



Ministry
of Defence



**Terms and Conditions of Contract
for
MSS/107 – MTU Diesel Generator Support
REDACTED FOR PUBLICATION**

By and Between:

DES Ships Commercial - Marine Systems Support
Ministry of Defence, Birch 3c #3331,
Abbey Wood, Bristol, BS34 8JH

and

“The winning Tenderer”

(together “the Parties”)

In line with Transparency legislation and the Security Aspects Letter for this requirement, any information within this Invitation to Negotiate considered to fall under the following categories has been redacted.

1. Military sensitive technical information
2. Tenderer's commercially sensitive information
3. Personal data

In accordance with the above, all Annexes and Appendices have been redacted in FULL as they are either considered to contain military sensitive technical information and are classified as OFFICIAL-SENSITIVE within the Security Aspects Letter

Document Administration & Authority

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Reviewed and Approved by

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Part A. General Conditions

Defence Conditions

The Parties agree that the following standard conditions shall apply to this Contract in addition to any DEFCONs expressly incorporated in Part B (Special Conditions):

DEFCON	Edition	Description
5J	11/16	Unique Identifiers
23	08/09	Special Jigs, Tooling and Test Equipment
68	02/19	Supply of Data for Hazardous Articles, Materials and Substances
76	12/06	Contractor's Personnel at Government Establishments
82	11/16	Special Procedure for Initial spares
113	02/17	Diversion Orders
117	10/13	Supply of Documentation for NATO Codification Purposes
127	12/14	Price Fixing Condition for Contract of Lesser Value Note: This DEFCON Shall be applicable to any future amendments <£250 requiring pricing activities.
129	07/19	Packaging (for Articles other than Munitions)
129J	18/11/16	The Use of the Electronic Business Delivery Form
501	11/17	Definitions and Interpretations
502	05/17	Specification Changes
503	12/14	Formal Amendments to Contract Note: For the purposes of Clause 1 of DEFCON 503 the Authority's duly authorised representative shall be the Commercial Branch named at Box 1 of Appendix to Contract.
507	10/18	Delivery
513	11/16	Value Added Tax
514	08/15	Material Breach
515	02/17	Bankruptcy and Insolvency
516	04/12	Equality
518	02/17	Transfer
520	05/18	Corrupt Gifts and Payment of Commission
522	11/17	Payment and Recovery of Sums Due
524	02/20	Rejection Note: For the purposes of Clause 4, the period specified shall be eighteen months.
525	10/98	Acceptance Note: For the purposes of Clause 4, the period specified shall be eighteen months.
526	08/02	Notices
527	09/97	Waiver
528	07/17	Overseas Expenditure, Import and Export Licenses Note: For the purposes of Clause 16, the periods are 30 calendar days.
529	09/97	Law (English)
530	12/14	Dispute Resolution (English Law)

531	11/14	Disclosure of Information
532B	04/20	Protection of Personal Data
534	06/17	Subcontracting and Prompt Payment
537	06/02	Rights of Third Parties
538	06/02	Severability
539	08/13	Transparency
550	02/14	Child Labour and Employment Law
566	10/20	Change of Control of Contractor
601	04/14	Redundant Material
602A	12/17	Deliverable Quality Plan
604	06/14	Progress Reports
605	06/14	Financial Reports
606	06/14	Change and Configuration Control Procedure
608	10/14	Access and Facilities to be Provided by the Contractor
609	08/18	Contractor's Records
611	02/16	Issued Property
612	10/98	Loss of or Damage to the Articles
620	05/17	Contract Change Control Procedure
621A	06/97	Transport (if the Authority is responsible for Transport)
624	11/13	Use of Asbestos in Arms, Munitions or War Materials
625	10/98	Co-Operation on Expiry of contract
627	12/10	Requirement for a Certificate of Conformity
630	02/18	Framework Agreements
632	08/12	Third Party Intellectual Rights & Restrictions
637	05/17	Defect Investigation and Liability
642	06/14	Progress Meetings
643	12/14	Price Fixing (Non-qualifying Contracts)
644	07/18	Marking of Articles
647	04/19	Financial Management Information Note: 16.4 and 16.5 of the Performance and Financial Reporting section, under Activity 1 of the Statement of Support Requirements replace the requirement called up in Clause 2 of this DEFCON.
656B	08/16	Termination for Convenience – over £5M
658	10/17	Cyber
659A	02/17	Security Measure
660	12/15	Reportable Official and Official-Sensitive Security Requirements
670	02/17	Tax Compliance
691	03/15	Timber & Wood Derived Products
694	07/18	Accounting for Property of the Authority
697	07/13	Contractors on Deployed Operations - CONDO
703	08/13	IPR Rights – Vesting in the Authority

Intellectual Property Rights

DEFCON	Edition	Description
14	9/20	Inventions and Designs Crown Rights and Ownership of Patents and Registered Designs
15	02/98	Design Rights and Rights to use Design Information
16	10/04	Repair & Maintenance Information
90	11/06	Copyright
91	11/06	Intellectual Property Rights In Software
632	08/12	Third Party Intellectual Property – Rights and Restrictions

703	08/13	Intellectual Property Rights – Vesting in the Authority
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Defstan & Quality Assurance Standards and Conditions

Standard	Description
AQAP 2110	NATO Quality Assurance Requirements for Design, Development & Production Edition D June 2016
AQAP 2105	NATO Requirements for Deliverable Quality Plans Edition C version 1 January 2019
DEFSTAN 00-045	Parts 1 (Issue 5) and Part 2 (Issue4) and Part 3 (Issue 3) (Using RCM to Manage Engineering Failures
IEC-62402-2019	Obsolescence Management – Application Guide from 2007
DEFSTAN 00-051	Environment Management Requirements for Defence Systems
DEFSTAN 00-052,	Issue 5, The General Requirements for Product Acceptance and Maintenance Test Specifications and Test Schedules
DEFSTAN 00-056	Safety Management Requirements for Defence Systems – Part 01 (Issue 07) and Part 2 (Issue 5)
DEFSTAN 05-057	Configuration Management of Defence Materiel – Issue7
DEFSTAN 05-061	Part 1, Issue 6 Quality Assurance Procedural Requirements (Concessions)
DEFSTAN 05-135	Issues 2 Avoidance of Counterfeit Material
DEFSTAN 00-600	Part 1: Integrated Logistics Support Requirements
DEFSTAN 00-601	Part 2 (Issue1) Contracting for Technical Documentation
DEFCON 602A	Edition 12/17 Quality Assurance with Deliverable Quality Plan
DEFCON 609	Edition 08/18 Contractor Records
DEFCON 627	Edition 12/10 Quality Assurance – Requirements for Certificates of Conformity
DEFSTAN 05-99	Part 1, Managing Government Furnished Equipment in Industry.
DEFSTANs 05-010	Part 0 (Issue7) Part 1(Issue 6), Part 2 (Issue 7) , Part 3 (Issue7) Product Definition Information
DEFSTAN 81-130	Issue 4/1 The Transportation, Handling, Storage and Packaging of Magnetically Sensitive Equipment

Defence Forms

DEFFORM	Edition	Description
47	11/20	Invitation to Tender
68	12/16	Hazardous Articles, Materials or Substances Statement by the Contractor
94	11/06	Confidentiality Agreement
111	18/11/16	Appendix – Addresses and other Information
129J	18/11/16	The Use of the Electronic Business Delivery Form
177	03/80	Design Rights and Patents (Sub-Contractors agreement)
315	02/98	Contract Data Requirements
316	05/98	Government Furnished Information
528	05/17	Import and Export Controls
532	05/18	Personal Data Particulars

Part B. Special Conditions

CORE CLAUSES

1. Definitions and Interpretations

- 1.1. In addition to the provisions of DEFCON 501 (Definitions and Interpretations), the following words and expressions shall apply to this Contract:

