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## DE&S

**Tender Number :**  
SACC/00039

**Description:**

Provision and Support of a JTIDS (Joint Tactical Information Distribution System) Network Management System (JNMS)  
Fixed and Deployable

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Appendix to Contract – DEFFORM 111

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Annex C	-	Contractor's Proposal <b>(included at Contract Award)</b>
Annex D	-	List of Key Personnel <b>(included at Contract Award)</b>
Annex E	-	Delivery Schedule <b>(included at Contract Award)</b>
Annex F	-	Security Aspects Letter (SAL)
Annex G	-	Government Furnished Assets (GFA)
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1. SCHEDULE OF REQUIREMENTS

<b>Name and Address of Tenderer</b>  See distribution list	<b>MINISTRY OF DEFENCE</b>	<b>Tender No</b>  SACC/00039
	<b>Schedule of Requirements for</b>  Provision and Support of a JTIDS (Joint Tactical Information Distribution System) Network Management System (JNMS) Fixed and Deployable	
<b>Issued With</b>  DEFFORM 47	<b>On</b>  12 March 2018	<b>Previous Contract No</b>  SACC/00011

Table 1 - Requirements

Item Number	Description	Price All £ (ex-VAT)
1	Provision of a JNMS Fixed and Deployable System in accordance with the Statement of Work at Annex A	
2	Support of a JNMS Fixed and Deployable System in accordance with the Statement of Work at Annex A	
3	Provision of training for JDLMO and on site personnel in accordance with the training requirements laid down in System Requirements Document for the period of the contract	
4	Integration of MID JTRS CMN4, Link Enhanced Throughput (LET), Crypto Modernisation (CM), Frequency Re-mapping (FR) and Concurrent Contention Receive (CCR) into JNMS Fixed and Deployable in accordance with the Statement of Work at Annex A from 1 April 2020	
5	Ad hoc Tasking approved by the Authority in accordance with Condition 3.7	£300,000.00 (Limit of Liability) Prices to be agreed in accordance with Condition 4.2

## 2. GENERAL CONDITIONS

DEFCON501 (Edn.11/17) - Definitions and Interpretations

DEFCON503 (Edn.12/14) - Formal Amendments to Contract

DEFCON515 (Edn.02/17) - Bankruptcy and Insolvency

DEFCON516 (Edn.04/12) - Equality

DEFCON518 (Edn.02/17) - Transfer

DEFCON520 (Edn.02/17) - Corrupt Gifts and Payments of Commission

DEFCON526 (Edn.08/02) - Notices

DEFCON527 (Edn.09/97) - Waiver

DEFCON528 (Edn.07/17) - Import and Export Licences

The Contractor's attention is drawn to Clause 1 of DEFCON 528 requiring notification of overseas expenditure. In this connection, the Contractor shall, within one month of acceptance of the Contract, notify the Contracts Branch of details of any overseas sub-contract or order he has placed, or intends to place, in aid of the contract. Details to be provided are: Contract No; Country in which sub-contract placed/to be placed; Name, Division and full postal address of sub-contractor; Value of sub-contract as applicable to main contract; Date placed/to be placed. If no overseas orders are to be placed, the Contractor shall advise the Contracts Branch to this effect in the same timescale.

DEFCON528 Ap - Appendix to DEFCON 528 – Overseas Expenditure, Import and Export Licences

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

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

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

DEFCON532A (Edn.06/10) - Protection Of Personal Data (Where Personal Data is not being processed on behalf of the Authority)

DEFCON537 (Edn.06/02) - Rights of Third Parties

DEFCON538 (Edn.06/02) - Severability

DEFCON539 (Edn.08/13) - Transparency

DEFCON550 (Edn.02/14) - Child Labour and Employment Law

DEFCON566 (Edn.03/18) - Change of Control of Contractor

DEFCON620 (Edn.05/17) - Contract Change Control Procedure

DEFCON656B (Edn.08/16) - Termination for Convenience – Over £5m

For the purposes of Clauses 1 and 6b of DEFCON 656B, the periods of notice shall be 3 months and 2 months respectively.

DEFCON659A (Edn.02/17) - Security Measures

Note: Should the Authority terminate the Contract under Clause 8 of this DEFCON, then the compensation provisions of DEFCON 514 shall apply.

DEFCON660 (Edn.12/15) – [Redacted] Security Requirements

DEFCON691 (Edn.03/15) - Timber and Wood - Derived Products

## **2.1 Completion of Work**

2.1.1 All work under Items 1 – 5 shall be carried out in accordance with the Statement of Work at Annex A. Additionally; all work under the contract shall be carried out to the reasonable satisfaction of the Authority's Project Manager, whose details are at Box 2 of the DEFFORM 111.

## **2.2 Contractor's Personnel**

2.2.1. The Contractor shall, and shall procure that the Sub-Contractor shall have:

2.2.1.1. sufficient staff (including all relevant grades of supervisory staff) with the requisite level of skill and experience shall at all times be engaged in the delivery of this Contract. This obligation shall include ensuring that there are sufficient staff to cover periods of holiday, sickness, other absences and anticipated and actual peaks in demand throughout the duration of this Contract and

2.2.1.2. all Contractor Personnel receive such training and supervision as is necessary to ensure the proper performance of this Contract in accordance with the provisions herein.

2.2.2. The Contractor shall and shall procure that the Sub-Contractor shall not terminate the appointment of any of the Key Personnel specified at Annex D to this Contract, or appoint any new member, or replacement for any, of the Key Personnel without the Authority's prior written approval. As soon as the Contractor becomes aware of a possible change to the Key Personnel, however arising, the Contractor shall notify the Authority's Commercial Branch in writing and shall use all reasonable endeavours as soon as reasonably practicable to find a suitable person to perform the role of the member of Key Personnel who is being replaced and to avoid any vacancy in such role.

2.2.3. Within five (5) business days of identifying any proposed replacement of Key Personnel, the Contractor shall provide evidence to the Authority's Commercial Branch that the proposed replacement holds qualifications, experience and competence equivalent to those of the member of Key Personnel being replaced.

2.2.4. The Authority shall notify the Contractor/Sub-Contractor in writing of its decision to approve or reject such proposed replacement within ten (10) business days of receiving such evidence. Any change in the Key Personnel approved in writing by the Authority in accordance with the provisions of this Clause 2.2.4 shall prompt a formal amendment to Annex C of the Contract in accordance with DEFCON 503 (Edn.12/14). DEFCON 620 (Edn.06/14) shall not apply.

2.2.5. The Authority shall have the right to require Contractor's Personnel are removed from the Contract and associated work, without prior warning, should security concerns arise, associated with them, during their employment. The removal may be without explanation to the Contractor where the information held is secret.

## **2.3 Contractor's Proposals**

2.3.1 The fact that:

2.3.1.1 the Contractor has complied with the Authority's Requirements, as specified in this Contract, but not the Contractor's Proposals at Annex C shall not be a defence to an allegation that the Contractor has not satisfied the Contractor's Proposals; and

[Redacted]

2.3.1.2 the Contractor has complied with the Contractor's Proposals at Annex C but not the Authority's requirements, as specified in this Contract, shall not be a defence to an allegation that the Contractor has not satisfied the Authority's Requirements.

2.3.2 If the Contractor's Proposals at Annex C do not fulfil the Authority's requirements as specified in this Contract, then the Contractor shall, at its own expense (and without invoking DEFCON 620, (Edn.05/17)) amend the Contractor's Proposals and rectify the JNMS system, affected article or component (as applicable) so as to ensure that:

2.3.2.1 the Contractor's Proposals satisfy the Authority's requirements as specified in this Contract; and

2.3.2.2 following such amendment or rectification the performance of the JNMS System, article or component (as applicable) shall be of at least an equivalent standard of performance to that set out in the Contractor's Proposals prior to their amendment or rectification (for the purpose of comparison, disregarding the fault which required the amendment or rectification to be made).

2.3.2.3 any proposed change to the Contractor's proposal shall require prior review and approval by the Authority. Any changes agreed will be incorporated within the Contract via a formal Contract Amendment, in accordance with DEFCON 503.

