



**Contract Number: DSACOMDD/5046**

**Sale and Disposal of Surplus Vehicles, Spare Parts and Tyres (Surplus Assets)**

**Terms and Conditions of Contract  
Issue 1**

## **TERMS AND CONDITIONS OF CONTRACT**

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## **1. DEFINITIONS AND DEFCONS**

### **1.1 DEFCONS:**

#### **GENERAL CONDITIONS**

DEFCON 68 (Edn 02/17) - Supply of Data for Hazardous Articles, Materials and Substances

DEFCON 501 (Edn 05/17) - Definitions and Interpretations

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DEFCON 515 (Edn 02/17) - Bankruptcy and Insolvency

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DEFCON 527 (Edn 09/97) - Waiver

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

DEFCON 531 (Edn 11/14) - Disclosure of Information

DEFCON 532A (Edn 06/10) - Protection of Personal Data (Where Personal Data is not being processed on behalf of the Authority)

DEFCON 537 (Edn 06/02) - Rights of Third Parties

DEFCON 538 (Edn 06/02) - Severability

DEFCON 539 (Edn 08/13) - Transparency

DEFCON 550 (Edn 02/14) - Child Labour and Employment Law

DEFCON 566 (Edn 10/16) - Change of Control of Contractor

DEFCON 630 (Edn 03/15) - Framework Agreements

DEFCON 658 (Edn 10/17) – Cyber **(Note: the Cyber Risk Level of the Contract has been defined as low, as defined in Def Stan 05-138)**

DEFCON 660 (Edn 12/15) - Official-Sensitive Security Requirements

DEFCON 670 (Edn 02/17) - Tax Compliance

DEFCON 681 (Edn 06/02) - Decoupling Clause – Subcontracting With the Crown

DEFCON 694 (Edn 03/94) - Accounting for Property of the Authority

#### **SPECIFICATIONS**

DEFCON 129J (Edn 11/16) - The Use of the Electronic Business Delivery Form

DEFCON 502 (Edn 05/17) - Specification Changes

DEFCON 602B (Edn 12/06) - Quality Assurance Without a Deliverable Quality Plan

DEFCON 608 (Edn 10/14) - Access and Facilities to be Provided by the Contractor

#### **PRICE**

DEFCON 643 (Edn 12/14) - Price Fixing (Non-qualifying contracts)

#### **INTELLECTUAL PROPERTY RIGHTS**

DEFCON 90 (Edn 11/06) - Copyright

DEFCON 632 (Edn 08/12) - Third Party Intellectual Property - Rights and Restrictions

## **LOANS**

DEFCON 76 (Edn 12/06) - Contractor's Personnel at Government Establishments

## **DELIVERY/PERFORMANCE**

DEFCON 5J (Edn 11/16) - Unique Identifiers

DEFCON 507 (Edn 10/98) - Delivery

Note, DEFCON 507 shall apply to the reports required under Item 2 of the Schedule of Requirements.

DEFCON 524 (Edn 10/98) - Rejection

DEFCON 525 (Edn 10/98) - Acceptance

DEFCON 612 (Edn 10/98) - Loss of or Damage to Articles

DEFCON 656B (Edn 08/16) - Termination for Convenience

## **PAYMENTS/RECEIPTS**

DEFCON 513 (Edn 11/16) - Value Added Tax

DEFCON 522 (Edn 11/16) - Payment and Recovery of Sums Due

DEFCON 534 (Edn 11/16) - Subcontracting and Prompt Payment

## **CONTRACT ADMINISTRATION**

DEFCON 604 (Edn 06/14) - Progress Reports

DEFCON 609 (Edn 06/14) - Contractor's Records

DEFCON 625 (Edn 10/98) - Co-operation on Expiry of Contract

DEFCON 642 (Edn 06/14) - Progress Meetings

## **1.2. DEFINITIONS**

1.2.1. Further to DEFCON 501, the following words and expressions shall have the meanings given to them:

1.2.1.1. "Additional Services" shall mean any work or services required by a Customer or G2G Customer from the Contractor, deemed outside of the scope of the contractual requirements delivered by the Contractor to the Authority in accordance with the Statement of Requirement (StoR) at Annex A to the Contract, which may include but is not limited to the following:

- a. Storage;
- b. Transport;
- c. Surplus Asset value enhancement;
- d. Export services;
- e. Warranties; and
- f. Delivery.