Applicable Law	Any applicable law, common law, legislation, proclamation, by-law, directive, decision, regulation, rule, order, notice, rule of court or delegated or subordinate legislation, and any applicable official request or requirement with which the relevant Party is bound to or is accustomed to comply.
Authority Disclosed Data	"Authority Disclosed Data" means information relating to the Authority, the Contractor or the Contractor Deliverables disclosed to the Contractor or a Contractor Related Party including: (a) the Contract Notice; (b) the Pre-Qualification Questionnaire; (c) information, data and documents disclosed during the tendering process; and (d) the Clarification Responses.
Authority Related Party	An officer, employee, Representative of the Authority, agent, adviser or contractor of the Authority or member of the UK armed forces (in each case acting in such capacity), other than the Contractor and Contractor Related Parties.
Background Information	Any Information not generated in the performance of this Contract.
Business Day	Any day excluding Saturdays, Sundays and public and statutory holidays in England and Wales.
Clarification Responses	Answers, updates and other clarifications provided by the Authority to the Contractor during the tendering process.
Commencement Date	The date of inception of the Contract by the Contractor signing a DEFFORM 10 and returning it to the Authority as an acceptance of offer.
Contractor	The person who, by the Contract, undertakes to supply the s, or perform the Service, or both 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's Representative(s)	The Contractor's employees, agents and subcontractors.
Contractor Related Party	means one or more of: (a) an officer, employee, representative, agent or adviser of the Contractor; (b) a member of the Contractor's Group; (c) a Sub-contractor and any further sub-contractor of any tier; and (d) an officer, employee, representative, agent or adviser of a Sub-contractor.
Control Copy	As set out in Clause 31.4
Controlled Information	Any information which is disclosed to the Contractor by or on behalf of the Authority under or in connection with the Contract, and which is stated to be 'Controlled Information'.
Contracting, Purchasing & Finance	The Authority's Contracting, Purchasing & Finance electronic procurement system.
Contract Year	365 days commencing on the Contract Commencement Date and repeating until the Contract expiration.
Defence Conditions	The conditions listed in Part A.
EU Public Procurement Regime	The Defence and Security Public Contracts Regulations 2011 or the Public Contracts Regulations 2015 as appropriate and as amended from time to time.
EU Treaties	The Treaty on the establishment of the European Union and the Treaty on the Functioning of the European Union as amended from time to time.
Exit Plan	The Exit Plan at Annex I
Expiry Date	The date which is Five (5) years after the Commencement Date unless and to the extent that the Contract is extended (to a maximum of two (2) years).
Firm Price	A price agreed for the Articles delivered under Activity 2 (Supply Support (Spares)) and Activity 3 (Repair Support (Spares)) & Activity 5 (Process Improvement) which is not subject to variation.
Firm Rates	A rate agreed for the Services delivered under Activity 4 (Post Design and Technical Services) which is not subject to variation.
First Demand	The first instance of the Authority placing a demand for Contractor Deliverables which were not priced prior to the Contract Commencement Date.
First Demand Articles	The Contractor Deliverables which are the subject of a First Demand.

First Level Articles	Submarine Articles the failure of which will lead to loss of a submarine and/or potentially the release of fission products.
Foreground Information	Any Information which is generated in performance of this Contract.
Good Industry Practice	The exercise of such degree of skill, diligence, prudence and foresight as would reasonably and ordinarily be expected from a skilled and experienced person seeking to comply with his contractual obligations and seeking to avoid liability arising under any duty of care that might reasonably apply to or to be expected from that person, complying with all applicable laws and engaged in the same type of undertaking and under the same or similar circumstances and conditions as the Contractor or any sub-contractor.
Government Furnished Equipment	Any Issued Property provided to the Contractor in accordance with DEFCON 611.
Government Quality Assurance Representative	An individual, or organisation, approved and registered by the MOD Quality Assurance Authority (QAA) to undertake tasked Government Quality Assurance surveillance on contracts/subcontracts placed in the UK.
Information	Any information scientific, technical or otherwise irrespective of the manner in which it is presented including in the form of software and whether or not it is protected or capable of protection as Intellectual Property.
Intellectual Property	Patents, utility models, rights (registered and unregistered) in any designs; applications for any of the foregoing; copyright; database and topography rights; confidential information and trade secrets; and all rights and forms of protection of a similar nature to these or having equivalent effect anywhere in the world.
Item	A component, part, consumable, assembly or equipment that is a constituent part of an Article.
Lead Time	The period between placement of an order and delivery of an Article.
New Provider	A third party or parties contracted (or to be contracted) by the Authority to carry out services and/or works similar to the Contractor Deliverables after Contract Expiry Date or termination.
Party	The Authority or the Contractor.
Performance Regime	The KPI management regime set out in Annex D (Performance Management).
Quality Plan	A plan which meets the requirements of AQAP 2105 and is in accordance with paragraph 4.5 relating to Activity 1 of Annex A (SOSR).

Repair Price	A one-off Firm Price for repair of a specific Article.
Repair Purchase Order (RPO)	An Authority-generated demand for Strip, Survey & Repair (SS&R) of Articles raised through CP&F.
Repair Turnaround Time	The Lead Time for repair of a specific Article following a Strip & Survey, commencing upon receipt by the Contractor of an RPO for the SS&R of the Article and ending on the date upon which the Contractor delivers the Article(s) Ex-Works (EXW) in accordance with DEFCON 507.
Ships Staff	Royal Navy personnel assigned and/or embarked on a Royal Navy surface or submarine vessel.
Defence Standards	Defence Standards set out processes and procedures that could be injurious to health if adequate precautions are not taken. Adherence to those processes and procedures in no way absolves users from complying with legal requirements relating to Health and Safety at Work. This standard has been devised solely for the use of the MOD and its contractors in the execution of contracts for the MOD.
Standard Purchase Order (SPO)	An Authority-generated demand for supply of Articles raised through CP&F.
Strip & Survey	The activity of the Contractor stripping down, inspecting and examining an Article to determine the existence and extent of damage and/or degradation to the Article.
Stripped, Surveyed & Repaired (SS&R)	The activity of the Contractor carrying out a Strip & Survey of an Article followed by the subsequent repair of the Article.
TAF Approval	The Authority's approval of a TAF Response by the completion of all sections of Part C of Annex F (TAF).
TAF Proposal	The generation of a specific requirement by the Authority through the completion of Part A of Annex F (TAF).
TAF Response	The Contractor's proposed solution, including price, for meeting a TAF Proposal by the completion of Part B of Annex F (TAF).
Task	A request from the Authority for Contractor Deliverables to be provided by the Contractor in relation to Activity 4, placed using a Task Approval Form (TAF).
Task Approval Form	The form at Annex F used by the Authority to request Contractor Deliverables under this Contract.
Term	As set out in Clause 2 (Contract Term).
Warranty Period	The period of time for which the Contractor's warranty provisions apply to a given Article as set out in Clause 37.

Abbreviations

AQAP	Allied Quality Assurance Publications
BER	Beyond Economic Repair
CE	Conformité Européene (European Conformity)
COC	Certificate Of Conformity
CONDO	Contractors on Deployed Operations
CP&F	Contracting, Purchasing & Finance
DEFCON	Defence Condition
DEFFORM	Defence Form
DEFSTAN	Defence Standard
DSPCR	Defence and Security Public Contracts Regulations
Edn	Edition
EU	European Union
GFA	Government Furnished Assets
GFE	Government Furnished Equipment
GQAR	Government Quality Assurance Representative
IEC	International Electrotechnical Commission
IP	Intellectual Property
IPR	Intellectual Property Rights
ISO	International Organization for Standardization
ITN	Invitation To Negotiate
KPI	Key Performance Indicator
LRU	Line-Replaceable Unit
MOD	UK Ministry Of Defence
NATO	North Atlantic Treaty Organisation
NSC	NATO Supply Code
NSN	NATO Stock Number
OEM	Original Equipment Manufacturer
OMP	Obsolescence Management Plan
ONS	Office for National Statistics
OSD	Out of Service Date
PCR	Public Contracts Regulations
PHS&T	Packaging, Handling, Storage and Transportation
PI	Performance Indicator

PDS	Post Design Services
QA	Quality Assurance
QMS	Quality Management System
QPI	Quality Performance Indicators
S&S	Strip & Survey
SME	Subject Matter Expert
SOQR	Statement of Quality Requirements
SOSR	Statement Of Support Requirements
SPOC	Single Points Of Contact
SQEP	Suitably Qualified and Experienced Personnel
SS&R	Strip, Survey & Repair
TAF	Task Approval Form

- 1.2. In this Contract, references to Defence Forms (DEFFORMs) shall mean the latest version of that document available.

2. Contract Term

- 2.1. Subject to the provisions of any right of early termination of this Contract, the term of this Contract shall commence on the Commencement Date and shall expire on the Expiry Date unless otherwise extended (up to 2 years) by the Authority.

