under the Contract.

12.3.2. Notwithstanding the provisions of Condition a or any other provisions of this Condition, the Authority shall have Government Licence Rights in the following Technical Data delivered or deliverable under the Contract:

12.3.2.1. Interface Data (other than Interface Data for which the Crown is the owner of the IPR, or otherwise licensed, by virtue of another provision of the Contract);

12.3.2.2. corrections or minor amendments made to Technical Data supplied to the Contractor as Government Furnished Assets;

12.3.2.3. Technical Data in which the Authority has obtained Government Licence Rights under another contract;

12.3.2.4. Technical Data that has been made publicly available otherwise than in breach of obligations of confidence, or Technical Data that the Contractor has disclosed without restrictions on further use or disclosure; and

12.3.2.5. any Technical Data specifically identified in the Schedule of Requirements as deliverable to the Authority with Government Licence Rights.

12.3.3. The Authority shall have Government Licence Rights of use in the following Technical Data, including any Limited Rights Technical Data included in or associated with it, notwithstanding the provisions of Condition 12.3.2:

12.3.3.1. studies, analyses, test data or similar data generated for the Contract, or for a response by the Contractor to an invitation to tender for the Contract, when the study, analysis, test or similar work is a Contractor Deliverable, but excluding test methodology to the extent that it consists of Limited Rights Technical Data;

12.3.3.2. Technical Data in data packs which are Contractor Deliverables; and

12.3.3.3. Technical Data for installation, operation, routine maintenance or training purposes;

12.3.4. The Government Licence Rights granted to the Authority under Condition 12.3.1 shall not apply to any Technical Data in self-standing proprietary designs, processes and materials that forms any part of the Technical Data that is a Contractor Deliverable and is notified to the Authority as Limited Rights Technical Data in accordance with the provisions of Condition 12.1 of this Condition.

12.4. Limited Rights

12.4.1. The Authority shall have royalty-free, worldwide, non-exclusive, perpetual and irrevocable Limited Rights in all Technical Data that is or forms part of a Contractor Deliverable, or has been otherwise been delivered to the Authority, and which has not been generated under the Contract, and which has been notified to the Authority in accordance with the provisions of **Condition 7.2.**

12.5.2. The Authority shall retain any rights that it has obtained in Technical Data by virtue of the provisions of another contract or other arrangement.

12.5.3. Except as may be required or permitted by law or as otherwise permitted by the provisions of another contract or other arrangement, the Authority shall not disclose Limited

Rights Technical Data outside HMG unless it has obtained the prior written permission of the Contractor or as permitted by the provisions of **Condition 12.6.**

12.5. Specific Disclosure Rights of the Authority in Limited Rights Technical Data

12.5.1. Notwithstanding any restrictions on disclosure in **Condition 12.4**, the Authority shall be permitted to disclose, and authorise the use of, Technical Data with Limited Rights for UK Governmental Purposes:

12.5.1.1. to an independent support contractor, solely for the purposes of the provision of a service to the Authority which, unless otherwise stated in the Contract, shall be limited to managing, monitoring, evaluating, assessing or auditing the work under the Contract; and

12.5.1.2. where the Contract is for the supply of Services and the Limited Rights Technical Data concerns the processes and procedures concerned with the delivery of the Services, to a follow-on contractor only for the continued supply of the Services following termination or expiry of the Contract, or during any transitional period as may be specified in the Contract, and only to the extent necessary for the delivery of the follow-on Services; and

12.5.1.3. where the Technical Data is necessary for repair, maintenance or overhaul of equipment for urgent operational or safety reasons, subject to the recipient (i) agreeing that the Technical Data shall only be used, or copied for those purposes, and (ii) agreeing to return the Technical Data to the Authority immediately on completion of the urgent operational or safety need without retaining a copy.

12.5.2. The Authority will have the right to disclose Limited Rights Technical Data for information and evaluation purposes in confidence to a foreign government for UK Governmental Purposes only and with the prior written permission of the Contractor.

12.5.3. The Authority shall not disclose Technical Data properly marked under Condition 5 as being Limited Rights Data unless it has first provided the Contractor, or other party asserting Limited Rights, with the opportunity to enter into a direct confidentiality agreement in the form of DEFFORM 94 with the intended recipient. The Authority shall not be restricted from disclosing the Technical Data to the intended recipient if the Contractor or other party asserting Limited Rights has not signed a confidentiality agreement in the form of DEFFORM 94 within 30 (thirty) calendar days of its receipt, provided that the Authority has placed the intended recipient under an obligation to keep the Technical Data confidential and to use it only for the purposes for which it is disclosed.

12.6. Modifications

12.6.1. The Authority shall not exercise its rights in Government Licence Rights Technical Data to authorise a third party (other than the design rights owner) to modify the design of any Article produced under the Contract without ensuring that

(i) it has the right to provide to the Contractor a copy of all Technical Data relating to any modified design to enable the Contractor to manufacture articles to the modified design ("Modified Design Data"); and

(ii) that it has the right to grant to, or to procure the grant to, the Contractor of a licence on willing

licensor/willing licensee terms, to use the Modified Design Data for the purposes of manufacture, sales and support of items made to the modified design for customers other than the Authority.

12.7. Contractor Background Patents and Designs and other IPR

12.7.1 Subject to Condition 12.5.2 and to any restrictions notified to the Authority in accordance with Condition 12.6.1, the Government Licence Rights granted to the Authority under Conditions 12.1, 12.1.2, and 12.1.3 and Limited Rights granted under Condition 12.7.1 of this Condition shall include licences under any Background Patents or Designs and other IPR owned by the Contractor solely in connection with, and to the extent necessary to exercise its rights in the Technical Data in accordance with such Conditions.