**2.4 Definitions**

2.4.1. In addition to the provisions of DEFCON 501 (Edn.11/17), the following words and expressions shall apply to this Contract:

Clause	means a Clause within a Condition.
Condition	means a Condition within the Contract.
Contract	means this document SACC/00039 and the associated Annexes.
Contract Amendment	means a change or amendment to the Contract in accordance with DEFCON 503.
Contractor's Personnel	shall include all employees of the Contractor and Sub-Contractors to the Contractor who are directly or indirectly involved in the delivery of the Contract, or support thereof.
Deliverables	means all goods which the Contractor is required to supply under the Contract
Government Furnished Assets (GFA)	means any item in the GFA list at Annex G provided by the Authority to the Contractor in support of this Contract, including Government Furnished Equipment/Resources/Facilities/Information (GFE/GFR/GFF/GFI).
Key Performance Indicators (KPIs)	means metric (either financial or non-financial) that is used to set and measure progress towards strategic objectives for an organisation.
Key Personnel	means those named Personnel that are employed to perform the roles identified in Annex D to this Contract.
Parties	means the Authority and Contractor collectively and excluding any other third party.
Sub-Contract	means a contract or arrangement between the Contractor and any other organisation or person for the provision of goods and/or services to the Contractor solely for the purposes of fulfilling the Contractor's obligations under the Contract.
Sub-Contractor	means any organisation or person party to a Sub-Contract, as defined above, with the Contractor.

Technical Information	means i) Copies of all Technical data, including software code in human readable form together with the required compiler(s), procedures, documentation and other information that has been generated as part of providing the Services. ii) Predictive Modelling: support, repair, modification and design services data showing trends capability and resource consumption. iii) A list of all licences, supply agreements and maintenance agreements with third parties for Third Party Software including full copies of the terms of the software license agreements; Contractor Software and Software developed under the Contract.
Third Party	means any individual or group of individuals who is/are not a party to the Contract.

## 2.5 Disclosure of Information

2.5.1 In addition to the provisions of DEFCON 531 (Edn.11/14), the Contractor shall take every precaution to ensure that information arising from, or connected with, the Contract, is divulged only to the minimum number of employees, and then only to the extent essential to each person's action in carrying out the Contract.

## 2.6 Entire Agreement

2.6.1 This Contract constitutes the entire agreement between the Parties relating to the subject matter of this Contract. This Contract supersedes all prior negotiations, representations and undertakings, whether written or oral, except that this Condition shall not exclude liability in respect of any fraudulent misrepresentation. This Contract is without prejudice to any other agreement between the Contractor and the Authority.

## 2.7 Order of Precedence

2.7.1. In amplification of DEFCON 501, if there is any inconsistency between the provisions of the main body of this Contract and the Annexes, or between any of the Annexes, the conflict shall be resolved according to the following descending order of priority:

2.7.1.1 Contract Schedule of Requirement (SOR);

2.7.1.2 Contract Narrative Conditions;

2.7.1.3 Contract DEFCONs;

2.7.1.4 Annex A - Statement of Work;

2.7.1.5 Annex B - System Requirements Document,

2.7.1.6 Annex H - Milestone Payment Plan;

2.7.1.7 All other Contract Annexes.

2.7.2. If either Party becomes aware of inconsistency between the provisions of the main body of this Contract and the Annexes, or between any of the Annexes such Party shall notify the other Party forthwith and the Parties shall resolve the conflict on the basis of the order of precedence set out in Clause 2.7.1. 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 shall be referred to dispute resolution in accordance with DEFCON 530.

## 2.8 Period of Contract

2.8.1 The period of the Contract shall be from **[To be populated following agreement of the delivery schedule]** and unless otherwise terminated in accordance with this contract or otherwise lawfully terminated, to **[5 years from the Contract start date]** inclusive.

2.8.2 Where a task is authorised in accordance with the procedure at Condition 3.8 during the period of the Contract but completion of the task will be outside this period, the task will be fulfilled in accordance with the terms and conditions and procedures of this Contract and by the date specified in the tasking form.

## **2.9 Publicity**

2.9.1. The Contractor shall note that no publicity or communication with representatives of press, television, radio or other media, unless previously agreed in writing by the Authority's Commercial Branch, shall be permitted on any aspects of this Contract. The Contractor shall not release any information publicly relating them, any employees, or Sub-Contractors to this Contract without the prior written approval of the Authority's Commercial Branch.:

2.9.2. This Condition is to be flowed down to all Sub-Contractors

2.9.3. Any failure to comply with the obligations under this Condition 2.9 shall be treated as a material breach of this Contract, and the Authority shall have the right to terminate the Contract in accordance with DEFCON 514.

## **2.10 Responsibility of the Contractor**

2.10.1. The Contractor shall be entirely responsible for undertaking the work detailed in the Schedule of Requirements.

2.10.2 The Contractor's responsibilities under the Contract shall in respect of Clause 2.10.1. include, but not be limited to:

2.10.1.1 carrying out all activities and producing the deliverables, as described in the Statement of Work and SRD, to meet the Authority's requirement, in accordance with the Delivery Schedule at Annex E, and the Conditions of this Contract;

2.10.1.2 the placing, administration, control and management of all Sub-Contracts, required to meet the requirements of the Contract;

2.10.1.3 planning, programming and progressing of the work, including preparation and delivery of appropriate documentation;

2.10.1.4. financial management of the work, including financial control and monitoring of all Sub-Contracts;

2.10.1.5. providing the Authority with the information reasonably required to satisfy the Representative on a continuing basis that the work is proceeding to time, cost and performance. This is without prejudice to the specific Contract reporting requirements outlined in this Contract

## **2.11 Security Vetting of Contractor's Personnel and Places of Work**

2.11.1. Where it is a statutory requirement that any Contractor's Personnel be of a required clearance level before undertaking particular work as specified in the Security Aspects Letter (SAL) at Annex F to this Contract, the Contractor shall ensure the validity of the clearance throughout the term of employment.

2.11.2. The Contractor shall ensure that all personnel are made aware of and comply with all the appropriate security measures as referred to at DEFCON 659A, as directed by the Authority, the Contract and the security policy, and with the security regulations pertaining to all work and documents relating to the project and the environments where the Contractor's activities may be undertaken.

2.11.3. The facilities in which the Contractor shall store/handle classified material in relation to this Contract shall be, and shall remain for the duration of the Contract, suitable for handling the information in accordance with the security requirements as defined in the Statement of Work at Annex A and in the SAL at Annex F to this Contract. The Contractor shall include in any relevant Sub-Contracts the provision, that should the Sub-Contractor intend to store/handle classified material in relation to the Contract, its facilities shall also be and remain for the duration of the Contract, suitable for handling the information in accordance with the security requirements as

defined in the Statement of Work at Annex A and in the SAL at Annex F to this Contract.

## **2.12 Sub-Contracts**

2.12.1. Except for those Sub-Contracts subject to Condition 5.4 and without prejudice to the Contractor's entire obligation to the Authority to perform the Contract in all respects and to deliver the articles as contracted so to do irrespective of any breach or default by any person other than the Authority with whom the Contractor has contracted whether by way of Sub-Contract or otherwise:

2.12.1.1 The Contractor shall ensure that the Authority's Commercial Branch is notified at the earliest opportunity of all potential Sub-Contracts to be placed by the Contractor in the execution of this Contract.

2.12.1.2 The Contractor shall include in any Sub-Contract the same conditions as are included in the Contract, modified if necessary so as to apply to the Sub-Contractor and shall comply with Condition 5.4.

2.12.1.3 The Contractor shall provide the Authority's Commercial Branch with a copy of any Sub-Contract, if so requested.

2.12.2. The Contractor shall be responsible for the award, administration and performance of all Sub-Contracts in such a manner to ensure that the delivery and performance requirements of the Contract are met. The Authority shall not be responsible for any inconsistencies, incompatibilities or omissions in the Contractor's agreements with its Sub-Contractors.

## **2.13 Sustainable Procurement - Best Practice**

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

## **2.14 Sustainable Procurement - Legislative Requirements**

2.14.1. The Contractor shall take all reasonable steps to procure the observance of [the economic, social and environmental legislation] related to the subject matter or the execution of the contract by any servants, employees or agents of the Contractor and any subcontractors engaged in the performance of the Contract.