3. Precedence of Documents

- 3.1. If there is a conflict or inconsistency between any of the terms in the main body of this Contract and the Annexes or between any of the Annexes, the following order of precedence shall apply to resolve that conflict:

- 3.1.1. The Terms & Conditions;
- 3.1.2. The Defence Conditions;
- 3.1.3. Annex A (Statement of Support Requirements);
- 3.1.4. Annex D (Performance Management);
- 3.1.5. All other Annexes.

- 3.2. If a Party becomes aware of any inconsistency within or between the documents referred to in Clause 3.1 above, such Party shall promptly notify the other and the Parties will seek to resolve such inconsistency, provided that if either Party considers the inconsistency to be material then the matter shall be determined in accordance with DEFCON 530 (Dispute Resolution).

- 3.3. The Contractor shall not seek to limit its obligations or liability under this Contract by imposing, incorporating or relying on its (or its sub-tier suppliers) conditions of sale whether or not such conditions may be printed on or included in documentation (including order acknowledgements and in comments fields) provided to the Authority and shall indemnify the Authority for any and all costs, claims, liabilities, demands arising from such conditions of sale.

4. Formal Amendments to the Contract

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

4.1.1. affect the rights of the Authority; or

4.1.2. modify, affect, reduce or extinguish the obligations and liabilities of the Contractor under the Contract; or

4.1.3. be deemed to be a waiver of rights of the Authority

unless made in writing and signed by the Authority's Commercial Officer (see Box 1 of DEFFORM 111 – Appendix to Contract) as the duly Authorised Representative of the Authority.

- 4.2. The Authority shall have no liability for any work undertaken by the Contractor which is the subject to an amendment, prior to the conclusion of any amendment in accordance with DEFCON 503 and DEFCON 620.

PARTIES RIGHTS AND OBLIGATIONS

5. Obligations of the Authority

- 5.1. The Authority shall comply with all Applicable Laws in the performance of its obligations under this Contract.
- 5.2. The Authority gives no guarantee as to the amount of work to be provided, or the value of orders, taskings, demands or otherwise and TAFs to be placed under the Contract nor is it obliged to provide the Contractor with any orders, taskings or demands.

6. Obligations of the Contractor

- 6.1. The Contractor shall provide the Contractor Deliverables to the Authority in accordance with:
- 6.1.1. all applicable standards in Part A General Conditions;
- 6.1.2. the Statement of Support Requirements (SOSR) and all SOSR Annexes at Annex A to this document; and
- 6.1.3. Annex C

- 6.1.4. any associated order or Task Authorisation Form (TAF) which shall be in the format in Annex F.

7. Standards of Performance

- 7.1. The Contractor shall (and the Contractor Related Parties shall) provide the contractor deliverables in compliance with:
- 7.1.1. all Applicable Laws;
- 7.1.2. Good Industry Practice;
- 7.1.3. any applicable Standards set out in the relevant order or Task Authorisation Form (TAF).

8. Contractor Related Parties

- 8.1. The Contractor shall at all times remain directly liable to the Authority for the due and proper performance of its obligations under this Contract and shall be responsible and liable for the acts and omissions of the Contractor Related Parties in relation to this Contract and the Services as if they were the acts and omissions of the Contractor.
- 8.2. Without limitation in respect of its actual knowledge, the Contractor shall for all purposes of this Contract be deemed to have such knowledge in respect of the Contractor Deliverables and other obligations under this Contract as is held (or ought reasonably to be held) by any Contractor Related Party.

9. Authority Related Parties

- 9.1. Subject to the provisions of this Contract, the Authority shall be responsible and liable for the acts and omissions of the Authority Related Parties as if they were the acts and omissions of the Authority.

10. Authority Disclosed Data

- 10.1. Subject to Clause 13 (Fraudulent Statements):
- 10.1.1. the Authority does not make any representation or give any warranty or undertaking as to the relevance, completeness, accuracy or fitness for any purpose of any of the Authority Disclosed Data; and
- 10.1.2. neither the Authority nor any Authority Related Party shall be liable to the Contractor in contract, tort (including the tort of negligence) or for breach of any statutory duty or otherwise as a result of:
- (i) any inaccuracy, omission, unfitness for any purpose or inadequacy of any kind whatsoever in the Authority Disclosed Data; or
- (ii) any failure to make available to the Contractor any materials, documents, drawings, plans or other information relating to the Contract or the competition.

11. Contractor's Due Diligence

- 11.1. On entering into this Contract, the Contractor agrees it has been given an opportunity to carry out a review and investigation of the documents provided during the tendering process and the Clarification Responses, and shall not in any way be relieved from any obligation under this Contract nor shall it be entitled to make any claim against the Authority (or an Authority Related Party) as a consequence of:
- 11.1.1. any information not being provided in the tendering process or the Clarification Responses where such information is not material;
 - 11.1.2. any fact or circumstance that has been fairly disclosed during the tendering process or the Clarification Responses;
 - 11.1.3. any fact or circumstance which the Contractor, or its agents or advisers were, or ought reasonably to have been, aware of as a result of the tendering process or the Clarification Responses; or
 - 11.1.4. any fact or circumstance which a Tenderer, acting in accordance with Good Industry Practice, would have been aware of having made reasonable due diligence enquiries.

12. No Relief

- 12.1. Subject to Clause 13 (Fraudulent Statements), the Contractor shall not in any way be relieved from any obligation under this Contract nor shall it be entitled to make any claim against the Authority (or an Authority Related Party) on the basis that it has relied upon any information, whether obtained from the Authority, Authority Related Party or other third party.

13. Fraudulent Statements

- 13.1. Nothing in this Contract shall exclude any liability which the Authority would otherwise have to the Contractor for statements made fraudulently or fraudulent omissions to make statements prior to the date of this Contract.

14. Progress Reporting

- 14.1. The Contractor shall provide progress reports in accordance with DEFCON 604 on a monthly basis, as reasonably required by the Authority or as stated within the Statement of Support Requirements at Annex A, to establish the nature and the progress of the supply of Articles and /or Services being provided under the Contract and any Repair Purchase Order / Standard Purchase Order.

15. Quality Assurance

- 15.1. The Contractor shall comply with the Quality Assurance Standards and Conditions and the quality management requirements detailed in Activity 1 of Annex A (SOSR).
- 15.2. The Contractor shall provide to the Authority within six (6) weeks of the Commencement Date a finalised Quality Plan.

16. Safety Management

- 16.1. The Contractor shall notify the Authority immediately upon becoming aware of any safety issues in relation to the Articles (including arisings from proposed modifications/new design) and the Contractor shall also:
- 16.2. set out the measures taken by the Contractor or planned to be taken to limit or resolve such safety issues; and
- 16.3. attend any meeting regarding such safety issues requested by the Authority; and
- 16.4. provide such supporting evidence as reasonably required by the Authority in order that a safety assessment/safety case can be conducted.

17. Obsolescence

- 17.1. The Contractor shall apply the processes and procedures of IEC 62402:2007 using an appropriate form in a format utilised by the Contractor to notify the Authority in writing immediately upon becoming aware of any actual or potential obsolescence issues affecting the Articles.
- 17.2. The Contractor shall provide sufficient detail to enable the Authority to understand the issue and formulate a strategy for dealing with the issue, which shall include a description of:
 - 17.2.1 the obsolescence issue;
 - 17.2.2 the cause of the obsolescence issue; and
 - 17.2.3 a suggested mitigation strategy to support future support and operational needs (including any investigative work required).

18. Environmental Management

- 18.1. The Contractor shall ensure that all activities performed under the Contract shall comply with certified environmental management standards based on ISO 14001 or equivalent.

19. UKCA (UK Conformity Assessed) marking

- 19.1 The Contractor shall comply with the UKCA (UK Conformity Assessed) marking for good delivered in Great Britain (England, Wales and Scotland) and for goods delivered in Northern Ireland, which require the CE marking or UKNI marking. where Articles comply with the UKCA (UK Conformity Assessed) marking the Contractor shall either mark the Articles with the appropriate UKCA marking or identify on appropriate delivery paperwork. Where the Article is exempt from the UKCA (UK Conformity Assessed) the Contractor shall notify the Authority in writing prior to delivery.