12.7.2. Subject to the rights of the Crown arising otherwise than under this Condition, and provided that the Contractor has met in a timely manner any obligations included in the Contract to inform the Authority of the existence of any relevant United Kingdom patent or registered design, the Contractor shall be entitled to claim payment under the provisions of Sections 55-59 of the Patents Act 1977 or the First Schedule to the Registered Designs Act 1949 in respect of any Background Patents or Designs owned or controlled by the Contractor, and used by the Authority, or any third party authorised by the Authority, in the exercise of the rights granted to the Authority under Condition 12.7.2 of this Condition.

12.7.3. The terms to be agreed or settled for the use of any such patented invention or registered design shall not include payment of compensation under Section 57A of the Patents Act 1977 or paragraph 2A of the First Schedule to the Registered Designs Act 1949 in respect of any invention or design covering the Articles, or described in any Government Licence Rights Technical Data that is a Contractor Deliverable, and is subject to this Condition.

12.8. Authority's Quiet Enjoyment; and Embedded Software

12.8.1. Nothing in this Condition shall act to prevent the Authority's quiet enjoyment of any Articles delivered to it under the Contract, including the right to operate, maintain, use and dispose of the Articles, and the Contractor shall not act to enforce rights in relation to any software that is provided as an integral part of such Articles to prevent the Authority's quiet enjoyment of the Articles. Nothing in this Condition shall prevent the Authority from exercising its statutory rights, currently in force or hereinafter enacted, in respect of such software. This Condition shall not require the Contractor to deliver software to the Authority separate from the Article. No trade mark right or right against passing off shall be exercised against any deliverable Article, or any article made by or for the Authority in accordance with the rights granted under this Condition, to a design incorporating a trade mark, recorded in deliverable Technical Data or embodied within any deliverable model, die or mould.

12.9. COTS Items

12.9.1. Where the Contractor has, consistent with its obligations under the Contract, utilised one of its own COTS Items, or a COTS Item supplied by a third party-, in its Contractor Deliverables, the Contractor shall not be required to grant, or procure the grant of, licence rights in any Technical Data relating to the COTS item to the Authority in accordance with this Condition 12.9.1, provided that the Contractor notifies the Authority of the source of the COTS Item (including Original Manufacturer Part Numbers, NATO Stock Numbers or NCAGE Codes, as appropriate). The Contractor shall secure for the Authority any standard licence rights that the supplier of the COTS Item provides in relation to Technical Data concerning the COTS Item.

12.10. Restrictions on Authority's Use and Disclosure of Technical Data – Prior Identification by the Contractor

12.10.1 All Technical Data to be delivered to the Authority under the Contract with restrictions on use or disclosure that are more restrictive than Government Licence Rights, shall be identified in DEFFORM 711 an appendix to the Contract. DEFFORM 711 may be updated from time to time during the course of the Contract with the express written agreement of the Authority.

12.10.2 The Contractor shall not deliver to the Authority any Technical Data with any restrictive marking if that Technical Data is not identified in DEFFORM 711. Subject to Condition 12.4, any Technical Data delivered to the Authority without first being identified in DEFFORM 711 may be used by the Authority as if it is Government Licence Rights Technical Data, in accordance with the provisions of Condition 12.8.1, but subject to the provisions of Conditions 12.8.4 and 12.8.5.

12.10.3 The Contractor shall notify the Authority of restrictions on the use or disclosure of Technical Data, due to IPR owned by a third party other than a subcontractor, after its delivery to the Authority where the identification of any such restrictions is based on information not available to the Contractor at the date of delivery, or where the Technical Data is identified in DEFFORM 71 and the omission of any restrictive marking is inadvertent. The Authority shall give prompt and reasonable consideration to any such notification and shall allow the Contractor to apply the appropriate restrictive marking to the Technical Data retrospectively if it is clear, in the circumstances, that the restrictive marking correctly reflects the Authority's rights in the relevant Technical Data as detailed in Condition 12.10.3 of this Condition. The Authority may continue any use of the Technical Data begun prior to the notification made in accordance with this Condition 12.3 notwithstanding that any such use may be contrary to any restrictive marking retrospectively applied to the Technical Data, but shall otherwise observe all restrictions on use and disclosure notified by the Contractor as are agreed in accordance with this sub-Condition 12.10.3.

12.11. Marking of Technical Data

12.11.1. The Contractor shall mark any covering, packaging or cover page of Technical Data delivered to the Authority with Government Licence Rights with the following legend:

“This Technical Data is delivered to the Authority by [state Contractor's name] under Contract [state MOD Contract No.]. The Authority has Government Licence Rights in the Technical Data in accordance with the provisions of Condition 12”

12.11.2. The Contractor shall mark any covering, packaging or cover page of Technical Data delivered with Limited Rights with the following legend:

“This Technical Data is delivered to the Authority by [state Contractor's name] under Contract [state MOD Contract No.]. The Authority has Limited Rights in the Technical Data as marked in accordance with the provisions of Condition 12”

12.11.3. Any pages of documents including Technical Data subject to Limited Rights shall include the **legend in Condition 12.11.2** at the top or bottom of the page and shall be clearly marked by the Contractor to identify the portions of those pages that are subject to those rights. The Technical Data shall be identified by marking, underlining or shading. The Authority shall have the right to remove any Technical Data subject to Limited Rights from a document and copy, use or disclose the edited document in accordance with the rights of the Authority in the resultant document.

12.11.4 The Contractor may apply a copyright notice to any Technical Data delivered to the Authority to identify the owner of the copyright, but shall not mark the Technical Data with any description of the Authority's rights in it other than those set out in this Condition 12.11.4.

12.12. Effect and Removal of Nonconforming and Incorrect Markings

12.12.1. The Authority shall notify the Contractor in writing of any markings on Technical Data that it reasonably believes are incorrect or do not conform to the provisions of Condition 11. The Contractor shall remove or correct any incorrect or non-conforming markings within 30 (thirty) calendar days of notification. Failure to remove or correct any such markings may be a ground for non-acceptance of the Technical Data by the Authority and withholding of Contract payment until resolved.