1.2.1.2. "As Lying" shall mean the condition of Surplus Assets at the time of inspection by the Customer or G2G Customer.

1.2.1.3. "Authorised Demander" or "Authority's Designated Officer" shall mean the contact detailed in Box 2 of DEFFORM 111 - Appendix to

Contract, who is the exclusive Authority representative empowered to place Routine Tasks against the Contract.

- 1.2.1.4. "Surplus Assets" means any item within the scope of this Contract, as defined by the list of categories identified in paragraph 2 of the Statement of Requirement (StoR) at Annex A to the Contract and which has been subject to a formal Tasking by the Authority to the Contractor, as surplus to requirements, beyond use or beyond economic use, except where such items are subsequently identified as Goods Received in Error (GRIE).
- 1.2.1.5. "Contractor to Customer Sale" shall mean sales in which the Contractor acts in the primary capacity to store, market and sell Surplus Assets.
- 1.2.1.6. "Customer" shall mean a third party private purchaser or potential purchaser of Surplus Assets from the Contractor under a Contractor to Customer Sale.
- 1.2.1.7. "Task", "Tasks", "Tasking" or "Taskings" shall mean a firm instruction placed on the Contractor by the Authority, through the issue of a Routine Task Form, as distinct from an Extraordinary Task.
- 1.2.1.8. "DIA AAC" shall mean the Authority's Defence Internal Audit Asset Accounting Centre.
- 1.2.1.9. "Discrepancy Items" shall mean any Surplus Assets collected or received by the Contractor that vary from any information contained on the Routine Task Form.
- 1.2.1.10. "Drawdown" and "Drawdown period" shall mean the activities required to be performed by the Contractor to reduce stock holding after expiry of the Service Period in accordance with Condition 39 of the Contract. For the avoidance of doubt, the Authority will not make any new Taskings to the Contractor during the Drawdown Period.
- 1.2.1.11. "Goods for Destruction or Recycling" (GDR) shall mean Surplus Assets that the Contractor considers beyond economic use and which will be destroyed or recycled by the Contractor on a paid-for basis, in accordance with Section 6 to the Statement of Requirement (StoR) at Annex A to the Contract.
- 1.2.1.12. "Goods Received In Error" (GRIE) shall mean any goods collected or received by the Contractor that have not been listed for collection on the Routine Task Form and which are accepted by the Authority as not being listed for collection.
- 1.2.1.13. "Government to Government Sale" or "G2G Sale" shall mean a transaction between the Authority and a G2G Customer in accordance with Condition 24 of the Contract, and in connection with

which the Contractor may or may not be required by the G2G Customer to provide Additional Services.

- 1.2.1.14. “G2G Customer” shall mean the purchasers of Surplus Assets under an agreement between the UK Government and the Government of another nation, or any organisation classed as a public body according to the law prevailing in the organisation’s place of business.
- 1.2.1.15. “Gifting” shall mean the donation of Surplus Assets by the Authority to the Government of a foreign nation.
- 1.2.1.16. “Loading” shall mean the point at which the Contractor handles Surplus Assets, or attaches any form of its own equipment to any Authority-owned Surplus Asset for the purpose of removing Surplus Assets from the Authority’s premises.
- 1.2.1.17. Unused.
- 1.2.1.18. “Minimum Selling Price” shall mean the minimum gross selling price of a Surplus Asset that the Authority is prepared to accept or in order to guarantee the amount returned to the Authority by the Contractor. Where calculation of the percentage share would result in a lower amount due to the Authority, the Contractor may proceed with the sale provided the Authority’s full percentage share of the Minimum Selling Price is paid by the Contractor to the Authority in full.
- 1.2.1.19. “Sub-contract” or “Subcontract” shall mean any contract or order placed by the Contractor with a Sub-contractor.
- 1.2.1.20. “Sub-contractor” or “Subcontractor” shall mean any person with whom the Contractor enters into a Sub-contract for the purpose of meeting its obligations under this Contract.
- 1.2.1.21. “Service” or “Services” shall mean the activities described in the Statement of Requirement (StoR) at Annex A to the Contract.
- 1.2.1.22. “Service Period” shall mean the period of time between the 11th of June 2018 and the date of the expiry of the Service Period including any option periods exercised, and prior to the commencement of the Drawdown Period, as defined under Item 1 of the Schedule of Requirements.
- 1.2.1.23. “Tyre” shall mean any Surplus Asset predominantly made of rubber, used for the purposes of conveying any form of transport, including, but not limited to, circular rubber wheels, rubber tracks and treads.