20. Not Used

TASKING, PRICING AND PERFORMANCE**21 Tasking Process**

- 21.1 Ad hoc engineering support may be initiated by the Authority in accordance with Activity 4 and 5 of the Statement of Support Requirement at Annex A.
- 21.2 The Contractor shall submit its response to a TAF Proposal by completing a TAF Response using the agreed rates set out in Annex C. There shall be no additional cost incurred by the Authority for the Contractor to raise a TAF Response.
- 21.3 The Authority may (at its discretion) either reject the response, raise a query or accept the TAF Response by submitting a signed TAF Approval. The Contractor shall not commence the ad hoc engineering support until the Authority has raised and issued to the Contractor a Standard Purchase Order.

22 Price

- 22.1 Prices for Contractor Deliverables shall be as follows;
 - 22.1.1 Activity 1 (Service Management) are included in the rates and prices for Activities 2-5;
 - 22.1.2 Activity 2 (Supply Support (Spares)) are as set out at Annex C and shall be Firm Prices for years 1 to 3 of the Contract and Fixed Prices for the remainder of the Term;
 - 22.1.3 Activity 3 (Repair Support (Spares)) are as set out at Annex C and shall be Firm Prices for years 1 to 3 of the Contract and Fixed Prices for the remainder of the Term; and
 - 22.1.4 Activity 4 (Technical Service Support and Post Design Services) shall be calculated using the rates set out at Annex C and in accordance with the process set out in Condition 21. The prices shall be Firm for years 1 to 3 of the Contract and shall be provided by the Contractor to the Authority in accordance with the timescales set out in the Performance Indicators included in the SOSR at Annex A.
 - 22.1.5 Activity 5 (Process Improvement) will be priced as set out at Annex C and shall be Firm Prices for years 1 to 3 of the Contract and Fixed prices for the remainder of the Term.
- 22.2 The Firm Price for each Strip, Survey & Repair shall be the complete price payable by the Authority for all work required to affect the repair, irrespective of the condition/completeness of the Article when received by the Contractor.
- 22.3 In order to provide Firm Prices (excluding VAT) for unpriced articles in Annex C upon First Demand, the Contractor shall within fifteen (15) Business Days:
 - 22.3.1 Provide the Authority with a minimum of three (3) quotations for each Article (where these are available), which have been obtained through a competitive process and which are valid for the remainder of the Term;

- 22.3.2 Confirm to the Authority the maximum Lead Times for each Article provided in a quotation provided pursuant to Condition 22.3.1.
- 22.3.3 Warrant to the Authority that it has obtained quotations which meet the requirement and offer best value for money to the Authority.
- 22.3.4 If the Contractor is unable to obtain three (3) quotations in accordance with Condition 22.3.1, it shall notify the Authority and seek further instructions on the basis of the quotations it has received. The Contractor shall provide evidence of price negotiations undertaken in respect of any articles which can only be obtained from a single source.
- 22.4 The Authority may place an order with the Contractor for any of the First Demand Articles based on any of the quotations supplied in accordance with Condition 22.
- 22.5 At its discretion, the Authority may audit the quotations obtained or the process followed by the Contractor to obtain quotations in accordance with Condition 22.
- 22.6 The Parties shall amend Annex C (Price List) to reflect the Authority's preferred quotation (which may or may not be the quotation used for the First Demand Articles) obtained in accordance with Condition 22 which shall apply to future orders for the remainder of the Term.

23 Option Period and Prices

- 23.1 The prices detailed in the Schedule of Prices at Annex C and the underlying pricing assumptions and mechanisms shall be extended to cover the option period from Year 6 to Year 7.
- 23.2 In addition to the prices for the period of Year 1 to Year 5 as detailed in the Schedule of Prices at Annex C and the agreed pricing mechanisms, the Contractor hereby grants to the Authority the irrevocable option to extend the Contract for a further 2 years in accordance with the Terms and Conditions set out in this Contract, it being agreed that the Authority has no obligation to exercise such option. In respect of years 6 & 7 the prices shall be calculated utilising the agreed pricing mechanisms and may be exercised by the Authority no later than end of Year 4.

24 Variation of Fixed Prices

Activities 2, 3 & 5.

- 24.1 During years 4 & 5 and if the Authority takes up the option to extend the Contract, years 6 & 7 of the Contract, the prices for Activities 2, 3 and 5 (items only) are Fixed Prices which shall be varied using the following variation of price formula:

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

Where:

- V represents the variation of price.
- P represents the Year 3 Firm Price as stated in Annex c

- O represents the index K38E Repair and installation services of machinery and equipment (SIC 2007) Output.
- OO represents the monthly average of index K38E Repair and installation services of machinery and equipment (SIC 2007) Output for the base period of Year 1 pricing.
- O_i represents the monthly average of index K38E Repair and installation services of machinery and equipment (SIC 2007) Output across the financial year prior to the period for which variation is being added.
- a represents the Non-Variable Element (NVE) which shall be 10%.
- b represents the Variable Element which shall be 90%.
- $a + b = 1$

24.2 For the purposes of this Contract a variation modifier can be derived by completing the operation (O_i / OO). This variation modifier shall then be applied to each Firm Price in Annex C hereto to calculate Article and Strip & Survey prices for Years 4 to 5 and should the Authority take up the option period the process shall be repeated to calculate prices for years 6 and 7 of the Contract.

24.3 The Index referred to in Clause 24.1 above shall be taken from the following Table: Output Producer Price Indices - K38E Repair and installation services of machinery and equipment (SIC 2007) Output.

24.4 Indices published with a 'B' or 'F' marker, or a suppressed value, in the last three (3) years are not valid for Variation of Price clauses and shall not be used. Where the price index has an 'F' marker or suppression applied to 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.

24.5 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.

24.6 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 ONS used for rebasing indices shall then be applied.

24.7 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.

24.8 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.

24.9 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.

25 Activity 4 & 5 (labour only) Pricing

25.1 The rates recorded at Annex C are Firm Rates for Years 1 to 3. The rates do not include provision beyond this period for increases or decreases in the rates to be applied for PDS/technical services and travel and subsistence. For the purposes of agreeing Firm Rates for each Contract Year during the period Years 4 to 7, the Contractor shall submit its proposed rates to the Authority six (6) months prior to the expiry of the current year's agreed Firm Rate. The Parties shall negotiate in good faith to agree and incorporate Firm Rates into the Contract within a three (3) month period of receipt of proposed rates.

26 Performance Mechanism

26.1 The Contractor is offered a mechanism that varies the Firm Prices that can be attained under Activities 2, 3 and 5 of the Contract in accordance with the level of performance achieved against the contractually agreed Key Performance Indicators (KPIs) Annex D1.

26.2 Under this mechanism the following process shall be used:

26.2.1 The Contractor will record, using the Performance & Financial Report (P&FR) at Annex D2, all Purchase Order lines/repair Purchase Order lines/ Development deliverables that are due for delivery against Activity 2 (Supply Support - Spares), Activity 3 (Repair Support - Spares) and Activity 5 (Process Improvements) of Annex A in each calendar month. These records shall be monitored by the Contractor and submitted via email to the Authority's representative as defined in DEFFORM 111, as part of the monthly Work in Progress (WIP) Report no later than the 5th Business Day of each calendar month for review by the Authority.

26.2.2 On the first Business Day of each calendar month the Contractor shall further identify and separately record all the orders for Capital Spares, Consumable Spares and Work Packages under Activity 2 which were due for delivery during the preceding calendar month and shall calculate the percentage of that population of Items which were delivered on time in full. The Contractor shall provide this percentage and the population upon which it was calculated to the Authority no later than the 5th Business Day of each calendar month for review and agreement by the Authority. The agreed percentage shall then be fixed as either a RED, AMBER or GREEN performance for each calendar month. On the first Business Day in March of each Contract year the final KPI position will be calculated. The sum of the % for each month will be totalled and divided by 12 (or the relevant number of months in the Contract year prior to the first Business Day of March or the number of months between the first Business Day of March and final Business Day of the Contract duration in the final year to be used in the calculation (see 26.2.8 below)). This final % will be taken in conjunction with Appendix 1 to Annex D1 to indicate whether the KPI incentive fee will be paid.