12.12.2. If the Contractor fails to remove or correct a non-conforming marking within 30 (thirty) calendar days after receipt of notification by the Authority, then the Authority shall be entitled to ignore the marking and treat the Technical Data as Government Licence Rights Technical Data in accordance with Condition 12.10.2 of this Condition and, if the Authority considers it appropriate, remove or correct the marking.

12.13 Technical Data Provided By Subcontractors

12.13.1. The Contractor shall ensure that the Authority's rights in Technical Data which is to be supplied by the Contractor's subcontractors, and which will be included in Technical Data that is a Contractor Deliverable, shall be in accordance with the provisions of Condition 12 together with any other rights of the Authority as set out in this Condition. The Contractor shall be responsible for determining with the subcontractor prior to the award of any subcontract the appropriate contractual arrangements, as between the Contractor and subcontractor, to provide the required Authority user rights in such Technical Data.

12.13.2. If the Contractor becomes aware that it will be unable to meet its Condition 12.13.1 obligations to the Authority in respect of Technical Data that will be delivered by a potential subcontractor to the Authority (regardless of whether that delivery is directly from the potential subcontractor to the Authority or through the Contractor to the Authority), then the Contractor shall promptly notify the Authority, providing evidence that the Contractor has used all reasonable endeavours to secure the necessary rights for the Authority, and that the subcontractor is unwilling to provide the necessary rights to the Authority, and request the potential subcontractor to negotiate directly with the Authority regarding the Authority's user rights in Technical Data arising from a potential subcontract. Upon receipt of such notice the Authority shall use all reasonable endeavours to conclude any direct agreement promptly. The Contractor shall not enter into a subcontract with the potential subcontractor in respect of the relevant Contract requirement of the Authority unless and until the Authority notifies the Contractor that the potential subcontractor has entered into a direct agreement with the Authority to provide the necessary rights for the Authority in Technical Data to be delivered by the subcontractor.

12.13.3. If the Contractor enters into a subcontract with a subcontractor that fails to secure the rights for the Authority as required by the provisions of Condition 12.13.1, and has not received prior written authorisation from the Authority to place the subcontract in accordance with the provisions of Condition 12.7.2, the Authority shall be entitled, to the extent allowed by law and without prejudice to any other contractual remedy, to use any of the subcontractor's Technical Data delivered to the Authority as if the Contractor had secured rights for the Authority and

obligations from the subcontractor consistent with the nature of the Technical Data and the relevant provisions of Condition 12.3; and the Contractor shall indemnify the Authority and be liable for any damages or costs incurred by the Authority for so long as the Contractor fails to secure the rights as aforesaid.

12.14. Contractor Retention of Records

12.14.1. The Contractor shall retain, for the duration of the Contract and for a period of six years thereafter, or such alternative period as may be specified in the Schedule of Requirements, a record of the work performed under the Contract and of the results obtained, and the Technical Data generated, delivered or to be delivered to the Authority under the Contract.

12.14.2. The Authority shall have the right to inspect the records maintained by the Contractor in accordance with Condition 12.14.1, within the period specified in that Condition and on reasonable notice. The Authority shall further have the right during that period or for so long as the Technical Data is known to still exist, to require additional deliveries of any Technical Data that was generated in the performance of work under the Contract whether or not it is contained in the Contractor Deliverables. This right shall be exercisable by separate order and on agreement of a fair and reasonable price based solely on the costs of compiling and delivering the Technical Data. Technical Data required to be delivered under this Condition shall be delivered within 45 (forty-five) calendar days of receipt by the Contractor of any order from the Authority and shall only be used by the Authority (or on its behalf) in accordance with the rights granted in such Technical Data under this Condition.

12.14.3. At the written request made by the Authority within the period specified in Condition 12.14.1 and subject to the availability of the relevant expertise, the Contractor shall provide to the Authority, or to any other person to whom the Authority may provide Technical Data in accordance with its rights under this Condition, assistance in understanding the Technical Data. The assistance shall be limited to that required by a person competent in the relevant area of technology to interpret the results of the Contract. The assistance shall be made available within 60 (sixty) calendar days of the request and on fair and reasonable terms and Conditions, including the costs of providing the assistance, but excluding any payment in respect of the right to use the Technical Data.

12.14.4. The Contractor shall maintain one copy of all Technical Data that is a Contractor Deliverable (hereinafter called the "Control Copy"). The Control Copy shall be the property of the Authority, and shall be marked accordingly, and the Authority may take possession of it notwithstanding any administration, receivership, winding-up or liquidation of the Contractor or any transfer of its assets to any third party; and copies of any Technical Data from the Control Copy shall be supplied as required from time to time by the Authority at the Authority's expense, the cost of which shall be based solely on the cost of copying and delivering the Control Copy.

12.15. Liability

12.15.1. In the event that Technical Data to which this Condition applies is used by or for the Authority otherwise than for the purpose for which it was supplied in accordance with the relevant provisions of this Contract, the Contractor shall have no liability whatsoever for any direct or

indirect consequences, including losses, damages or injuries caused to the Authority or any third party, arising from its use.

12.16. General

12.16.1. For the avoidance of doubt, nothing in this Condition shall:

12.16.1.1. restrict the entitlement of either party to make use of Technical Data once it enters the public domain otherwise than as a result of the Authority or any person supplied with the Technical Data by the Authority disclosing it in breach of any obligations of confidence relating to such Technical Data; or

12.16.1.2. extinguish or diminish any statutory rights or common law rights of the Authority to use any Technical Data or any IPR covering such Technical Data or any rights of the Authority acquired under any separate contract or agreement.

12.16.2. The terms of this Condition shall survive the termination or expiry of the Contract.

12.17. Third party IPR authorisation

12.17.1. AUTHORISATION BY THE CROWN FOR USE OF THIRD-PARTY INTELLECTUAL PROPERTY RIGHTS

12.17.2. 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.