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

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

## **2.15 TUPE**

To be supplied following confirmation/information from the current incumbent.

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

DEFCON68 (Edn.02/17) - Supply of Data for Hazardous Articles, Materials and Substances

DEFCON117 (Edn.10/13) - Supply of Information for NATO Codification and Defence Inventory Introduction

**[Redacted]**

DEFCON126 (Edn.11/06) - International Collaboration

DEFCON129 (Edn.18/11/16) - Packaging (For Articles other than Munitions)

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

DEFCON502 (Edn.05/17) - Specification Changes

DEFCON601 (Edn.04/14) - Redundant Materiel

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DEFCON607 (Edn.05/08) - Radio Transmissions

DEFCON608 (Edn.10/14) - Access and Facilities to be Provided by the Contractor

DEFCON624 (Edn.11/13) - Use of Asbestos

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DEFCON644 (Edn.05/17) - Marking of Articles

DEFCON658 (Edn.10/17) - Cyber

DEFCON697 (Edn.07/13) - Contractors on Deployed Operations

**3.1 Access to the Contractor's Premises and Technical Information**

3.1.1 In addition to the rights afforded to the Authority under DEFCON 608 the Contractor shall allow authorised personnel of the Authority access to the premises of the Contractor to enable the Authority to observe all work being carried out under the Contract and to examine any drawings, specifications or other documents, computer generated and maintained data or software programs utilised by the Contractor under the Contract. The Contractor shall provide all reasonable facilities as necessary for the execution of the Authority's rights reserved herein.

3.1.2 The Contractor shall ensure that a corresponding right of access is secured for the Authority's representatives in all Sub-Contracts placed by the Contractor for the purpose of the Contract. All access to Sub-Contractors shall be arranged by the Authority through the Contractor.

3.1.3 The Authority may make use of personnel contracted from Third Parties to assist the Authority in the performance of this Contract. The Contractor shall allow access by such personnel to its premises, and to the premises of any Sub-Contractors, and to any personnel, information or articles that are relevant to the performance of this Contract.

3.1.4 Such access shall only be granted for specific and defined tasks to be agreed between the Authority and the Contractor as required. The Contractor shall not unreasonably prevent such access unless there are substantiated and justified reasons. In such cases the Contractor shall use reasonable endeavours to ensure alternative access arrangements to the information or articles.

3.1.5 The Authority shall impose upon any personnel the obligation to keep any data or information supplied by them confidential and to use it only for carrying out the specifically defined tasks.

3.1.6 If the Contractor or any of your Sub-Contractors consider that actions or requests made by such personnel are not covered by the scope of this Condition, the Contractor shall notify the Authority of its concerns. The Authority shall use reasonable endeavours to resolve the issue.

3.1.7 Such Third Party personnel shall enjoy the same rights as the Authority's own personnel and shall be subject to the same obligations as the Authority's Personnel in similar circumstances.

3.1.8 Whenever access is granted to any of the bodies or personnel mentioned above, including Authority's staff, such access shall be restricted to the specific purpose for which that access was granted.

3.1.9 No-one granted access on the Authority's behalf by the Contractor shall impede the progress of any work. They shall not give, and the Contractor shall not accept, any instruction or re-direction to the Contractor or to any of the Contractor's Sub-Contractors.

3.1.10 Except in the case of emergency when the Parties agree the Authority shall not be required to provide notice, the Authority shall give the Contractor reasonable notice of no less than 5 working days, when access to the premises of the Contractor or of any Sub-Contractor's is required.

3.1.11 The Authority shall ensure that all representatives requiring access to the premises of the Contractor or of any Sub-Contractors have the appropriate security clearance.

### 3.2 Commercial Risk

3.2.1 The Contractor acknowledges that any risk assessment which has been, or may be, undertaken in connection with this Contract has been, or will be, a project management function only. Such risk assessments do not affect the legal relationship between Parties. The process of risk assessment, including without limitation, the identification of (or the failure to identify):

3.2.1.1 particular risks and their impact; and/or

3.2.1.2 risk reduction measures, contingency plans and remedial actions

3.2.2 shall in no way limit, transfer or exclude the Contractor's obligations under this Contract and shall be without prejudice to the Authority's rights, remedies, privileges or powers under the Contract. The risks identified as a result of any risk assessment questionnaire and risk assessment process generally remain the risks of the Contractor and are not assumed by the Authority expect to the extent that the Authority expressly and unequivocally released was or will be issued by the Authority solely on this basis.

### 3.3 Cyber

3.3.1 Further to DEFCON 658 the Cyber Risk Level of the Contract is **LOW**, as defined in Def Stan 05-138. Consequently the Contractor, as part of their enduring obligations under the Contract, shall perform the relevant control measures required to mitigate cyber risks as detailed within Def Stan 05-138. The defined cyber risk controls are the minimum measures that will be required although there may be occasions when additional control measures will need to be implemented; in these circumstances an MOD Accreditor will engage directly with the relevant stakeholders.

3.3.2 Where the Contractor intends to sub-contract any part of the requirement, the Contractor must complete a Risk Assessment to assess the cyber risk level for that

sub-contract and ensure their supply chain has the appropriate controls, or an agreed implementation plan, in place prior to sub-contract award.

3.3.3 The Risk Assessment Reference (RAR) is J98DMMDT.

### 3.4 Export Licences

3.4.1 The Contractor shall be solely responsible for securing all necessary export licences in a timely manner to ensure that the Contractor shall meet the delivery dates in Delivery Schedule at Annex E. This includes but is not limited to any export licence required in relation to:

3.4.1.1 any equipment that is to be manufactured outside of the United Kingdom;

3.4.1.2 any data, drawings, specifications, manufacturing data and other like information required for manufacture of any equipment under licence in the United Kingdom; and

3.4.1.3 for the provision of all other information, documents, technical assistance and data required to satisfy in full the requirements of the Contract.

### 3.5 Quality Assurance

3.5.1 In addition to those standards and regulations provided for elsewhere in this Contract, Annexes and Authority's Requirements, the Contractor shall comply with the following quality standards in the performance of its obligation under this Contract.

3.5.2 The Contractor shall hold and maintain an appropriate Third Party quality assurance certification as awarded by a UK accredited certification body or equivalent. Certification shall be maintained throughout the duration of the Contract. The resultant quality management system shall have appropriate scope for the work being undertaken.

3.5.3 For the purpose of the Contract, the following Quality Assurance Provisions shall apply:

DEFSTAN / AQAP NO	ISSUE NO	DESCRIPTION
AQAP 2110	Edition D	NATO Quality Assurance Requirements for Design, Development and Production (based on ISO 9001:2015 QMS)
AQAP 2210	Edition A Version 2	Management of the quality of software development process will be in accordance with AQAP 2210 Ed A Version 2
Def Stan 05-057	Issue 6	Configuration Management of Defence Material
Def Stan 05-061	Part 1 Issue 6	Concessions
Def Stan 05-061	Part 4 Issue 3	Contractor Working Parties
Def Stan 05-061	Part 9 Issue 5	Independent Inspection Requirements for Safety Critical Items
Def Stan 05-135	Issue 1	Avoidance of Counterfeit Material

3.5.4 The Contractor shall maintain his quality management system in accordance with the applicable standard. The Authority is fully committed to ISO 9001:2008 and the Contractor must be registered as certified to this new standard or approved equivalent to meet the quality management requirements of the Authority's Contracts.

3.5.5 Quality Assurance Representative: All reference to the Quality Assurance Representative (QAR) in documents which form part of this Contract shall be read as referring to the Authority specified in Box 7 of the DEFFORM 111.

### **3.6 Safety**

3.6.1 The Contractor shall be responsible for the observance by itself, its employees, agents and Sub-Contractors of all safety precautions necessary for the protection of its employees, agents, Sub-Contractors and any other persons, including all precautions to be taken under statutory provisions or any other directions of any local or other authority having the force of law. The Contractor shall co-operate fully with the Authority to ensure the proper discharge of these duties.