- 26.2.3 On the first Business Day of each calendar month the Contractor shall further identify and record all the orders for Repairs under Activity 3 which were due for delivery during the preceding calendar month and shall calculate the percentage of that population of Items which were delivered on time in full. The Contractor shall report this percentage and the population upon which it was calculated to the Authority no later than the 5th Business Day of each calendar month for review and agreement by the Authority. The agreed percentage shall then be fixed as either a RED, AMBER or GREEN performance for each calendar month. On the first Business Day in March the final KPI position will be calculated. The sum of the % for each month will be totalled and divided by 12 (or the relevant number of months in the Contract year prior to the first Business Day of March or the number of months between the first Business Day of March and final Business Day of the Contract duration in the final year to be used in the calculation (see 26.2.8 below)). This final % will be taken in conjunction with Appendix 1 to Annex D1 to indicate whether the KPI incentive fee will be paid.
- 26.2.4 On the first Business Day of each calendar month the Contractor shall further identify and record all the Development Deliverables under Activity 5 – Dashboard Development which were due for delivery during the preceding calendar month and shall calculate the percentage of that population of Items/Hours which were delivered on time in full. The Contractor shall report this percentage and the population upon which it was calculated to the Authority no later than the 5th Business Day of each calendar month for review and agreement by the Authority. The agreed percentage shall then be fixed as either a RED or GREEN performance for each calendar month. On the first Business Day in March the final KPI position will be calculated. The sum of the % for each month will be totalled and divided by 12 (or the relevant number of months in the Contract year prior to the first Business Day of March or the number of months between the first Business Day of March and final Business Day of the Contract duration in the final year to be used in the calculation (see 26.2.9 below)). This final % will be taken in conjunction with Appendix 1 to Annex D1 to indicate whether the KPI incentive fee will be paid.
- 26.2.5 Should the KPI report associated with Activities 2, 3 and 5 have a RED performance status for a period of 3 consecutive calendar months a recovery plan must be included within the monthly report provided by the 5th Business Day of the following calendar month. The plan shall define the steps and processes which the Contractor intends to undertake to rectify its performance issues, which will be subject to the Authorities approval.
- 26.2.6 All recovery plans as detailed in 26.2.5 above shall include as a minimum:
- i. Full description of the delay and reasons for its occurrence;
 - ii. Any resultant impacts on future deliverables/deliveries;
 - iii. Actions to be taken - including identifying the owner;
 - iv. Proposed Recovery schedule; and
 - v. Full review on recovery plan effectiveness at the next planned Project Review or Annual Strategic Review whichever is the sooner.

- 26.2.7 For the purposes of this Contract non-performance of an approved recovery plan may be deemed to be continuous poor performance and may constitute, at the Authorities sole discretion, a material breach of the Contract. The Authority shall, without limiting any of its other rights and remedies, be entitled to exercise at its sole discretion its right to terminate in accordance with DEFCON 514.
- 26.2.8 The Contractor will initially be paid at the Red performance level of 95% of the Firm Price agreed at Annex C. Should the Contractor achieve an average Amber performance level across the Financial year under Activity 2 (Supply Support - Spares) KPI 1 or Activity 3 (Repair Support - Spares) KPI 2 they will be paid the remaining 5% of their firm price which has been withheld, should the Contractor achieve an average Green performance level across the Financial year under Activity 2 (Supply Support - Spares) or Activity 3 (Repair Support – Spares) they will also be paid an additional 2% of the total order values for the relevant Activity (valued at the 100% price in Annex C) for the preceding financial year.
- 26.2.9 Under Activity 5 (Process Improvement – Dashboard Development) the Contractor will initially be paid at the Red performance level of 95% of the Firm Price agreed at Annex C. Should the Contractor achieve a Green performance level against KPI 3 across the Financial year they will be paid the remaining 5% of their firm price which has been withheld.
- 26.2.10 Whilst KPI 4 carries no financial performance incentives, all other remedies apply for failure to deliver against this KPI or consistent Red performance levels (See section 26.2.5).
- 26.2.11 For the avoidance of doubt, and as **AN EXAMPLE ONLY**, the Authority will assume a Firm Price of £100 in Annex C equates to 100% of the price payable under this contract. The Contractor will be paid at the agreed RED performance rate against each line item which will equate to £95 (95%) upon delivery of goods in full. Subject to performance and following confirmation by the Authority that the Contractor has met the AMBER performance level at the end of the Financial Year the Authority will pay the additional AMBER performance fee of £5 (5%) , should the Contractor achieve the GREEN performance level at the end of the Financial Year the Authority will also pay the incentivisation fee of £2 (2%) of the Firm Price in Annex C. In accordance with 27.5 and 27.6 below, where there are multiple items on a Purchase Order line /repair Purchase Order line, any item will be considered to have been performed at the RED rate if the line item is delivered later than the corresponding agreed lead time in Annex C. Provided that the Contractor achieves an average GREEN performance across the totality of order lines due in the previous Financial year, then all lines will receive the incentivisation payment at the GREEN rate.

27. KEY PERFORMANCE INDICATORS

- 27.1 The performance of the Contractor in providing the Contractor Deliverables shall be monitored throughout the duration of the Contract through the use of the Key Performance Indicators (KPIs) set out below. The Contractor shall monitor its performance against the KPIs and shall issue to the Authority a report detailing the level of performance achieved in accordance with 26.2 above.

- 27.2 The KPIs shall be measured by reference to the corresponding descriptions set out below and, in the tables, set out in Appendix 1 (Key Performance Indicators) to Annex D1.
- 27.3 KPI reports are reviewed at the Project Review and Annual Strategic Review Meetings as detailed in this Annex D during the first 3 years of the contract. The Authority will at its discretion consider the Contractor's performance thereafter and will propose the amendment of the existing or the introduction of any additional KPI's to ensure constant improvement. The amendment of any KPI's will only occur once in each calendar year.
- 27.4 The Contractor will be required to provide Financial Management Information to the Authority as detailed in Annex A of DEFCON 647. The Contractor shall provide Financial Management Information in the format at Annex B of DEFCON 647 to support this contract monthly and this will be monitored annually.

PERFORMANCE LEVELS

- 27.5 All Purchase Order lines/repair Purchase Order lines/Development Deliverables, and their associated quantities/hours, issued by the Authority in respect of Activities 2, 3 and 5 shall be delivered 'On Time in Full' (OTIF) in accordance with the contractual lead times/planned hours stated in Annex C. If the Contractor chooses to split delivery of a Purchase Order line/repair Purchase Order lines/Development Deliverables, then it shall be deemed OTIF if all part deliveries meet the contractual lead time/planned hours.
- 27.6 The percentage of Purchase Order lines/repair Purchase Order lines/Development Deliverables due in month that have been delivered OTIF shall determine whether the Contractor has met a Red, Amber or Green level of performance as detailed at Appendix 1 to Annex D1.
- 27.8 Subject to calculation, in accordance with Appendix 1 to Annex D1, of the Contractor's actual level of performance, the Authority will as required pay additional GREEN performance sums to the Contractor in accordance with the process defined at 26.2 above.
- 27.9 The Authority shall pay any sums due to the Contractor on an annual basis by issue of a Standard Purchase Order via CP&F and shall occur no later than 30 calendar days after the preceding Contract Year. The sum to be paid shall be calculated in accordance with Appendix 1 to Annex D1.

28. PAYMENT

- 28.1 Claims for payment in respect of work carried out under each Activity shall be invoiced by the Contractor in accordance with DEFCON 522 and made via the Contracting, Purchasing and Finance (CP&F) electronic procurement tool. All payments will be made at the 95% rate as per sections 26.2.8 and 26.2.9 above.

Activity 2

- 28.2 Claims for payment in respect of work carried out under Activity 2 shall be made in accordance with 28.1 above upon satisfactory completion of all work under each Order and following the Article being brought on charge at MOD Store. Payment claims shall be submitted by the Contractor and payments will be authorised by the Authority and made via CP&F.

Activity 3

- 28.3 Claims for payment in respect of work carried out under Activity 3 shall be made in accordance with 28.1 above upon satisfactory completion of all work under each Repair Order line and following the Article being brought on charge at MOD Store. For items found to be BER, payment will be made following receipt of the Strip and Survey Report by the Authority and in accordance with condition 28.1 above. Payment claims shall be invoiced by the Contractor and payments authorised by the Authority and made via CP&F.

Activity 4

- 28.4 Claims for payment in respect of work carried out under Activity 4 relating to TAFs shall be made utilising the firm labour rates and travel & subsistence rates shown in Annex C, following completion of all work to the Authority's satisfaction and submission of a completed TAF PART D (Task Completion) to the Authority. Payment claims shall be submitted by the Contractor and payments authorised by the Authority and made via CP&F.