13. LOANS

DEFCON 611 (Edn. 02/16) - Issued Property

DEFCON 694 (Edn. 07/21) - Accounting For Property of the Authority

13.1. Government furnished assets

13.1.1. The Authority will record in Annex J to the Contract all Government Furnished Assets (GFA) supplied or to be supplied to the Contractor. The GFA shall be listed and specifically defined by description, quantity, dates, loan periods and loan terms.

13.1.2. The Authority shall have no liability to the Contractor if, when the GFA is made available on the agreed dates, the Contractor fails to make use of it.

13.1.3. The Contractor shall record all items issued on loan in accordance with DEFCON 694. Where GFA is issued to the Contractor and is not retained at Government establishments, the requirements of DEFCON 611 shall apply. Any information issued shall be under the terms of DEFCON 531.

13.1.4. While, during the course of the Contract, the Contractor identifies new requirements for GFA, these shall be subject to negotiations with the Authority.

13.1.5. If the Contractor no longer has a requirement to hold any GFA or otherwise on completion of all work under the Contract it shall seek instructions from the Authority's Commercial Officer.

13.1.6. The Authority does not give any warranty or undertaking as to the completeness, accuracy, or fitness for any purpose of any of the Authority provided information. Neither the Authority nor its agents or employees shall be liable to the contractor in contract (save as expressly provided elsewhere in the Contract), tort, statute nor otherwise, as a result of any inaccuracy, omission, unfitness for any purpose, or inadequacy of any kind, in the Authority provided information.

13.2 Delivery of Government Furnished Assets (GFA)

13.2.1. The Authority shall be responsible for shipping GFA to the Contractor's premises or agreed UK Mainland destinations i.e. to the Contractor's Sub-Contractors' place of business.

13.2.2. The Contractor shall be responsible for both returning and shipping GFA to the Authority, whether the GFA is held by the Contractor or by a Sub-Contractor of the Contractor.

13.3 Deliverable Documents

13.3.1. The Contractor shall ensure that the Authority has the right to copy, amend, extend or have copied, amended or extended any deliverable documents supplied under the Contract or any part thereof including any such part when incorporated in any amended or extended version of such technical publication, and to circulate, use or have used said technical publication including any amended or extended version and any copies thereof for any United Kingdom Government purpose.

14. ACCEPTANCE

14.1. If no acceptance procedure is specified acceptance shall occur when either:

14.1.1. the Authority does any act in relation to the Contractor Deliverable which is inconsistent with the Contractor's ownership; or

14.1.2. the time limit in which to reject the Contractor Deliverables defined in **Condition 15.2** has elapsed.

15. REJECTION

15.1. If any of the Contractor Deliverables Delivered to the Authority do not conform to the Specification or any other terms of this Contract, then (without limiting any other right or remedy that the Authority may have) the Authority may reject the Contractor Deliverables (in whole or in part). The Authority shall return these Contractor Deliverables to the Contractor at the Contractor's risk and cost.

15.2. Rejection of any of the Contractor Deliverables under Condition 15.1 shall take place within thirty (30) Business Days.

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16. TERMINATION

16.1. Insolvency

16.1.1. The Authority may terminate the Contract, without paying compensation to the Contractor, by giving written Notice of such termination to the Contractor at any time after any of the following events where the Contractor is an individual or a firm:

16.1.1.1. the application by the individual or, in the case of a firm constituted under English law, any partner of the firm to the court for an interim order pursuant to Section 253 of the Insolvency Act 1986; or

16.1.1.2. the court making an interim order pursuant to Section 252 of the Insolvency Act 1986; or

16.1.1.3. the individual, the firm or, in the case of a firm constituted under English law, any partner of the firm making a composition or a scheme of arrangement with his or its creditors; or

16.1.1.4. the presentation of a petition for bankruptcy order against the individual or, in the case of a firm constituted under English law, any partner of the firm unless it is withdrawn within three (3) Business Days from the date on which the Contractor is notified of the presentation; or

16.1.1.5. the court making a bankruptcy order in respect of the individual or, in the case of a firm constituted under English law, any partner of the firm.

16.1.1.6. Where the Contractor is either unable to pay his debts as they fall due or has no reasonable prospect of being able to pay debts which are not immediately payable. The Authority shall regard the Contractor as being unable to pay his debts if:

(i) he has failed to comply with or to set aside a Statutory demand under Section 268 of the Insolvency Act 1986 within twenty-one (21) days of service of the Statutory Demand on him; or

(ii) execution or other process to enforce a debt due under a judgement or order of the court has been returned unsatisfied in whole or in part.

16.1.1.7 The presentation of a petition for sequestration in relation to the Contractor's estates unless it is withdrawn within three (3) Business Days from the date on which the Contractor is notified of the presentation; or

16.1.1.8. the court making an award of sequestration in relation to the Contractor's estates.

Where the Contractor is a company registered in England:

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16.1.1.9. the presentation of a petition for the appointment of an administrator; unless it is withdrawn within three (3) Business Days from the date on which the Contractor is notified of the presentation; or

16.1.1.10. the court making an administration order in relation to the company; or

16.1.1.11. the presentation of a petition for the winding-up of the company unless it is withdrawn within three (3) Business Days from the date on which the Contractor is notified of the presentation; or

16.1.1.12. the company passing a resolution that the company shall be wound-up; or

16.1.1.13. the court making an order that the company shall be wound-up; or

16.1.1.14. the appointment of a Receiver or manager or administrative Receiver.

Where the Contractor is a company registered other than in England, events occur or are carried out which, within the jurisdiction to which it is subject, are similar in nature or effect to those specified in Conditions 16.1.1.9 to 16.1.1.14 inclusive above.