### **3.7 Tasking – Ad hoc**

3.7.1 The Contractor shall, if required, undertake any tasks approved by the Authority under Item 5 of the Schedule of Requirements. All work under this Item shall be approved in advance by the Authority's Project Manager and tasked in accordance with the procedure detailed in Condition 3.8 below. A register of approved tasks in the format of that at Annex K will be maintained by the Authority and the Contractor and shall be reviewed at the Quarterly Progress Meetings.

### **3.8 Tasking Procedure**

3.8.1 Tasking will be initiated by the Authority's Project Manager by completion of Part A of the Tasking Authorisation Form (TAF) at Annex J to the Contract. The TAF will then be forwarded to the Contractor for costing.

3.8.2 On receipt of the TAF the Contractor will complete Part B, using the agreed rates at Annex I to the Contract, and return the TAF to the Authority's Project Manager with a copy to the Authority's Commercial Officer. The Contractor shall only proceed with the work after approval of the task by the Authority.

3.8.3 When all the required sections of Part C of the TAF have been completed by the Authority then the TAF should be returned to the Contractors designated Commercial Officer and Project Manager.

3.8.4 On completion of a task the Contractor shall complete Part D of the TAF and forward it to the Authority's Project Manager for completion of Part E, under which the Authority approves formal closure of the task.

3.8.5 The Authority will maintain the TAF Register, the latest version of which is provided at Annex K. The Authority's Commercial Officer will up-issue the TAF Register Quarterly in arrears and will provide the same to the Contractor in accordance with the procedure detailed in DEFCON 503.

## **4. PRICE**

DEFCON127 (Edn.12/14) - Price Fixing Condition for Contracts of Lesser Value

Note: shall apply only to amendments to the Contract with a value up to and including £250,000 (two hundred and fifty thousand pounds sterling).

DEFCON619A (Edn.09/97) - Customs Duty Drawback

DEFCON643 (Edn.12/14) - Price Fixing (Non-qualifying Contracts)

Note: shall apply only to amendments to the Contract with a value exceeding £250,000 (two hundred and fifty thousand pounds sterling).

#### **4.1 Import Duty**

4.1.1 Should the Contractor require to import items from outside the European Community (EC), he shall immediately inform the Authority with details of the article to be imported, the purpose for which the article is required and the country from which it is being imported. Where appropriate the Authority will provide the Contractor with appropriate certification in order that the Contractor can claim appropriate exemptions from import duty.

#### **4.2 Limit of Liability for Line 5**

4.2.1 The amount shown in the Schedule of Requirements for Item 5 are estimates and are included for indicative purposes only. The Authority shall not be bound to place tasks to this value nor to accept or pay for any work undertaken under Item 5 which has not been tasked in accordance with the procedure detailed in Condition 3.8 above.

#### **4.3 Pricing**

4.3.1 The price stated for Items 1, 2, 3 and 4 of the Schedule of Requirements shall be a Firm Price not subject to variation or escalation and shall be:

4.3.1.1 the price of the services delivered in accordance with the terms of the Contract;

4.3.1.2 inclusive of all appropriate taxes (but NOT UK VAT), royalties, licence fees and the cost of complying with all Contract Conditions; and

4.3.1.3 inclusive of all costs associated with importing any equipment/software/data into the UK from overseas.

4.3.2 Firm Prices shall be agreed in advance, unless agreed otherwise, in accordance with DEFCON 643 for any tasks to be carried out under Item 5 of the Schedule of Requirements. Prices shall be calculated using the firm labour rates at Annex I and shall not exceed the limit of liability detailed in Item 5 of the Schedule of Requirements. All work to be undertaken under Item 5 shall be tasked in accordance with the procedures detailed in Condition 3.8. The Authority shall not be liable for any costs associated with work undertaken under Item 5 which has not been tasked.

#### **4.4 Travel and Subsistence**

4.4.1 Where applicable, Travel and Subsistence costs incurred by the Contractor in performance of tasks authorised under Item 5 shall be reimbursed at the Rates shown in Annex I.

### **5. INTELLECTUAL PROPERTY RIGHTS**

DEFCON14 (Edn.11/05) - Inventions and Designs Crown Rights and Ownership of Patents and Registered Designs

For the purposes of the Contract the address specified in Note (1) of DEFCON 14 shall be amended to read: "DIPR-SU, Directorate of Intellectual Property Rights, MOD Abbey Wood, Poplar 2a #2214, Bristol, BS34 8JH.

DEFCON15 (Edn.02/98) - Design Rights and Rights to Use Design Information

This condition applies when there is any development work being undertaken by the Contractor for which the MoD is charged under the Contract. Before carrying out any such development, the Contractor shall notify the Authority's commercial officer, and shall agree a DEFFORM 315 prior to the commencement of the development activity.

DEFCON16 (Edn.10/04) - Repair and Maintenance Information

DEFCON21 (Edn.10/04) - Retention of Records

DEFCON90 (Edn.11/06) - Copyright

DEFCON91 (Edn.11/06) - Intellectual Property Rights in Software

DEFCON126 (Edn.11/06) - International Collaboration Clause

For the purposes of the Contract, the period prescribed in Clause 3 of this condition shall be 15 years from the date of Contract.

DEFCON632 (Edn.08/12) - Third Party Intellectual Property - Rights and Restrictions

DEFCON703 (Edn.08/13) - Intellectual Property Rights - Vesting in the Authority

Note that DEFCON 703 shall only apply to those deliverables listed in the Schedule of Work as being subject to this Condition.

## 5.1 Definitions

5.1.1 For the purposes of Conditions 5.1.1.3 to 5.1.1.10 only, the following definitions apply.

5.1.1.1 "Application Programming Interface (API)" means a defined interface provided by an item of software which provides a specific function or service to other items of software

5.1.1.2 "Article" means the Project System and any subsystem or any other part thereof.

5.1.1.3 "Contract Data Requirement (CDR)" means a data requirement referred to in the Schedule of Requirements the format and content of which is set out or referenced in DEFFORM 315 in Annex M to the Contract.

5.1.1.4 "Information" means technical information or any other information, whether in human readable form or in machine-readable form, or in any other form.

5.1.1.5 "Intellectual Property" includes patents, registered designs, design rights, topography rights, copyright, database rights and other rights in Information.

5.1.1.6 "Interface" means those features of a system, equipment, module or application - including those outlined in ISO 7498 (Basic reference Model for Open Systems Interconnection) - which must be compatible with those features of one or more other systems, equipments, modules or applications, in order to enable their successful integration and interoperation for Project Purposes.

5.1.1.7 "Interface Information" means the Information which is necessary and sufficient to describe and define an Interface, including its operating and physical features.

5.1.1.8 "TDP" means Technical Data Package.

5.1.1.9 "Project System" means systems and equipments supplied or to be supplied by the Contractor pursuant to this Contract and any follow-on contracts.

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5.1.1.10 "Project System Contract" means this Contract and/or any follow on contract(s) which the Authority places with the Contractor for the performance of further work towards the development of the Project System or for the supply and/or support of that System.

5.1.1.11 "Project Purpose" means the design and development and manufacture of:

5.1.1.11.1 new equipments, or the modification of existing equipments, whether belonging to the UK Government, the Authority or any other UK Government Department, to enable them to make use of the Project System and provider of Project Services, and the manufacture of such equipments when designed or modified.

5.1.1.11.2 additional sub-systems and equipments to operate with the Project System.

5.1.1.11.3 replacement sub-systems and equipments to operate with the Project System.

For the avoidance of doubt:

- "existing equipments" does not include the Project System itself;
- "replacement sub-systems" means items of a different design and purpose to the Articles delivered under this contract;
- "additional sub-systems" does not include Articles produced or acquired under this contract;

## **5.2 Copyright Clause – Technical Support Contractors**

5.2.1 Notwithstanding any restrictions which may otherwise apply by virtue of Clause 5 of DEFCON 90, subject to the rights of third parties the Authority shall have, in respect of any copyright work to which this Contract applies, a free licence to copy and use, or have used, by its technical support contractors, the work or any copy thereof for the purposes of monitoring work under a Project System Contract, or inspecting, testing and evaluating Information and Articles delivered thereunder, or evaluating the Information contained in the work with a view to procuring equipment for use with the Project System (hereinafter called "Permitted Purposes"), provided that the Authority shall ensure that:-

5.2.1 access to the Information contained in the work is confined to those employees of the Authority and its technical support contractors who require access for the said Permitted Purposes; and

5.2.2 access by an employee of a technical support contractor shall not be permitted until the technical support contractor has entered into a non-disclosure agreement with the owner of the Information; and

5.2.3 provided that no part of the work or any copy thereof shall otherwise be made available to any third party, except with the prior written permission of the owner of the Information.