Activity 5

- 28.5 Claims for payment in respect of work carried out under Activity 5 shall be made in accordance with 28.1 above upon satisfactory completion of all work agreed at the start of the preceding month. Payment claims shall be invoiced by the Contractor and payments authorised by the Authority and made via CP&F.
- 28.6 Following the performance calculations and agreement on final sum payable for the financial year (in the month of the preceding year) the Value Rebate Scheme (Annexes C & Q) will be applied. The banding and subsequent discount will be agreed with the Contractor, and provisions made for payment of the resultant value to the Authority.
- 28.7 In order that the financial aspects of the Contract are managed effectively, it is essential that claims for payment are rendered promptly.

FINANCIAL INSPECTION AND REVIEW

29. Rights of Audit

- 29.1. The Contractor shall grant the Authority's nominated representative(s) or agent(s) reasonable access to the Contractor's systems and records relating to the Contract from the Contract Commencement Date. Contract Records shall be kept for a period of six years after completion of the Contract with the exception of safety certificates as detailed in Annex A – SOSR.
- 29.2. The Contractor shall keep full and accurate records (including, without limitation, financial documents including Supplier quotations/tenders evidencing expenditure and income) with respect to the Contract.
- 29.3. The Contractor shall grant the Authority and its authorised representative(s) or agent(s) the right of access at all reasonable times to visit the Contractor's premises and to inspect and/or take copies from the records, relating to the Contract, and the Contractor shall provide all reasonable assistance at all times during the currency of the Contract, and for six years after completion of all work there under, and fifteen years for Certificates of Conformity, for the purposes of allowing the Authority and/or its authorised representative(s) or agent(s) to obtain such information as is necessary to:
- 29.3.1. fulfil the Authority's obligations to supply information in relation to Parliamentary, Governmental, judicial or other administrative purposes; or

- 29.3.2. carry out an audit of the Contractor's compliance with the obligations set out in the Contract including, without limitation, the Contractor's obligations with respect to the meeting of performance and quality standards, the security and confidentiality of data, computer integrity and other security requirements; or
 - 29.3.3. investigate suspected fraud or other impropriety by the Contractor, the Ministry of Defence and/or any third party in relation to the Contract, in which case the provisions of this Clause shall be to the powers of the law enforcement authorities granted by law; or
 - 29.3.4. verify the accuracy of and appropriate application of charges and prices and any proposed or actual variations to the charges and prices in accordance with the Contract.
- 29.4. Subject to DEFCON 531 (Disclosure of Information) the Authority and its authorised representatives and/or agents shall treat as confidential all data and records accessed during any audit carried out pursuant to this Clause.
- 29.5. The Authority shall give a minimum of five (5) Business Days' notice of the exercise of its audit rights under this Clause, except:
- 29.5.1. where overriding Government circumstances dictate (e.g. Ministerial /Parliamentary requirements); or
 - 29.5.2. in the circumstances set out in Clause 29.3.3, in which case the Authority will be entitled to conduct an audit without notice; and
 - 29.5.3. that there shall be a standing right for the Authority or its agent(s) to carry out a spot check audit in conjunction with progress meetings held at the Contractor's premises

30. Open Book Accounting

- 30.1. The Contractor agrees to open book accounting whereby the Authority shall be provided with any information or documentation used by the Contractor that the Authority requires to evaluate the Contractor's pricing activities under the Contract.
- 30.2. The Authority reserves the right to request information and documentation that relates to the Contractor's pricing activities, including the cost models, under the Contract and on the receipt of such a request the Contractor shall provide the Authority with such information or documentation within five (5) Business Days.

INTELLECTUAL PROPERTY, INFORMATION AND GOVERNANCE

31. Intellectual Property Rights (IPR)

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

Notwithstanding any other provisions of the Contract and for the avoidance of doubt, award of the Contract by the Authority and placement of any contract task under it does not constitute an authorisation by the Crown under Sections 55 and 56 of the Patents Act 1977 or Section 12 of the Registered Designs Act 1949. The Contractor acknowledges that any such authorisation by the

Authority under its statutory powers must be expressly provided in writing, with reference to the acts authorised and the specific intellectual property involved.

- 31.2 DEFCONs 14, 15, 16, 21, 90 and 91 apply to the work under the contract except to the extent that (i) work in respect of any diesel engine is to be performed by other than the original supplier of that diesel engine to the Authority (or their successor having purchased the associated intellectual property in that diesel engine) or (ii) in respect of any other task under the Contract including Process Improvements under Activity 5. DEFCON 703 shall apply to (i) and (ii) in substitution for DEFCONS 14, 15, 16, 21 and 90.
- 31.3 To the extent that Activity 5 and any dashboard output display includes any Background Information belonging to the Contractor or any third party then the Contractor grants or shall procure the grant to the Authority of a royalty free licence to copy, modify and use or have copied, modified and used on behalf of the Authority the Background Information (including any associated intellectual property right) for any Authority purposes whatsoever

Security of Supply

- 31.4 In addition to the Intellectual Property Rights DEFCONs included within the General Conditions of Contract, the following shall also apply.
- 31.5 In the event that:
- 31.5.1 The Authority decides to place a follow on contract with the Contractor for the continuing provision of the Contractor Deliverables which are the same as or similar to those provided under this Contract and the Contractor is unwilling or unable to accept, on fair and reasonable terms a follow on contract from the Authority; and/or
- 31.5.2 The Contractor permanently discontinues its business for whatever reason and such business is not continued by a successor in interest to the Contractor to whom the relevant intellectual property rights have been transferred.

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

Private Venture Funding

- 31.6 The Contractor shall not introduce any private venture funding under this Contract without the prior written agreement of the same by the Authority's Commercial Officer. Unless the Contractor obtains such prior written approval from the Authority's Commercial Officer then it shall be assumed that no private venture funding was introduced.

Records

- 31.7 Throughout the Term and for not less than six (6) years thereafter and fifteen (15) years for Certificates of Conformity, the Contractor shall maintain at least one copy ("the Control Copy") of information utilised or generated in performance of the Contract.
- 31.8 Any Background Information within the Control Copy shall be clearly identified and duly marked.
- 31.9 The Control Copy shall be maintained in media and formats agreed to by the Authority but in any event shall be presented in a logical format which readily facilitates third party understanding of the information and its association with any article, process or material including without limitation, all drawings, specifications and all documentation necessary to operate or further modify any computer software developed in the performance of the Contract.
- 31.10 Except as authorised in writing by the Authority the Control Copy shall not be altered by the Contractor in any way which would render it inconsistent with the build standards of associated equipment including software or processes utilised in performance of the Contract.
- 31.11 The Control Copy shall be deemed to be the property of the Authority and shall be conspicuously marked by the Contractor as such, and the Authority may take possession of the Control Copy notwithstanding any administration, receivership, winding-up or liquidation of the Contractor or any transfer of its assets to any third party. Copies of information held on the Control Copy shall be supplied by the Contractor as required from time to time by the Authority. The Contractor shall be entitled to be reimbursed the reasonable costs of delivery.
- 31.12 If the Contractor enters into another contract with the Authority regarding maintenance of the Control Copy, then the Contractor's obligations contained in Clauses 31.7 to 31.11 shall be governed by that contract after the Expiry Date or early termination.
- 31.13 If no further contract is entered into between the Parties after the Expiry Date or early termination, the Contractor shall offer in writing to supply the Control Copy to the Authority and shall give the Authority six (6) calendar months to confirm whether it requires the Control Copy to be supplied. If the Authority notifies the Contractor within such six (6) calendar months that it requires the Control Copy to be supplied, the Contractor shall supply it to the Authority within two (2) weeks of receipt of such request. If the Authority notifies the Contractor within such six (6) calendar months that it does not require the Control Copy to be supplied or does not respond to the Contractor within such six (6) calendar months period, the Contractor may, subject to compliance with any other contractual or legal obligation to retain the relevant data, destroy or amend the Control Copy as it sees fit.

32. Sub-Contracts

- 32.1. The Contractor shall not place any sub-contract or order involving design or development of the equipment required under this Contract without the prior approval of the Authority's Commercial Officer (see Box 1 of DEFFORM 111 – Appendix to Contract).
- 32.2. The Contractor shall not enter into any commitment in relation to such work until the sub-contractor has entered into an agreement with the Authority in the form set out in DEFFORM 177 Design Rights and Patents (Sub-contractors Agreement). Wherever possible, the request for approval should be accompanied by two copies of the agreement signed by the sub-contractor. If in any case the Contractor is unable to comply with this Clause, he shall report the matter to the Authority's

Commercial Officer (see Box 1 of DEFFORM 111 – Appendix to Contract) and await further instructions before placing the sub-contract.