16.1.2. Such termination shall be without prejudice to and shall not affect any right of action or remedy which shall have accrued or shall accrue thereafter to the Authority and the Contractor.

16.2 Corrupt Gifts

16.2.1. The Contractor shall not do, and warrants that in entering the Contract it has not done any of the following (hereafter referred to as 'prohibited acts'):

16.2.1.1. offer, promise or give to any Crown servant any gift or financial or other advantage of any kind as an inducement or reward;

- (i) for doing or not doing (or for having done or not having done) any act in relation to the obtaining or execution of this or any other contract with the Crown; or
- (ii) for showing or not showing favour or disfavour to any person in relation to this or any other Contract with the Crown.

16.2.1.2. enters into this or any other Contract with the Crown in connection with which commission has been paid or has been agreed to be paid by it or on its behalf, or to its knowledge, unless before the Contract is made particulars of any such commission and of the terms and Conditions of any such agreement for the payment thereof have been disclosed in writing to the Authority.

16.2.2. If the Contractor, its employees, agents or any subcontractor (or anyone acting on its behalf or any of its or their employees) does any of the prohibited acts or commits any offence under the Bribery Act 2010 with or without the knowledge or authority of the Contractor in relation to this Contract or any other contract with the Crown, the Authority shall be entitled:

16.2.2.1. to terminate the Contract and recover from the Contractor the amount of any loss resulting from the termination;

16.2.2.2. to recover from the Contractor the amount or value of any such gift, consideration or commission; and

16.2.2.2. to recover from the Contractor any other loss sustained in consequence of any breach of this Condition, where the Contract has not been terminated.

16.2.3. In exercising its rights or remedies under this Condition, the Authority shall:

16.2.3.1. act in a reasonable and proportionate manner having regard to such matters as the gravity of, and the identity of the person performing, the prohibited act;

16.2.3.2. give all due consideration, where appropriate, to action other than termination of the Contract, including (without being limited to):

(i) requiring the Contractor to procure the termination of a subcontract where the prohibited act is that of a Subcontractor or anyone acting on its or their behalf;

(ii) requiring the Contractor to procure the dismissal of an employee (whether its own or that of a Subcontractor or anyone acting on its behalf) where the prohibited act is that of such employee.

16.2.4. Recovery action taken against any person in Her Majesty's service shall be without prejudice to any recovery action taken against the Contractor pursuant to this Condition.

16.3 Material breach

16.3.1. In addition to any other rights and remedies, the Authority shall have the right to terminate the Contract (in whole or in part) with immediate effect by giving written Notice to the Contractor where the Contractor is in material breach of its obligations under the Contract.

16.3.2. Where the Authority has terminated the Contract under Condition 17.3.a the Authority shall have the right to claim such damages as may have been sustained as a result of the Contractor's material breach of the Contract, including but not limited to any costs and expenses incurred by the Authority in:

16.3.2.1. carrying out any work that may be required to make the Contractor Deliverables comply with the Contract; or

16.3.2.2. obtaining the Contractor Deliverable in substitution from another supplier.

16.4 Consequences of Termination

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

17. LIMITATION OF CONTRACTOR'S LIABILITY

Definitions

17.1 In this Condition 17 the following words and expressions shall have the meanings given to them, except where the context requires a different meaning:

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

“Data Protection Legislation” means all applicable data protection and privacy legislation in force from time to time in the UK, including but not limited to:

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

17.1.2. the Data Protection Act 2018;

17.1.3. the Privacy and Electronic Communications Directive 2002/58/EC (as updated by Directive 2009/136/EC) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended; and

17.1.4. all applicable legislation and regulatory requirements in force from time to time which apply to a party relating to the processing of personal data an privacy [and the guidance and codes of practice issued by the Information Commissioner’s Office which apply to a party];

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

“Law” means any applicable law, statute, by-law, regulation, order, regulatory policy, guidance or industry code that has the equivalent of legal effect, rule of court or directives or requirements of any regulatory body, delegated or subordinate legislation or notice of any regulatory body;

“Service Credits” means the amount that the Contractor shall credit or pay to the Authority in the event of a failure by the Contractor to meet the agreed Service Levels as set out/referred to in [cross refer to service credit regime in the contract];

“Term” means the period commencing on the Contract commencement date and ending on the Contract end date or on earlier termination of this Contract.

17.2 Unlimited liabilities

17.2 Neither Party limits its liability for:

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

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

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

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

17.3 The financial caps on the Contractor's liability set out in Clause 18.5 below shall not apply to the following:

17.3.1. for any indemnity given by the Contractor to the Authority under this Contract, including but not limited to any warranties or guarantees provided over and above required Legislation by the Contractor, or by any Subcontractor of which the benefits are passed by the Contractor to the Authority;

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

17.3.3. breach by the Contractor of DEFCON 532B and Data Protection Legislation.

17.4. The financial caps on the Authority's liability set out in Clause 17.6 below shall not apply for any indemnity given by the Authority to the Contractor under this Contract, including but not limited to DEFCON 656B.

Financial Limits

17.5 Subject to Clauses 17.2 and 17.3 and to the maximum extent permitted by Law:

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

- i. in respect of DEFCON 76 GBP £1 million in aggregate;
- ii. in respect of DEFCON 514 GBP £2 million in aggregate;
- iii. in respect of DEFCON 611 GBP £5 million in aggregate; and
- iv. in respect of DEFCON 612 GBP £5 million in aggregate;

17.5.2. without limiting Clause 17.5.1 and subject always to Clauses 17.2, 17.3, 17.3.5 and 17.5.3, the Contractor's total liability throughout the Term in respect of all other liabilities, whether in contract, in tort (including negligence), arising under warranty, under statute or otherwise under or in connection with this Contract shall be [£ pounds] £13 million in aggregate;

17.5.3. on the exercise of any and, where more than one, each option period or agreed extension to the Term, the limitation of the Contractor's total liability (in aggregate) set out in Clauses 17.5.1 and 17.5.2 above shall be fully replenished such that on and from

each such exercise or extension of the Term, the Authority shall be able to claim up to the full value of the limitation set out in Clauses 17.5.1 and 17.5.2 of this Contract.