## **5.3 The Authority's Rights to Have Access to and to Use, Interface Information**

5.3.1 Should, in performance of the Contract, any Interfaces be required or developed for the operation of the Project System or for Project Purposes, the rights in all Interface Information for these new Interfaces will be granted on the same terms as this Condition 5.3.

5.3.2 Where there are Interfaces then the Authority shall have a free licence to copy and use, or have copied and used by his contractors, all Interface Information associated with such Interfaces for the purposes of meeting the needs of the Project System or for Project Purposes, provided that the Authority shall ensure that access by an employee of a contractor shall not be permitted until the Contractor has entered into confidentiality undertakings with the owner of the Information.

5.3.3 At the reasonable request of the Authority, the Contractor shall provide, in addition to the Interface Information in paper form, the relevant API object code implementation as part of a common operating environment software load in order to assist a third party (receiving Interface Information in accordance with this Condition 5.3 in the development and interoperation of applications which are intended to make use of or communicate with the Project System. If additional work is required beyond separation of the API object code, such additional work shall be subject to the agreement of fair and reasonable terms between the Authority and the Contractor:

#### **5.4 Intellectual Property Rights Applicable to Sub-Contracts**

5.4.1 Unless otherwise instructed by the Authority, the Contractor shall not enter into any sub-contract or order or extend any existing sub-contract or order in relation to any aspect of the design, development or operation of the Project System (Hardware or Software) until the Subcontractor has entered into an agreement with the Authority in the appropriate form set out in DEFFORM 177 at Annex L to the Contract, which includes such provisions of the Contract as the Authority deems relevant and the Subcontractor has provided a written undertaking to enter into a Commercial Exploitation Agreement with the Authority in the appropriate form set out in Annex N. If in any case the Contractor is unable to comply with this Condition 5.4, he shall report the matter to the Authority and await further instruction before placing the sub-contract or order.

#### **5.5 Intellectual Property in Software**

5.5.1 In respect of Proprietary Software as defined in sub-clause 5.5.2 the terms of any licence as stated in Clause 3.c of DEFCON 91 are as set out within this Condition 5.5.

5.5.2 Where Proprietary Software is delivered but not deemed developed under this Contract for the purposes of DEFCON 91 (herein referred to as Proprietary Software), then subject to the provisions of this Condition 5.5, and in consideration of the Authority placing the Contract with the Contractor, the Authority shall have a free non exclusive, non transferable, perpetual licence to copy, modify (to the extent modifications may occur during normal use of the Proprietary software through the configuration features contained therein), use, and to have copied, modified, or used the Proprietary Software (but excluding source code) and associated Information for using the Project System with which it was supplied for the Services of the United Kingdom Government, including the issue of any such Proprietary Software and associated Information to any contractor or potential contractor in connection with a contract or the tendering for a proposed contract for any United Kingdom Government purpose, but only when the Contractor or potential Contractor has entered into a non disclosure agreement with the Contractor in the form of DEFFORM 94. The licence granted to the Authority under this sub-clause 5.5.1 is limited to the operation of the Project System, Project Purposes and for using the Articles that include embedded Proprietary Software in other systems as required from time to time by the Authority. Such right to use Proprietary Software under this clause does not extend to using the Proprietary software on a stand-alone basis and/or disembodied from the hardware, which use shall be subject to sub-clause 5.5.3 below.

5.5.3 The Contractor agrees that where the Authority has a requirement for the Proprietary Software for use outside of the scope of 5.5.2, this will be licensed to the Authority on fair and reasonable terms.

5.5.4 In the event that the Contractor is unable through reason of administration, winding-up, insolvency or receivership, from meeting the obligations laid down in sub-clause 5.5.3 then the Authority shall be entitled to take such copies and make use of the Project Proprietary Software or such similar Contractor owned software (as may have been provided to the Authority by or on behalf of the Contractor) as may be required to meet United Kingdom Government purposes. The Authority undertakes that it will make fair and reasonable payment which takes account of the copies taken and use made under the provisions of this Condition 5.5. The payment shall be made either to the liquidator or receiver or as the case may be to a third party having purchased the asset to which any licence fee would be expected to be due. The provisions of this Condition 5.5 form a licence in force from the date of this Contract

but which shall not be exercised by the Authority until the conditions of this Condition 5.5 are met.

5.5.5 The Contractor undertakes, on fair and reasonable terms to be agreed, to provide technical assistance and support to third parties, who may have been selected by the Authority, in order to enable such third parties to copy, modify or use the Deliverable Software including the Proprietary Software on behalf of the Authority but in the case of Proprietary Software only after that Proprietary Software has been released to the Authority pursuant to sub-clauses 2.f.ii or 2.f.iii. Prior to any release of the Proprietary Software, the Contractor undertakes, on fair and reasonable terms to be agreed, to provide technical assistance and support and to license to the Authority software development toolkits for the purpose of allowing the Authority to customise certain components of the Proprietary Software, such as, but not limited to, displays and interfaces.

## **5.6 IPR Conditions Applicable to Project Training Documentation**

5.6.1 The Contractor shall ensure that the Authority has the right to copy, amend, extend or have copied, amended or extended any training documentation called for under the Schedule of Requirements, irrespective of whether in hard or soft format, or any part thereof including any such part when incorporated in any amended or extended version of such training documentation, and to circulate, use or have used said training documentation including any amended or extended version and any copies thereof for any United Kingdom Government purpose.

## **5.7 Integration**

5.7.1 As long as the Project System remains in service with the Authority, where the Authority requires and requests that the Contractor modifies the Project System for the purposes of integration and interoperation, then to the extent that the Contractor owns or controls the relevant Information he undertakes to use all reasonable endeavours to provide the modification promptly on fair and reasonable terms which are at least consistent with the Authority's standard pricing conditions.

5.7.2 Where the Contractor is unable to contract for the required modification, or where the Authority at its sole discretion decides that a third party should carry out the modification, then the Contractor undertakes to provide a royalty free licence in the relevant Information that he owns or controls to such third party, as the Authority may nominate to perform the modification. Notwithstanding the above, in the event that the Contractor is unable to contract for the required modification because the necessary information has not been made available by the Authority or a third party other than a subcontractor, then the Authority shall request a costed proposal from the Contractor for a licence to provide the relevant Information to enable a third party to perform the modification. The Contractor shall provide any such costed proposal on fair and reasonable terms.

5.7.3 The Contractor shall be entitled to make representations to the Authority concerning the likelihood of commercial damage arising from disclosure to the third party and the Authority shall give due consideration to such representations but may still require release of the relevant Information in which case the matter shall be referred to arbitration. The Contractor shall be entitled to enter into a direct confidentiality agreement with the recipient third party. The Authority shall endeavour to acquire for the Contractor a free licence to use for any purpose any modification that may be made by a third party under this Condition 5.7.

## **5.8 Commercial Exploitation**

5.8.1 The Contractor shall not commercially exploit any system designed and developed under the Contract unless he has the formal written agreement of the Authority. Any proposal for Commercial Exploitation of the system shall be submitted to the Authority for consideration in accordance with Annex N.

## **5.9 Deliverables Subject to Vesting**

5.9.1 Where the Authority takes vesting of a deliverable under this contract pursuant to DEFCON 703, the contractor shall not include any pre-existing or Third Party information in such a deliverable without the prior written agreement of the Authority. Where such information is included without the Authority's agreement the Contractor accepts that the Authority shall have the right to copy, use and disclose the information in any manner of its choosing and that on notifying the Authority of any such inclusion as soon as it became aware of it shall at the Authority's sole discretion and the Contractors sole expense deliver a revised deliverable with either the rights set out in Clause 5.9.2 or the information removed.