33. Access to Material Information/Data/Software ('Information')

- 33.1. In the event of termination in accordance with DEFCON 514 (Material Breach), the Authority shall have a royalty free right to use all Information in whatever format generated or used by the Contractor specifically for the purposes of managing and administering the Contract and necessary for the Authority and/or a third party or Successor Contractor to manage and complete the Contract.
- 33.2. Within thirty Business Days of receiving formal notice of termination under DEFCON 514 (Material Breach), the Contractor shall provide a list of all Information referred to in Clause 31.1 to the Authority's Contracting Officer identified in DEFFORM 111 to this Contract and agree the nature and timescale for the transfer of such information.
- 33.3. Where the Contract is terminated in accordance with DEFCON 656B (Termination for Convenience) then such rights to Information shall be limited to Information deliverable under the Contract and excludes rights to the Contractor proprietary information.
- 33.4. Where the Contract is to be terminated in accordance with DEFCON 514 (Material Breach) or DEFCON 656B (Termination for Convenience) or the Authority seeks to place a Contract with a third party on expiry of this Contract to provide support under the scope of this Contract, then the Authority and such third party shall provide the Contractor with a written undertaking that the Contractor's Information provided under this Clause shall be protected and not used by such third party other than for the purposes of managing and administering the Contract or for the purposes of a similar Contract between the Authority and such third party.
- 33.5. Upon the Contractor's receipt of the Authority's formal written notice of termination, the Authority will be deemed to have overall responsibility for managing the Exit Plan as detailed in Clause 36. The Contractor shall remain responsible for all aspects of the Contractor's performance of the Contract for the period of notice to the date of Contract termination
- 33.6. The Authority shall confirm its receipt of any assets returned or transferred by the Contractor to the Authority in writing.

34. Cyber Security

- 34.1. The Cyber Risk Level assigned to this Contract is **VERY LOW** as defined in DEFSTAN 05-138 (Cyber Security for Defence Suppliers).

35. Transfer of Undertakings (Protection of Employment)

- 35.1. The Contractor shall comply with the terms and conditions of Annex O – Transfer of Undertakings (Protection of Employment).

36. Publicity

- 36.1. The Contractor shall not publicise, either directly or indirectly in any media release, public announcement, or public disclosure relating to this Contract or its subject matter, in any promotional

or marketing materials, lists, or business presentations, without the written consent of the Authority for each such use or release in accordance with this Clause save as required through statutory regulations.

37. Information Regarding Prosecution or Proceedings

- 37.1. If the Contractor becomes aware of any prosecution or proceedings, for criminal breaches of the Law related to the subject matter or the execution of the Contract, against the Contractor, any servants, employees or agents of the Contractor and any subcontractors engaged in performance of the Contract, the Contractor shall immediately notify the Authority.
- 37.2. Any convictions during the Term of the Contract for criminal breaches of the Law related to the subject matter or the execution of the Contract by the Contractor or any of the Contractor's directors/partners or senior management who have powers of representation, decision or control, shall be regarded as a Material Breach of the Contract.

OBLIGATIONS TO ASSIST POST TERMINATION OR EXPIRY

38. Exit Plan

- 38.1. The Contractor shall deliver an Exit plan to the Authority for approval within 3 (three) months of the Contract Commencement Date and throughout the term of the Contract shall comply with the then latest Exit Plan at Annex I.
- 38.2. The Contractor shall review and update the Exit Plan annually and on the earlier of:
- 38.2.1. twelve (12) Months prior to the end of the Term; or
- 38.2.2. upon receipt of a notice of termination.
- 38.3. All such updates must be approved by the Authority and shall include any changes which the Authority requires in order to achieve a controlled Contract exit and transition to a New Provider or, if there is no New Provider, to the Authority.
- 38.4. The Contractor shall ensure that it is able to implement the Exit Plan throughout the Term.
- 38.5. All costs incurred in developing, updating and implementing the Exit Plan shall be borne by the Contractor.

39. Warranty

- 39.1 With respect to Activity 2, Activity 3 & Activity 5 within Annex A of the Terms & Conditions (SOSR), the Contractor shall repair or replace any Article(s) found to be defective during the Warranty Period as a result of defective material or manufacturing, provided that any replaced Article(s) shall upon the Contractor's request be returned to the Contractor at Contractor's cost.
- 39.2 With respect to Activity 4 within Annex A of the Terms & Conditions (SOSR), the Contractor shall repair or re-perform any defective Post Design Technical Services (PDTS) performed by the Contractor where such defect appears during the Warranty Period.

39.3 The Authority shall immediately take appropriate steps to prevent any defect from becoming more serious, and all warranty claims with respect to this warranty shall be made in writing without delay and no later than ten (10) Business Days following discovery of such defect during the Warranty Period. The Authority shall have the responsibility to establish that its claim is covered by warranty. Replaced Articles shall become the Contractor's property. Delivery of replacement or repaired Articles shall be made in accordance with the original delivery terms.

39.4 With respect to **Activity 2, Activity 3 and Activity 5** within Annex A of the Terms & Conditions (SOSR):

39.4.1 The Warranty Period for the Articles shall commence on the date of delivery and shall end twenty-four (24) months from the date of Delivery.

39.4.2 Where the Article(s) are inspected and installed within the abovementioned twenty-four (24) months by Contractor-authorized and/or an Authority Related Party in accordance with the OEM instructions and manuals, the Warranty Period shall be twelve (12) months from the date when the Article(s) successfully pass Sea Acceptance Trials (SATs) or twenty-four (24) months from the date of delivery, whichever occurs earlier.

39.4.3 The Warranty Period for Articles which have been repaired under Warranty shall expire upon the latter of:

- i. Six (6) months from the date when the repaired Articles successfully pass SATs; or
- ii. Expiry of the Warranty Period applicable to the originally-supplied Article(s) as set forth in Clause 39.4.1.

39.4.4 The Warranty Period for replacement Articles supplied under the warranty shall expire upon the latter of:

- i. Twelve (12) months from the date when the repaired Articles successfully pass SATs; or
- ii. Expiry of the Warranty Period applicable to the originally-supplied Article(s) as set forth in Clause 39.4.1

39.5 Not Used

39.6 The Warranty Period for repaired or replacement Articles shall be subject to the same terms, conditions and limitations of liability as those applicable to the originally-supplied Article(s). Under no circumstances shall the Warranty Period of any Article (whether as originally supplied or as repaired or replaced) extend beyond the date that is thirty-six (36) months following the date of commencement of the original Warranty Period as stipulated above in Clause 39.4. However, should there be a recurring defect that results in a given Article requiring replacement multiple times within the Warranty Period, the Contractor shall investigate the issue and propose an alternative solution to the Authority at no additional cost to the Authority.

39.7 With respect to Activity 4 within Annex A of the Terms & Conditions (SOSR):

The Warranty Period for any Post Design Technical Service (PDTs) performed by the Contractor shall expire twelve (12) months from the date of completion of the PDTs performed under the corresponding TAF unless otherwise agreed.

39.7.2 The Warranty Period for any PDTs which has been re-performed under the warranty shall expire twelve (12) months following the date of acceptance of the PDTs re-performed under the corresponding TAF unless otherwise agreed.

39.7.3 The warranty for PDTs which have been re-performed under the warranty shall be subject to the same terms, conditions and limitations of liability as those applicable to the originally-performed PDTs. Under no circumstances shall the Warranty Period of any PDTs (whether original or re-performed) extend beyond the date that is twenty four (24) months following the date of commencement of the original Warranty Period as stipulated above in Clause 39.7.1. However, should there be a recurring defect that results in a PDTs task requiring to be re-performed multiple times within the Warranty Period, the Contractor shall investigate the issue and propose an alternative solution to the Authority at no additional cost to the Authority.

39.8 Applicable to all Activities; the Contractor shall not be liable for any defect due to or arising in connection with:

39.8.1 any materials, components, designs or software provided by the Authority;

39.8.2 negligence or wilful misconduct of the Authority;

39.8.3 evidence of improper service work, installation or alterations carried out by the Authority without prior agreement with the Contractor;

39.8.4 use of unsuitable material or consumables by the Authority affecting operation;

39.8.5 any use, service or operation of the Articles which is not in conformity with manuals, instructions of specifications provided by the Contractor or an Authority Related Party.