- 1.2.1.24. "Unloading" shall mean the point at which any Surplus Asset is deposited in either the Contractor's or the Authority's premises (as the case may be).

## **2. SCOPE AND DURATION**

- 2.1. Subject to Termination of this Contract for any reason, the scope of the Contract shall include two distinct phases, as follows:

2.1.1. Service Period, under Item 1 of the Schedule of Requirements; and

2.1.2. Drawdown Period, under Item 4 of the Schedule of Requirements. No further Taskings shall be made by the Authority during the Drawdown Period.

- 2.2. Subject to Condition 18 (Options), the duration of the Service Period under Item 1 of the Schedule of Requirements shall be 4 (four) years from 11 June 2018. The duration of the Drawdown period under Item 4 of the Schedule of Requirements shall be one year from the date of expiry of the Service Period including any option periods that may be exercised.

- 2.3. Further to Clauses 4 and 5 of DEFCON 630 (Edn 03/15), and for the avoidance of any doubt, the Contractor acknowledges and agrees in accepting this Contract that the Contract is not exclusive, defined as:

2.3.1. the Authority shall not be bound to Task any Surplus Assets to the Contractor; and

2.3.2. the Authority is free to make any alternative arrangements for the disposal and/or sale of such Surplus Assets; and

2.3.3. the Contractor accepts it has no claim against the Authority where the Authority exercises the rights described in Clauses 2.3.1 and/or 2.3.2 above.

## **3. SPECIFICATION**

- 3.1 For the purposes of DEFCON 502, the Specification shall be in accordance with the Statement of Requirement (StOR) at Annex A to the Contract and all associated Annexes and Appendices.

## **4. INTERPRETATION AND PRECEDENCE**

- 4.1. Further to DEFCON 501, in the event of any internal conflict in any document or any conflict between documents with the same order of precedence, the Authority shall be entitled to give directions as to which part of the relevant document or which document (as the case may be) shall take precedence over which other part or which other document (as the case may be). The Authority's directions in the matter, after consultation with the Contractor, shall be final and the Contractor shall agree that the Contract shall be construed accordingly.



4.2. For the purposes of this Contract, the order of precedence described in Clause 1.e. of DEFCON 501 shall be interpreted as follows:

4.2.1. Annexes, Reference Documents and Standards called up within the text of special Conditions of Contract shall have the same or equal precedence to a special Condition of Contract.

## **5. CONTRACTOR'S RESPONSIBILITIES FOR SURPLUS ASSETS**

5.1. When the Contractor takes control of the Surplus Assets in accordance with Condition 7.1 of the Contract, it shall be the Authority's principal in all aspects of the management and handling of the Surplus Assets, as outlined in Condition 11 of the Contract and the Statement of Requirement (StOR) at Annex A to the Contract.

5.2. The Contractor shall hold the Surplus Asset (or any part thereof) as fiduciary agent and bailee for the Authority. Whenever the Contractor sells to a Customer, it does so as principal and not as the Authority's agent, and has no authority to commit the Authority to any liability or Contract.

5.3. If before Title to the Surplus Asset passes to the Contractor, the Contractor becomes subject to an Insolvency Event defined as an event listed in DEFCON 515, then without limiting any other right or remedy the Authority may have:

5.3.1. The Contractor's authority to sell the Surplus Asset (or any part thereof) shall cease immediately; and

5.3.2. The Authority may require the Contractor to return all Surplus Assets in its possession that have not been resold in accordance with any instructions notified by the Authority and the Authority may exercise the right to recall the Surplus Assets as set out in Condition 9 of the Contract.

## **6. TITLE OF SURPLUS ASSETS**

6.1. The Contractor shall ensure that all Sub-contractors and other persons dealing with the Surplus Asset (or any part thereof) are aware that Title in the Surplus Assets vests in the Authority at all times until either of the following circumstances arise:

6.1.1. For a Government to Government Sale, as the Contractor is not party to such a sale, once the Authority has received the full payment in cleared funds from the G2G Customer, the Authority will confirm to the Contractor that Title in the Surplus Asset (or any part thereof) has passed to the G2G Customer.