17.6. Subject to Clauses 17.2, 17.4, 17.4.3 and 17.7, and to the maximum extent permitted by Law the Authority's total liability (in aggregate) whether in contract, in tort (including negligence), under warranty, under statute or otherwise under or in connection with this Contract shall in respect of all liabilities (taken together) be limited to the Charges paid by the Authority in the relevant Contract Year in respect of any and all claims in that Contract Year.

17.7. Clause 17.6 shall not exclude or limit the Contractor's right under this Contract to claim for the Charges.

Consequential losses

17.8. Subject to Clauses 17.2, 17.3 and 17.9, neither Party shall be liable to the other Party or to any third party, whether in contract (including under any warranty), in tort (including negligence), under statute or otherwise for or in respect of:

17.8.1. indirect loss or damage;

17.8.2. special loss or damage;

17.8.3. consequential loss or damage;

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

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

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

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

17.9. The provisions of Clause 17.8 shall not restrict the Authority's ability to recover any of the following losses incurred by the Authority to the extent that they arise as a result of a Default by the Contractor:

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

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

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

17.9.3. the additional cost of procuring and maintaining in place transitional assistance

and replacement deliverables for the remainder of the Term and any option period or agreed extension to the Term (including legal and other consultants' fees, re-procurement project costs, other expenses associated with such exercise and any increase in the fees for the replacement services over and above the Contract Price that would have been payable for the relevant Contractor Deliverables);

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

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

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

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

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

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

17.10. Invalidity

If any limitation or provision contained or expressly referred to in this Condition 17 is held to be invalid under any Law, it will be deemed to be omitted to that extent, and if any Party becomes liable for loss or damage to which that limitation or provision applied, that liability will be subject to the remaining limitations and provisions set out in this Condition 17.

17.11. Third Party Claims and Losses

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

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

17.11.2. is a type of claim or loss that would have been recoverable under this Contract

if the third party were a party to this Contract (whether as the Authority or the Contractor), such claim to be construed as direct losses for the purpose of this Contract.

17.12. Double Recovery

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

18. EXIT STRATEGY

18.1.1. At the end of the period of performance of the Contract (either due to termination, or due to the approach of the end of the Contract period of performance); the Authority's reasonable requirements for any hand-over by the Contractor to any successor Contractor or the Authority of all the data, as may exist in the Contractor's possession at the time of the winding-up of the Contract shall be at no additional charge to the Authority in accordance with 18.1.2.

18.1.2. The contractor shall assemble and maintain a data package (the 'Data Package') containing all information necessary to enable the Authority to reproduce, maintain, repair and support the system, through a technically competent manufacturer. The data pack shall vest in and become the absolute property of the Authority as it is assembled, and the contractor shall mark the data package to indicate that it is 'Ministry of Defence Property maintained and stored under Contract No 701547527. The data package shall be held by the Contractor on behalf of the Authority without lien and will be made available to the Authority upon request without additional charge in line with DEFCON 609. For the avoidance of any doubt the Contractor will not be liable for any failure by the Authority's selected contractor to perform in respect of any such reproduction, maintenance, repair or support that is not attributable to a failure of the data package to contain the necessary (and correct) information as aforesaid.

NOTE: All supporting information must be contained within the Data Package with traceable references.

18.1.3. Where the Authority invokes their requirements for handover in accordance with **Condition 18.1.1**, due to forthcoming contract completion; the Authority shall give the Contractor a minimum of 3 calendar months' notice, such notice period not ending later than the expiry date of the Contract. For the avoidance of doubt, where the contract ends due to termination, the notice period given by the Authority shall be in accordance with that defined in DEFCON 656B.

18.1.4 Upon receipt of notice per **Condition 18.1.3**, the Contractor shall meet with the Authority's Delivery Team in order to understand the current sprint/release activities and agree on the status of each task in order to prioritise the completion/cessation of activities to allow for the orderly completion of the handover requirements. The Contractor shall also provide experienced person(s) (able to conduct a 'code walkthrough') to support and answer any questions that may arise from the Authority.

19. PAYMENTS/RECEIPTS

19.1. Payment and recovery of sums due

19.1.1. Payment for Contractor Deliverables will be made by electronic transfer and prior to submitting any claims for payment under Condition 19.1.2 the Contractor will be required to register their details (Supplier on-boarding) on the Contracting, Purchasing and Finance (CP&F) electronic procurement tool.

19.1.2. Where the Contractor submits an invoice to the Authority in accordance with **Condition 19.1.1**, the Authority will consider and verify that invoice in a timely fashion.

19.1.3. The Authority shall pay the Contractor any sums due under such an invoice no later than a period of 30 days from the date on which the Authority has determined that the invoice is valid and undisputed.

19.1.4. Where the Authority fails to comply with Condition 19.1.1 and there is undue delay in considering and verifying the invoice, the invoice shall be regarded as valid and undisputed for the purpose of Condition 19.1.3 after a reasonable time has passed.

19.1.5. The approval for payment of a valid and undisputed invoice by the Authority shall not be construed as acceptance by the Authority of the performance of the Contractor's obligations nor as a waiver of its rights and remedies under this Contract.

19.1.6. Without prejudice to any other right or remedy, the Authority reserves the right to set off any amount owing at any time from the Contractor to the Authority against any amount payable by the Authority to the Contractor under the Contract or under any other contract with the Authority, or with any other Government Department.

19.2. Value added tax

19.2.1. The Contract Price excludes any UK output Value Added Tax (VAT) and any similar EU (or non-EU) taxes chargeable on the supply of Contractor Deliverables by the Contractor to the Authority.