5.9.2 Where the Authority agrees with the Contractor that it is necessary to include pre-existing or Third Party Information the Contractor shall secure for the Authority, as a minimum, the right to copy and use the information within any United Kingdom Government Department. The Contractor shall identify in each such deliverable any pre-existing or Third Party Information with a legend indicating its proprietary nature and acknowledging the Authority's rights under this contract.

## **5.10 Security of Supply**

5.10.1 Subject to the provisions of this Condition 5.10, the Authority shall have a non-exclusive licence on the terms and conditions at sub-clause 5.10.3, to copy, to use, and have used Information as described in sub-clause 5.10.7 for the purposes of third party manufacture of further quantities of the Articles delivered to the Authority under this Contract.

5.10.2 The Authority may require the Contractor to compile and maintain, or if extant, to amend and maintain, a Technical Data Pack (TDP) that meets the specified requirements of the Authority. Maintenance will be for the duration of this Contract. Maintenance of the TDP will be a requirement of any CLS Service contracts awarded to the Contractor. Any further modifications or enhancements carried out by the Contractor and funded by the Authority under any other contract will be incorporated into the TDP on fair and reasonable terms. In brief the TDP shall comprise the Information outlined in sub-clause 5.10.7. The Contractor will be required to provide a costed proposal against the Authority specification incorporating the principles of fair and reasonable pricing in accordance with the pricing conditions applicable to formal amendments to the Contract. Negotiated and agreed proposals will be subject to incorporation into the Contract by means of an up-issued Statement of Work, to be promulgated as part of the formal Contract amendment. . Where the Authority does not require a complete TDP it may request compilation of a TDP which comprises Information necessary to manufacture any of the Articles (or parts thereof). The TDP shall be the property of the Authority and the Contractor shall clearly and conspicuously mark the TDP to indicate the Ministry of Defence ownership and right to use the TDP in accordance with "Condition 5.10 of Contract Number SACC/00039". The TDP shall be held by the Contractor and when the conditions of this sub-clause 5.10.2 are met, released to the Authority. For the avoidance of doubt, the Authority's ownership of the TDP shall not imply any restriction on the Contractor with respect to Intellectual Property (IP) owned or under its control and does not imply a transfer of ownership of such IP or a licence in respect of this IP other than that described in Clause 5.10.1, above.

5.10.3 In the event that the Contractor is unable or unwilling to accomplish the production and delivery of additional or replacement Articles (including parts thereof) in accordance with the terms set forth in sub-clause 5.10.4, the TDP for the Articles (or parts thereof) will be delivered promptly to the Authority upon written request, without any additional charge. Upon delivery of the TDP to the Authority, the Authority's rights regarding third party manufacture shall arise therein subject to the restrictions set forth in sub-clause 5.10.11. The Contractor shall have no obligation to provide licenses in respect of any third party owned Intellectual Property rights where such an obligation is agreed between the Authority and the appropriate Subcontractor in Design Rights and Patents (Subcontractors) Agreements.

5.10.4 Where the Authority has an obligation to pay royalties or other licence fees in payment for the exercise of rights granted by this Condition 5.10, the following basic provisions will apply, unless otherwise agreed:

5.10.4.1 Royalties will be calculated upon the invoice prices charged to the Authority by the supplier for the articles supplied or the services provided, after the deduction of the costs of any freight, packaging, insurance, and sales taxes.

5.10.4.2 Licence fees shall be payable each half-year within 30 days of receipt of a valid invoice for such fees.

5.10.4.3 The Authority shall, within forty five (45) days of the end of each Calendar half-year, prepare and issue to the licensor, with a copy to the Contractor or Subcontractor, a statement showing all transactions subject to royalties which arose during that half-year and the amount of the royalties so arising, and shall make payment to the licensor of the said amount, plus VAT if applicable, within said 45 day period.

5.10.4.4 The Authority shall maintain proper books and accounting records of all transactions subject to royalty or other fees at its premises, the address of which the Authority will notify to the Contractor or Subcontractor, and shall make such records available for inspection at all reasonable times by the Contractor or Subcontractor and its auditor. At the Contractor's reasonable request and for information purposes only, the Authority shall provide a copy of such records for the Contractor's retention.

5.10.5 Without prejudice to the terms and conditions which the Authority may require in any future possible contract placed directly or indirectly with the Contractor, the Contractor agrees that it is a condition of this Contract that where the Authority has requirements for replacement or additional Articles (including parts thereof), these will be supplied on fair and reasonable best customer terms of like customers. The Contractor also agrees that it is a condition of this Contract that where the proposed contract is not a result of a valid competition, that the Contractor will at the sole discretion of the Authority, and where appropriate, provide the Authority with a cost breakdown in accordance with DEFCON 643 or, if applicable DEFCON 127.

5.10.6 The Contractor further agrees that any and all non-competitive future work which the Contractor is invited directly to submit a quotation for, or tender a price for, in response to the Authority's requirements, such price will be constructed using UK MoD rates or Overseas Government rates, whichever is applicable.

5.10.7 The TDP shall comprise all Information required to manufacture the Articles, including drawings, bills of materials, test specifications, and software which the Contractor, or the ultimate owner of the Information that is controlled by the Contractor, themselves, use for the purposes defined in sub-clause 5.10.1. The TDP shall comprise all Information sufficient in form and content to enable a third party, experienced and skilled in the design, development and/or manufacture of equipment of a similar or related technology, to manufacture the required Articles.

5.10.8 During the agreed compilation period of the specified TDP or specified revised TDP, the Authority shall have a right at reasonable frequency and upon reasonable notice to enter the Contractor's premises for the purposes of verifying that the TDP is being developed in accordance with the provisions of the Contract amendment. Following formal acceptance of the TDP required under the Contract amendment, the Authority shall also have a right to enter the Contractor's premises to verify that the TDP, as baselined at acceptance, is available for release to the Authority. The Authority shall not be entitled to disclose any Information that he may discern from such inspection of the TDP unless the disclosure is otherwise provided for under this Contract but subject to such restrictions as may apply. Acceptance of the TDP shall be in accordance with a process identified in the associated Contract Amendment, but as a minimum, this will include consideration of whether or not the TDP meets the requirements of the Authority's specification in terms of the scope, the quality and clarity of the Information.

5.10.9 To the extent that he is able the Contractor undertakes, on fair and reasonable terms to be agreed, to provide technical assistance and support to third parties who may have been selected by the Authority to manufacture the Articles.

## [Redacted]

5.10.10 The Contractor shall not sell, assign or otherwise transfer any of his interest in the TDP without first acquiring from the prospective purchaser, assignee or transferee an undertaking in favour of the Authority and acknowledging the rights of the Authority in the TDP. The undertaking shall include an obligation to maintain the rights of the Authority in the TDP as per this sub-clause 5.10.10 in any subsequent sale, assignment or transfer. The Contractor shall promptly deliver a copy of such undertaking to the Authority.

5.10.11 The Authority's rights under this Condition 5.10 regarding manufacture by third parties shall only apply as regards quantities of the Articles required for any UK Government requirement, excluding overseas sales and commercial sales by the UK Government. The grant of such rights shall be subject to the rights of third parties and the provisions of sub-clause 5.10.3.

5.10.12 In any event, the Authority's rights to disclose the TDP to a third party shall be subject to the following conditions:

5.10.12.1 No disclosure to a third party shall take place unless and until the third party has entered into a written confidentiality agreement with the owner of the Information.

5.10.12.2 In the event that the conditions of this sub-clause 5.10.12.2 are incapable of being achieved because of the then status of the owner of the Information, the provisions of sub-clause 5.10.12.1 shall require that the Authority shall itself impose on the third party confidentiality terms equivalent to those that would otherwise have been agreed between owner of the Information and the third party.