39.9 The Contractor's warranty obligation does not include any crange, electricity, scaffolding, docking, diving, sub-sea work, towage cost, demounting or mounting costs, taxes and duties, and all such cost and expenses shall be reimbursed by the Authority to the Contactor where applicable.

39.10 Where, after the Contractor's warranty investigation, it is agreed between the Authority and the Contractor that the Authority does not have a warranty claim within the scope of these conditions, then the Authority shall be responsible for all applicable costs and expenses for such inspection, repaired or replacement Articles, or other PDTs.

39.11 Not used

40. EARNED VALUE MANAGEMENT

- 40.1 The Authority reserves the right to invoke the Earned Value Management (EVM) methodology in line with DEFCON 647, which may result in the inclusion of the following additional requirements below. Tenderers should not price for any of the below into their Tender response, it is for information only and should the Authority decide to invoke EVM a review of pricing will be undertaken at the time.

40.1.1 Organisation

The work undertaken by the contractor shall be subdivided into portions that are agreeable with the Authority. These subdivisions may be characterised as a Contractor Work Breakdown Structure (CWBS) and shall be defined in a Contractor Work Breakdown Structure Dictionary.

40.1.2 Planning, Scheduling and Budgeting

Contractors may be required to produce a schedule at a summary level of that reflects the scope of work and time frame required to complete delivery to the Authority. A single page plan that represents the highest level of summary shall be made available to the Authority.

40.1.3 Accounting Considerations

The Contractor may be required to demonstrate that actual costs are accurately and separately recorded against relevant elements of the CWBS.

40.1.4 Analysis and Reporting

The Contractor shall provide a monthly report of spending against the plan that compares actual expenditure by CWBS element to the planned values.

- 40.2 The Contractor may be required to provide an in-year spending forecast and shall indicate to the Authority within 5 Business Days if at any time the Contractor expects that the funds required to complete the contract will exceed the agreed contract value. Additionally, if the funds required within any fiscal year are expected to exceed the amount authorised by the Authority, the Contractor shall notify the Authority within no more the 5 Business Days.

- 40.3 The Contractor shall report progress to the Authority using the Cost and Schedule Status Report form, or an equivalent.

40.4 Revisions and Data Management

The Contractor shall manage change in a manner that ensures only the Authority approved changes are incorporated.

41. LIMITATIONS ON LIABILITY

Unlimited liabilities

- 41.1 Neither Party limits its liability for:
- 41.1.1 death or personal injury caused by its negligence, or that of its employees, agents or sub-contractors (as applicable);
 - 41.1.2 fraud or fraudulent misrepresentation by it or its employees;
 - 41.1.3 breach of any obligation as to title implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982; or
 - 41.1.4 any liability to the extent it cannot be limited or excluded by law.
- 41.2 The financial caps on the Contractor's liability set out in Clause 41.4 below shall not apply to the following:
- 41.2.1 for any indemnity given by the Contractor to the Authority under this Contract;
 - 41.2.2 the Contractor's indemnity in relation to DEFCON 91 (Intellectual Property in Software) and DEFCON 632 (Third Party IP - Rights and Restrictions);
 - 41.2.3 the Contractor's indemnity in relation to TUPE at Annex O (TUPE);
 - 41.2.4 breach by the Contractor of DEFCON, 532B and Data Protection Legislation;
- 41.3 The financial caps on the Authority's liability set out in Clause 41.4 below shall not apply to the following:
- 41.3.1 for any indemnity given by the Authority to the Contractor under this Contract;
 - 41.3.2 the indemnity given by the Authority in relation to TUPE under Annex O (TUPE); shall be unlimited; and

Financial limits

- 41.4 Subject to Clauses 41.1 and 41.2 and to the maximum extent permitted by Law:
- 41.4.1 The Contractor's total liability in respect of losses that are caused by Defaults of the Contractor shall in no event exceed:
- (i) in respect of DEFCON 76 five million pounds (£5,000,000) in aggregate;
 - (ii) in respect of DEFCON 514 one million five hundred thousand pounds (£1,500,000) in aggregate;
 - (iii) in respect of DEFCON 611 five million pounds (£5,000,000) in aggregate; and
 - (iiii) in respect of DEFCON 612 five million pounds (£5,000,000) in aggregate;
- 41.4.2 without limiting Clause 41.4.1 and subject always to Clauses 41.1, 41.2, 41.2.5 and 41.4.3, 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 five million pounds (£5,000,000) in aggregate.
- 41.4.3 on the exercise of any and, where more than one, each option period or agreed extension to the Term, the limitation of the Contractor's total liability (in aggregate) set out in Clauses 41.4.1 and 41.4.2 above shall be fully replenished such that on and from each such exercise or extension of the Term, the Authority shall be able to claim up to the full value of the limitation set out in Clauses 41.4.1 and 41.4.2 of this Contract.

- 41.5 Subject to Clauses 41.1, 41.3, 41.3.3 and 41.6, and to the maximum extent permitted by Law the Authority's total liability (in aggregate) whether in contract, in tort (including negligence), under warranty, under statute or otherwise under or in connection with this Contract shall in respect 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.
- 41.6 Clause 41.5 shall not exclude or limit the Contractor's right under this Contract to claim for the Charges.

Consequential loss

- 41.7 Subject to Clauses 41.1, 41.2 and 41.8, neither Party shall be liable to the other Party or to any third party, whether in contract (including under any warranty), in tort (including negligence), under statute or otherwise for or in respect of:
- 41.7.1 indirect loss or damage;
 - 41.7.2 special loss or damage;
 - 41.7.3 consequential loss or damage;
 - 41.7.4 loss of profits (whether direct or indirect);
 - 41.7.5 loss of turnover (whether direct or indirect);
 - 41.7.6 loss of business opportunities (whether direct or indirect); or
 - 41.7.7 damage to goodwill (whether direct or indirect),
- even if that Party was aware of the possibility of such loss or damage to the other Party.
- 41.8 The provisions of Clause 41.7 shall not restrict the Authority's ability to recover any of the following losses incurred by the Authority to the extent that they arise as a result of a Default by the Contractor:
- 41.8.1 any additional operational and administrative costs and expenses arising from the Contractor's Default, including any costs paid or payable by the Authority:
 - (i) to any third party;
 - (ii) for putting in place workarounds for the Contractor Deliverables and other deliverables that are reliant on the Contractor Deliverables; and
 - (iii) relating to time spent by or on behalf of the Authority in dealing with the consequences of the Default;
 - 41.8.2 any or all wasted expenditure and losses incurred by the Authority arising from the Contractor's Default, including wasted management time;
 - 41.8.3 the additional cost of procuring and maintaining in place transitional assistance and replacement deliverables for the remainder of the Term and any option period or agreed extension to the Term (including legal and other consultants' fees, re-procurement project costs, other expenses associated with such exercise and any increase in the fees for the replacement services over and above the Contract Price that would have been payable for the relevant Contractor Deliverables);
 - 41.8.4 any losses arising in connection with the loss, destruction, corruption, inaccuracy or degradation of Authority data, or other data or software, including, to the extent the

Authority data, other data or software can be recovered or reconstituted, the fees, costs and expenses of reconstituting such Authority data, data or software;

- 41.8.5 damage to the Authority's physical property and tangible assets, including damage under DEFCON 76 and 611;
- 41.8.6 costs, expenses and charges arising from, or any damages, account of profits or other award made for, infringement of any third-party Intellectual Property Rights or breach of any obligations of confidence;
- 41.8.7 any additional costs incurred by the Authority in relation to the Authority's contracts with a third party (including any compensation or interest paid to a third party by the Authority) as a result of the Default (including the extension or replacement of such contracts);
- 41.8.8 any fine or penalty incurred by the Authority pursuant to Law and any costs incurred by the Authority in defending any proceedings which result in such fine or penalty; or
- 41.8.9 any savings, discounts or price reductions during the Term and any option period or agreed extension to the Term committed to by the Contractor pursuant to this Contract.

Invalidity

- 41.9 If any limitation or provision contained or expressly referred to in this Condition 41 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 41.

Third party claims or losses

- 41.10 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:
 - 41.10.1 arises naturally and ordinarily as a result of the Contractor's failure to provide the Contractor Deliverables or failure to perform any of its obligations under this Contract; and
 - 41.10.2 is a type of claim or loss that would have been recoverable under this Contract if the third party were a party to this Contract (whether as the Authority or the Contractor), such claim to be construed as direct losses for the purpose of this Contract.

No double recovery

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