19.2.2. If the Contractor is required by UK VAT law to be registered for UK VAT (or has registered voluntarily) in respect of their business activities at the time of any supply, and the circumstances of any supply are such that the Contractor is liable to pay the tax due to HM Revenue and Customs (HMRC), the Authority shall pay to the Contractor in addition to the Contract Price (or any other sum due to the Contractor) a sum equal to the output VAT chargeable on the tax value of the supply of Contractor Deliverables, and all other payments under the Contract according to the law at the relevant tax point.

19.2.3. The Contractor is responsible for the determination of VAT liability. The Contractor shall consult its Client Relationship Manager or the HMRC Enquiries Desk (and not the Authority's Representative (Commercial)) in cases of doubt. The Contractor shall notify the Authority's Representative (Commercial) of the Authority's VAT liability under the Contract, and any changes to it, within twenty (20) Business Days of becoming aware the liability is other than at the standard rate of VAT. In the event of any doubt about the applicability of the tax in such cases, the Authority may require the Contractor to obtain, and pass to the Authority, a formal ruling from HMRC. The Contractor shall comply promptly with any such requirement. Where the Contractor obtains a ruling from

HMRC, it shall supply a copy to the Authority within three (3) Business Days of receiving that ruling unless it proposes to challenge the ruling. Where the Contractor challenges the ruling it shall supply to the Authority a copy of any final decisions issued by HMRC on completion of the challenge within three (3) Business Days of receiving the decision.

19.2.4. Where supply of Contractor Deliverables comes within the scope of UK VAT, but the Contractor is not required by UK VAT law to be registered for UK VAT (and has not registered voluntarily), the Authority shall be responsible for assessing and paying over directly to HMRC any UK output VAT due in respect of the Contractor Deliverables. The Contractor shall be responsible for ensuring it takes into account any changes in VAT law regarding registration.

19.2.5. Where Contractor Deliverables are deemed to be supplied to the Authority outside the UK, the Contractor may be required by the laws of the country where the supply takes place to register there for EU (or non-EU) turnover or similar tax. In that event, the Authority shall pay to the Contractor in addition to the Contract Price (and any other sum due to the Contractor under the Contract) a sum equal to the tax the Contractor is liable to pay to the tax authorities of the country in question in relation to the Contractor Deliverables within thirty (30) calendar days of a written request for payment of any such sum by the Contractor.

19.2.6. In relation to the Contractor Deliverables supplied under the Contract the Authority shall not be required to pay any sum in respect of the Contractor's input VAT (or similar EU or non-EU or both input taxes). However, these input taxes will be allowed where it is established that, despite the Contractor having taken all reasonable steps to recover them, it has not been possible to do so. Where there is any doubt that the Contractor has complied with this requirement the matter shall be resolved in accordance with DEFCON 530.

19.2.7. Should HMRC decide that the Contractor has incorrectly determined the VAT liability, in accordance with Condition 19.2.6 above, the Authority will pay the VAT assessed by HMRC. In the event that HMRC so determines, the Contractor shall pay any interest charged on any assessment or penalties or both directly to HMRC. Such interest or penalties or both shall not be recoverable from the Authority under this Contract or any other contract. The Contractor shall supply the Authority with a copy of all correspondence between HMRC and the Contractor's advisors regarding the VAT assessment within three (3) Business Days of a written request from the Authority for such correspondence.

19.3. Debt Factoring

19.3.1. Subject to the Contractor obtaining the prior written consent of the Authority, the Contractor may assign to a third Party ("the Assignee") the right to receive payment of the Contract Price or any part thereof due to the Contractor under the Contract (including interest which the Authority incurred through late payment under the Late Payment of Commercial Debts (Interest) Act 1998 ("the Act")). Any assignment of the right to receive payment of the Contract Price (or any part thereof) under this Condition 19.3 shall be subject to:

- i. reduction of any sums in respect of which the Authority exercises its right of recovery under Condition 19.1.6
- ii. all related rights of the Authority under the Contract in relation to the recovery

of sums due but unpaid; and

iii. the Authority receiving notification under both Conditions 19.3.2 and 19.3.1

19.3.2. In the event that the Contractor obtains from the Authority the consent to assign the right to receive the Contract Price (or any part thereof) under Condition 19.3.1 the Contractor shall notify the Authority in writing of the assignment and the date upon which the assignment becomes effective.

19.3.3. The Contractor shall ensure that the Assignee:

i. is made aware of the Authority's continuing rights under Conditions 19.3.1 and

ii. notifies the Authority of the Assignee's contact Information and bank account details to which the Authority shall make payment, subject to any reduction made by the Authority in accordance with Conditions 19.3.1

19.3.4. The provisions of Condition 19.1 (Payment and Recovery of Sums Due) shall continue to apply in all other respects after the assignment and shall not be amended without the prior approval of the Authority.

19.4 Subcontracting and prompt payment

19.4.1. Subcontracting any part of the Contract shall not relieve the Contractor of any of the Contractor's obligations, duties or liabilities under the Contract.

19.4.2. Where the Contractor enters into a Sub-contract, he shall cause a term to be included in such Subcontract:

i. providing that where the Subcontractor submits an invoice to the Contractor, the Contractor will consider and verify that invoice in a timely fashion;

ii. providing that the Contractor shall pay the Subcontractor any sums due under such an invoice no later than a period of thirty (30) days from the date on which the Contractor has determined that the invoice is valid and undisputed;

iii. providing that where the Contractor fails to comply with Condition 19.4.2(i) above, and there is an undue delay in considering and verifying the invoice, that the invoice shall be regarded as valid and undisputed for the purposes of Condition 19.4.2(ii) after a reasonable time has passed; and

iv. requiring the counterparty to that Subcontract to include in any Subcontract which it awards, provisions having the same effect as Conditions 19.4.2(i) to 19.4.2(iv).