5.10.13 The rights of the Authority as set out in sub-clauses 5.10.1 to 5.10.12 above shall apply to the manufacture of the Articles to the design as represented by the TDP. Such design shall be deemed inclusive of modifications, adaptations or enhancements produced by the Contractor and supplied to the Authority as shall arise whilst the Articles are in service with the UK Armed Forces or any UK Government Department. This clause shall apply where the Authority has placed a contract for such modification, adaptation or enhancements to the Contractor under sub-clause 5.10.2. Where such modifications, adaptations or enhancements arise as a result of partial or complete private venture funding, the exercise of such rights shall be subject to the payment by the Authority to the Contractor of a fair and reasonable sum having regard to such private venture funding.

5.10.14 In the event of the Contractor advising the Authority that it no longer has any interest in the future development or improvement of the Articles, the Authority shall have the right to take delivery of the TDP defined in sub-clause 5.10.7 and use, or have used, any Information contained in the TDP for development or improvement purposes. Such a right of use shall be at the Authority's sole risk and shall be subject to the agreement of fair and reasonable terms with the Contractor. To the extent that the TDP is modified or used for a purpose other than that for which it was supplied under sub-clauses 5.10.7 and 5.10.15, the Contractor shall have no liability whatsoever to the Authority or any third party arising from such use of the TDP.

5.10.15 The TDP at Condition 5.10 shall comprise all software including source codes and associated Information required to support and modify the Proprietary software.

## 6. LOANS

DEFCON23 (Edn.08/09) - Special Jigs, Tooling and Test Equipment

DEFCON76 (Edn.12/06) - Contractor's Personnel at Government Establishments

DEFCON611 (Edn.02/16) - Issued Property

DEFCON694 (Edn.03/16) - Accounting for Property of the Authority

## **6.1 Government Furnished Assets – GFA**

6.1.1. All GFA issued by the Authority to the Contractor for the purpose of carrying out the work under Schedule of Requirements Items 1-5 is listed at Annex G to this Contract. All GFA will be provided on the terms and conditions stated therein, and are subject to the provisions of DEFCON 611.

6.1.2. Save for the applicability of DEFCON 632, any information of a technical nature that has been provided to the Contractor by the Authority under the Contract is provided, without any potential liability to the Authority; the Contractor is responsible for and remains completely liable for any use it may make of such information in the execution of the Contract, and for assuring itself that the information is fit for purpose and accurate.

6.1.3. All changes to the GFA list shall be undertaken by a formal Contract Amendment in accordance with DEFCON 503 and the process in DEFCON 620.

6.1.4. The Contractor shall take any steps as may be reasonably necessary to ensure that it has brought to the notice of all Sub-Contractors and any other persons dealing with any GFA that the Authority is the owner, the handling requirements associated and that obligations to flow down Conditions of this Contract are met. The Contractor shall notify the Authority immediately of any attempts by a Third Party to secure a lien or rights of a similar kind on any GFA. At the same time the Contractor shall notify the Third Party that the Authority is the owner of the GFA. This shall not relieve the Contractor of his obligations under DEFCON 611.

6.1.5 In accordance with DEFCON 611 the Contractor shall on completion of the Contract notify the Authority of all residual GFE held. The Authority shall at this point provide the Contractor with disposal instructions or returning the items to the Authority.

## **7. DELIVERY**

DEFCON5J (Edn.18/11/16) - Unique Identifiers

DEFCON82 (Edn.11/16) - Special Procedures for Initial Spares

DEFCON113 (Edn.02/17) - Diversion Orders

DEFCON507 (Edn.10/98) - Delivery

DEFCON514 (Edn.08/15) - Material Breach

DEFCON524 (Edn.10/98) - Rejection

DEFCON525 (Edn.10/98) - Acceptance

DEFCON612 (Edn.10/98) - Loss of or Damage to the Articles

DEFCON621A (Edn.06/97) - Transport (if The Authority is responsible for transport) - applies to MIDS JTRS CMN4 Terminals only

DEFCON621B (Edn.10/04) - Transport (if Contractor is responsible for transport)

### **7.1 Anchor Milestones**

7.1.1 The Authority has specified the successful completion of the following anchor milestones:

7.1.1.1 Preliminary Design Review as specified in the Delivery Schedule at Annex E; in accordance with the SOW at Annex A.

7.1.1.2 Critical Design Review as specified in the Delivery Schedule at Annex E; in accordance with the SOW at Annex A.

7.1.1.3 Factory Acceptance Test as specified in the Delivery Schedule at Annex E; in accordance with the SOW at Annex A.

7.1.1.4 System Acceptance Test as specified in the Delivery Schedule at Annex E; in accordance with the SOW at Annex A.

7.1.2 It is a requirement of the Contract that the Contractor shall successfully achieve the anchor milestones referred to in this Condition. Should the Contractor fail to achieve the anchor milestones on the date due specified within the Delivery Schedule at Annex E, the Authority may, in its sole discretion, write to the Contractor giving forty (40) calendar days written notice of its intention to terminate the Contract. On receipt of written notice from the Authority the Contractor has up to twenty (20) calendar days to submit a rectification plan for the Authority's consideration, stating how the Contractor shall fulfil the remaining obligations on the Contract, to the dates specified within the Delivery Schedule at Annex E. The rectification plan shall include a programme plan with timelines and a clear description of recovery measures. Following submission of the rectification plan by the Contractor, the parties shall discuss the Contractor's submission and endeavour to reach an agreement within ten (10) calendar days. At the Authority's sole discretion, if the parties fail to agree within ten (10) calendar days after the date of the Contractor's submission of the rectification plan the Authority shall have the right to issue a formal termination notice, to terminate the Contract in accordance with DEFCON 514. In the event that the Authority terminates the Contract under the provisions of this Condition, any payments made by the Authority shall be recoverable and no further payments shall be due.

7.1.3 In the event of termination by the Authority under the provisions of this Condition then all Articles and materials delivered as GFA, shall remain vested in the Authority. All GFA shall be returned to the Authority with twenty (20) business days following Contract termination.

## **7.2 Delivery Schedule**

7.2.1 The articles under Item 1 of the Schedule of Requirements shall be delivered in accordance with the Delivery Schedule at Annex E. Should the Contractor fail to achieve the delivery dates the Authority shall have the right to terminate the Contract in accordance with DEFCON 514.

## **7.3 Self-To-Self Delivery**

7.3.1 Where any Article to be supplied under the Contract is to be delivered otherwise than being handed over by the Contractor to the Authority, as where an Article is to be delivered by the Contractor to its own premises or to those of a Sub-Contractor ('self-to-self delivery'), the risk in such Article shall (notwithstanding the provisions of DEFCON 612) remain vested in the Contractor until such time as the Article is handed over to the Authority.

## **8. PAYMENTS/RECEIPTS**

DEFCON513 (Edn.11/16) - Value Added Tax (VAT)

DEFCON522 (Edn.11/17) - Payment and Recovery of Sums Due

DEFCON534 (Edn.06/17) - Subcontracting and Prompt Payment

DEFCON649 (Edn.12/16) - Vesting

DEFCON670 (Edn.02/17) - Tax Compliance

## 8.1 Interim Payments

8.1.1 The Authority shall, subject to the following provisions of this Condition, make to the Contractor advances against the Contract price payable for Items 1-4 of the Schedule of Requirement.

8.1.2 These advances against the prices payable shall be paid progressively as Milestone Payments, in accordance with the Milestone Payment Plan at Annex H to this Contract.

8.1.3 The Contractor shall be entitled to interim payment, to be claimed in accordance with Condition 8, Payment, for each Milestone, when:

8.1.3.1 the Contractor has completed all work comprised in the Milestone for which the advance is sought in accordance with the applicable Milestone Acceptance Criteria detailed within Annex E.

8.1.3.2 the Milestones have been completed sequentially unless otherwise expressly agreed between the Parties;

8.1.3.3 the Contractor shall have complied with all its contractual obligations which enable the Authority to monitor the Contractor's contractual performance, including but not limited to those obligations related to the provision of information to the Authority.

8.1.4 Notwithstanding Clause 8.1.3, above, the Authority shall not be obliged to make a payment to the Contractor if the Authority has reasonable cause to believe that the Contractor will be unlikely to render complete performance of his obligations in respect of Items 1-4 of the Schedule of Requirements.