6.1.2. For a Contractor to Customer Sale, Title to any Surplus Asset shall not pass from the Authority to the Contractor until immediately before the time at which a resale of that Surplus Asset to a Customer becomes effective.

- 6.1.3. For any gifting of Surplus Assets by the British Government to a foreign government. In this event, the Authority will confirm to the Contractor that Title in the Surplus Asset (or any part thereof) has passed to the foreign Government.

## **7. RISK**

- 7.1. Risk in the Surplus Assets shall pass to the Contractor and such Surplus Assets shall be deemed to be under the Contractor's control on the earliest of the following:

7.1.1. Commencement of Loading of the Surplus Asset (where the Contractor loads the Surplus Asset); or

7.1.2. Completion of the Loading of the Surplus Asset on to the Contractor's transport (where the Authority is responsible for Loading the Surplus Asset); or

7.1.3. Delivery of the Surplus Asset at the Contractor's premises where the Surplus Asset is sent by exception via post or delivered by the Authority or any duly appointed representative of the Authority.

- 7.2. The Contractor shall be responsible for any event that reduces the market value of any Surplus Asset, whilst such Surplus Asset is under the Contractor's control in accordance with Condition 7.1 of the Contract.

- 7.3. The Contractor is only relieved of their responsibility under this Condition 7 on the latest of the following:

7.3.1. when Title in the Surplus Asset transfers to the Customer under Condition 6, or:

7.3.2. Handover of the Surplus Asset to the Customer or his representative at the Contractor's premises upon either commencement of Loading of the Surplus Asset (where the Customer is responsible for Loading the Surplus Asset) or upon completion of Loading of the Surplus Asset onto the Customer's transport (where the Contractor is responsible for Loading the Surplus Asset); or

7.3.3. Handover of the Surplus Asset to the Customer at the Customer's premises upon either commencement of Unloading of the Surplus Asset (where the Customer Unloads the Surplus Asset) or upon completion of Unloading of the Surplus Asset at the Customer's premises (where the Contractor is responsible for delivering and Unloading the Surplus Asset to the Customer); or

7.3.4. Delivery at the Customer's premises where the Surplus Asset is sent by exception via post or delivered by the Contractor or his authorised representative; or

7.3.5. Where the Authority recalls Surplus Assets in accordance with Conditions 9 or 34, upon Unloading of the Surplus Asset having been satisfactorily completed by the Contractor by the placing of the Surplus Asset in the Authority's nominated point of return. Should the Authority arrange return transport with any third party, all risks of any loss, theft, damage or destruction will remain with the Contractor until the Loading of the Surplus Assets has been completed.

7.4. In the event any Surplus Asset is in any way lost, stolen, damaged or destroyed whilst under the Contractor's control in accordance with this Condition 7 of the Contract, and the Surplus Asset is not subject to a Minimum Selling Price (MSP), the Authority shall apply a reasonable MSP to the Surplus Asset for the purposes of determining the value of the loss to the Authority. The Authority's decision on the MSP it sets is final.

7.5. If the Surplus Asset has a MSP applied before any loss, theft, damage or destruction by the Contractor however caused or occasioned whilst the Surplus Asset is under the Contractor's control, the Authority will maintain such MSP valuation.

7.6. Without prejudice to any other Authority rights or remedies, the Contractor shall pay the Authority the full MSP value of the Surplus Asset, to make good any such loss, theft, damage or destruction however caused or occasioned whilst the Surplus Asset is under the Contractor's control in accordance with this Condition 7 of the Contract.

7.7. In the event that the Authority provides any human or material resources to the Contractor for the purpose of Loading Surplus Assets, all risk of theft, loss, damage or destruction shall remain with the Contractor in accordance with Condition 7.1.1 of the Contract, where the Contractor is responsible for Loading. Any such assistance is offered by the Authority on a goodwill basis and shall not result in a transfer of risk back to the Authority. The Contractor shall be wholly liable for any loss or damage howsoever caused.

## **8. INDEMNITY**

8.1. As it is the Contractor, (and not the Authority), who is responsible for preparing the Surplus Assets for sale, the Contractor shall indemnify the Authority against any claims from third parties (including but not limited to the Customer) in respect of any loss, liability, damage (whether civil or criminal), costs or expenses arising from or in connection with any Contractor to Customer sale.