19.5 Milestone Payment Plan

19.5.1. Payments for Schedule of Requirements Table 1, Line Items 1-3 and Table 2, Line Item 6 shall be in accordance with the Milestone Payment Plan at Annex E to the Contract.

19.5.2 Where Milestones are delivered on time and accepted by the Authority, in accordance

with Condition 14, the Contractor shall receive the full Milestone payment in accordance with Condition.

19.5.3. Where a Milestone is not delivered on time, the Milestone payment shall be retained in full until the relevant Milestone deliverable is accepted by the Authority.

20. CONTRACT ADMINISTRATION

20.1 Progress meetings

20.1.1 The Contractor shall attend progress meetings at the frequency or times specified in the D&M SOW at Annex A and the In-Service Support SOW at Annex B to the Contract and shall ensure that its Contractor's Representatives are suitably qualified to attend such meetings.

20.1.2 The Contractor shall submit Quarterly Progress Reports to the Authority's Representatives. The reports shall detail as a minimum:

- (1) Performance/Delivery of the Contractor Deliverables;
- (2) Risks and opportunities;
- (3) Any other information specified in SOW; and
- (4) Any other information reasonably requested by the Authority.

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21. EVENTS AFFECTING TIME AND PERFORMANCE

21.1 If an Event occurs that could prevent or affect the Contractor's execution of its time or performance obligations under this Contract (an "Event"), and subject to the Contractor having taken reasonable steps to mitigate the impact of such an Event, the parties shall work together in good faith to mitigate the impact of an Event in a spirit of mutual trust and cooperation as set out below.

21.2 The Contractor shall notify the Authority in writing as soon as the Contractor becomes aware of an Event, and shall, as soon as practicable, and no later than 20 (twenty) business days thereafter, provide to the Authority the following:

21.2.1 such details as necessary to describe the Event; and,

21.2.2 details describing the impact of the Event on the Contractor's ability to deliver its obligations under the Contract; and,

21.2.3 details of the steps taken or planned to be taken (if any) by the Contractor to mitigate the impact of the Event; and,

21.2.4 a proposal to resolve the impact of the Event within the current scope and Contract Price; or

21.2.5 a proposal to resolve the impact of the Event by means of a change to the Contract scope and, where additional cost is incurred in so doing, the amount of such additional cost less any cost that will not be incurred as a result of the proposal.

21.3 The Authority shall within 5 (five) business days of after receipt of a proposal made in accordance with Conditions 22.2.4 or 22.2.5 respond in writing to the Contractor and shall either:

21.3.1 accept any delay or shortfall in performance of the Contractor's obligations under the Contract through a concession; or,

21.3.2 accept the Contractor's proposed resolution proposal and, in the case of a proposal under Condition 22.2.5, amend the Contract to reflect the change in scope or Contract Price; or,

21.3.3 provide an alternative solution for consideration by the Contractor; or,

21.3.4 request further information from the Contractor.

21.4 The Contractor shall meet any reasonable request from the Authority made in accordance with Condition 22.3.4 within 5 (five) business days and the Authority shall upon receipt of such information respond to the Contractor within 5 (five) business days as described in Conditions 22.3.1 to 22.3.3.

21.5 The parties shall use all reasonable endeavours to agree on the appropriate mitigation of the impact of the Event within 15 (fifteen) business days after receipt of the response given to the Contractor in accordance with Condition 22.3 and, in the absence of agreement, shall refer the issue for resolution in good faith negotiations between the Business Area CEO of the

Contractor and [1* from MOD], failing which either party may refer it for resolution in accordance with the terms of DEFCON 530.

21.6 For the avoidance of doubt, any delay in performance of obligations under the Contract caused by an Event shall not give rise to a right for the Authority to terminate the Contract or impose any other sanctions whatsoever.

22. EARNED VALUE MANAGEMENT

22.1 The Contractor shall develop, deliver and update as needed over the term of the contract, an Earned Value Management Plan (EVMP) Level 4 in accordance with the requirements stated in the Statement of Work (D&M) at Annex A to the Contract.

23. ENVIRONMENTAL REQUIREMENTS

23.1 The Contractor shall in all its operations to perform the Contract, adopt a sound proactive environmental approach that identifies, considers, and where possible, mitigates the environmental impacts of its supply chain. The Contractor shall provide evidence of so doing to the Authority on demand.

24. DIVERSION ORDERS

24.1. The Authority shall notify the Contractor at the earliest practicable opportunity if it becomes aware that a Contractor Deliverable is likely to be subject to a Diversion Order.

24.2. The Authority may issue a Diversion Order for the urgent delivery of the Contractor Deliverables identified in it. These Contractor Deliverables are to be delivered by the Contractor using the quickest means available as agreed by the Authority.

24.3. The Authority reserves the right to cancel the Diversion Order.

24.4. If the terms of the Diversion Order are unclear, the Contractor shall immediately contact the Representative of the Authority who issued it for clarification and/or further instruction.

24.5. If the Diversion Order increases the quantity of Contractor Deliverables beyond the scope of the Contract, it is to be returned immediately to the Authority's Commercial Officer with an appropriate explanation.

24.6. The Contractor shall be entitled to reasonable additional delivery and packaging costs incurred in complying with the Diversion Order or cancellation. Claims are to be submitted by the Contractor to the Authority's Commercial Officer together with applicable receipts and agreed as an amendment to the Contract in accordance with Condition 6 (Amendments to Contract). The Contractor shall comply with the requirements of the Diversion Order upon receipt of the Diversion Order.

25. SELF-TO-SELF DELIVERY

25.1. Where it is stated in the Schedule of Requirements that any Contractor Deliverable is to be Delivered by the Contractor to its own premises, or to those of a Subcontractor ('self-to-self delivery'), the risk in such a Contractor Deliverable shall remain vested in the Contractor until such time as it is handed over to the Authority.