8.1.5 Where the Authority intends to rely on Clause 8.1.4 above as the basis for rejecting any claim for interim payment which the Contractor may make, the Authority shall give to the Contractor notice in writing of his intention together with the Authority's reasons for the rejection.

8.1.6 The Authority shall without prejudice to any other right / remedy of either party, be entitled to recover in full all interim payments made under the Contract where:

8.1.6.1 the Contract, or the part of the Contract under which Items 1-4 of the Schedule of Requirements is to be provided, is terminated otherwise than in accordance with DEFCON 656B (Edn.08/16) or expires by reason of passing of time; and

8.1.6.2 the Contractor has failed to complete performance of Items 1-4 of the Schedule of Requirements.

8.1.7 In the event of repayment to the Authority under the provisions of Clause 8.1.6 above then all that which vested in the Authority under the provisions of DEFCON 649 (Edn.12/16) and which related to Items 1-4 of the Schedule of Requirements shall re-vest in and become the absolute property of the Contractor.

8.1.8 Payment of an interim payment by the Authority under this Condition 8.1 shall not, unless expressly stated to do so, constitute:

8.1.8.1 acceptance by the Authority of any contractual deliverable;

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

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

## **8.2 Payments**

8.2.1 Claims for payment in respect of Items 1, 2, 3 and 4 shall be made in accordance with the Milestone Payment Plan at Annex H to the Contract.

8.2.2 Payment in respect of tasks carried out under Item 5 shall be on completion. The Authority will consider the use of milestone payments for tasks with a value over £50,000 and duration of 6 months or over.

## **9. CONTRACT ADMINISTRATION**

DEFCON604 (Edn.06/14) - Progress Reports

One (1) Quarterly Progress Report shall be provided ten (10) business days prior to the Quarterly Progress Meeting as per Condition 9.6.

DEFCON609 (Edn.06/14) - Contractor's Records

DEFCON642 (Edn.06/14) - Progress Meetings

DEFCON647 (Edn.09/13) - Financial Management Information

### **9.1 Co-operation on Expiry of Contract**

9.1.1 During the final six months before the expiry date of the Contract, or during the period of any termination notice, the Contractor shall co-operate fully, with the transfer of responsibility of the Contract and associated Articles, from the Contractor to any person (follow on Contractor) or to the Authority. For the purposes of this Clause the meaning of the term co-operate shall include:

9.1.1.1 liaising with the Authority and/or any follow-on Contractor, and providing reasonable assistance and advice concerning the management of the Contract and the transfer to the Authority or to such Follow-on Contractor; and

9.1.1.2 ensuring that the Authority and/or any follow-on Contractor will have access to, and the rights to use and obtain, all information and Articles necessary for continued performance of the Contract; and

9.1.1.3 allowing any such follow-on Contractor access (at reasonable times and on reasonable notice) to the Articles but not so as to interfere with or impede the current management of the Contract.

9.1.2 The Contractor shall use all reasonable endeavours so as to facilitate the smooth transfer of responsibility of the Contract to a follow-on Contractor or to the Authority, as the case may be, and the Contractor shall take no action at any time during the Contract period or thereafter which is calculated or intended, directly or indirectly, to prejudice or frustrate or make more difficult such transfer.

### **9.2 Earned Value Management**

9.2.1 The Contractor shall provide a single plan that reflects the scope of work and timeframe required to complete delivery to the Authority.

9.2.2 The Contractor shall provide an in year spending forecast and shall indicate to the Authority within five (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 than five (5) business days.

### **9.3 Key Performance Indicators (KPIs)**

9.3.1 The Contractor shall report its performance against the Key Performance Indicators (KPIs) at Annex O at the Quarterly Progress Meeting. Achievement of the

“Green” level of performance (as set in Table 1) for all KPIs in each quarter will indicate the satisfactory performance by the Contractor and no deductions shall be made to the payment for the relevant performance period.

#### 9.4 Meetings Governance

9.4.1 A Contract Start-Up meeting between the Authority and the Contractor shall take place no later than five (5) business days after Contract Award at the Authorities premises.

9.4.2 The Terms of Reference for the Quarterly Progress Meetings are detailed below. This sets out the purpose of the meeting, the frequency and coverage of review, chairmanship, and membership.

JNMS Governance Terms of Reference: Quarterly Progress Meeting			
Purpose and Scope of Authority	Review delivery and performance of the JNMS project, managing JNMS risks & opportunities, resolving issues and encouraging continuous improvement. Reviewing of JNMS performance metrics and programme data and to incorporate Logistic Support Committee.		
Frequency	Quarterly at Contractor’s premises		
Chair	SACC PM		
Core Membership	<table border="1"> <tr> <td><b>SACC DT</b> Engineer Commercial Manager ILS Manager Customer</td> <td><b>Supplier’s Team</b> Project Manager Engineer Commercial Manager ILS Manager</td> </tr> </table>	<b>SACC DT</b> Engineer Commercial Manager ILS Manager Customer	<b>Supplier’s Team</b> Project Manager Engineer Commercial Manager ILS Manager
<b>SACC DT</b> Engineer Commercial Manager ILS Manager Customer	<b>Supplier’s Team</b> Project Manager Engineer Commercial Manager ILS Manager		
Additional attendees	Stakeholders (such as Safety, Finance Manager, Project Controls, GFA) where considered necessary to address JNMS dependencies/programme issues. Suitably briefed individuals deputising for the above core members where they are unable to attend.		
Outputs	The JNMS QPM will report on the following topics: Milestone Status EVM Performance Project Risks, Issues and Opportunities Opportunities GFX matters requiring attention of the Authority Safety, Environmental and Security ILS including Obsolescence Report Sub-Contractors progress/issues arising Spend against Payment Plan Quality Assurance Audit		
QPM Agenda and Scope of Reviews (as required for project control)	<ul style="list-style-type: none"> <li>Review JNMS programme delivery and performance (including Milestones and EVM reports)</li> <li>Schedule and Milestone Review</li> <li>Payment Plan (check against potential for advance payments)</li> <li>Obligations Matrix Review</li> <li>Change Control including Tasking</li> <li>Review the joint JNMS Risk Register</li> <li>Monitor GFA requirements</li> <li>Refer risks, issues or disputes as appropriate</li> <li>Quality Assurance</li> <li>ILS update including obsolescence and changes</li> </ul>		

9.4.3 A Contract Close Down meeting between the Authority and the Contractor shall take place twenty (20) business days before the end of the Contract at the Authorities premises.

## **9.5 Progress Meetings**

9.5.1. The Contractor shall provide the following prior to the meeting:

9.5.1.1 the calling notice for the meeting two (2) months before the meeting date;

9.5.1.2 the relevant meeting agenda ten (10) business days before the meeting date;

9.5.1.3 any additional information required by the Authority

9.5.2 The Contractor shall perform secretarial duties at the meetings, including meeting minutes.

9.5.3 Minutes of meetings between the Authority and the Contractor shall be accepted once the Authority is satisfied that the minutes are an accurate reflection of the meeting in question and any decisions taken or actions placed therein:

9.5.3.1 The Contractor shall submit the draft minutes to the Authority for its approval no later than ten (10) business days following completion of said meeting.

9.5.3.2 The Authority shall review the draft minutes and provide the Contractor with either its approval of the minutes or comments / corrections to the draft minutes no later than five (5) business days after receipt of the draft minutes.

9.5.3.3 The Contractor shall incorporate those comments / corrections into the revised minutes which shall be issued to the Authority for its approval (in accordance with the above process) no later than two (2) business days following receipt of those comments / corrections.

9.5.3.4 No later than two (2) business days following receipt of the Authority's approval of the minutes, the Contractor shall formally issue the approved minutes to all attendees of the meeting.

## **9.6 Progress Reporting**

9.6.1 The Contractor shall issue a quarterly progress report to the Authority's Project and Commercial Manager with a minimum of ten (10) business days prior to the Quarterly Progress Meeting and will include those activities listed in para 1.9.2 of the Statement of Work at Annex A.

9.6.2 The Contractor shall provide a progress report to the Authority at the end of each month via email. This report will detail the progress of all ongoing TAF tasks, including the percentage of completion to satisfy the Authority's financial reporting procedures.