## **9. RIGHT TO RECALL**

9.1. The Authority reserves the right to recall Surplus Assets for any reason and at any time. The Authority will not exercise this right unreasonably.

9.2. In such circumstances, the Authority will give Notice to the Contractor by issue of an Extraordinary Task in accordance with Condition 23 of the

Contract and may seek a quotation from the Contractor for return transportation costs. Where requested, the Contractor's quotation shall include any costs of Loading at the Contractor's premises, transportation to and Unloading at the Authority's designated location, if applicable. Such quotation shall not include any costs which may have been incurred by the Contractor prior to the Authority giving such Notice to recall. The Authority reserves the right to make its own transportation arrangements at its discretion.

9.3. The Contractor shall not be entitled to any agreed percentage share of any subsequent gifting or sale that may be concluded directly by the Authority.

9.4. Should the Contractor become subject to an insolvency event as listed in DEFCON 515, the Authority may recall any Surplus Assets from the Contractor. In this event, the Contractor shall be liable for all costs of return transportation to any reasonably designated Authority premises.

## **10. COLLECTION, LOADING AND TRANSPORTATION OF SURPLUS ASSETS**

10.1. Unless otherwise agreed between the parties, the Contractor shall be responsible for collecting Surplus Assets from the Authority's premises, Loading the Surplus Assets onto the Contractor's transport, and the transportation, delivery and Unloading of Surplus Assets at the Contractor's premises in accordance with Section 1 to the Statement of Requirement (StOR) at Annex A to the Contract.

10.2. The Contractor shall comply fully with all relevant legislation regarding suitable transport, containers, handling, Loading/Unloading, health and safety and environmental protection.

10.3. The Contractor shall be responsible for ensuring adequate human and mechanical resources, including, where necessary, any specialist equipment for the purposes of Loading and Unloading of Surplus Assets. The Authority may provide assistance where appropriate at its absolute discretion but shall in no way be liable for any loss or damage in accordance with Condition 7.7 of the Contract. The Authority shall not be bound to provide any assistance to the Contractor.

## **11. STORAGE**

11.1. Unless otherwise agreed between the parties, the Contractor shall store Surplus Assets at the Contractor's premises in accordance with Section 2 of the Statement of Requirement (StOR) at Annex A to the Contract.

11.2. The Contractor shall ensure that all Surplus Assets are stored in a secure environment and in a manner that shall prevent any loss, theft, damage, destruction or any deterioration in condition that would adversely affect the value of the Surplus Assets. The Authority will identify any specific or additional storage requirements when the Surplus Assets are Tasked. The Authority reserves the right to give Notice requiring the Contractor to implement such specific or additional storage requirements at any time after

such Tasking, but will not do so unreasonably. Such requirements may include, but not be limited to, covering Surplus Assets with tarpaulin or other resources or to store Surplus Assets within a secure and/or weatherproof, permanent or temporary building or other structure.

## **12. EXPORT LICENCE**

12.1. Further to DEFCON 528, the Contractor or its Customer shall apply for the UK export licence for the Surplus Assets, subject to any foreign export control approval having been granted. The Authority shall use its reasonable endeavours to assist the Contractor (or Customer) to obtain the export licence where such assistance is legally required. The Contractor accepts that if it has not received export licence approval, then the transfer of Title shall be delayed until approval has been received.

12.2. Applications for a UK export license should be made to:

Export Control Organisation  
Department for International Trade  
3rd Floor  
1 Victoria Street  
London  
SW1H 0ET

Website: <https://www.gov.uk/government/organisations/export-control-organisation>

Guidance for export controls is published on <https://www.gov.uk>

ECO Helpline:  
Tel. +44 (0)20-7215 4594  
Fax. +44 (0)20-7215 2635  
Email. [eco.help@trade.gsi.gov.uk](mailto:eco.help@trade.gsi.gov.uk)

12.3. In the event the Customer is not granted the export licence, the Contractor shall terminate the individual sale and the Contractor shall ensure it refunds to the Customer any payments made or makes payment to the Authority of the agreed percentage share of any monies retained in accordance with Item 1 of the Schedule of Requirements and Condition 15.

## **13. UNITED STATES INTERNATIONAL TRAFFIC IN ARMS REGULATIONS (ITAR)**

13.1. The Contractor shall register an application for a Broker's licence with the United States Department of State and comply with the conditions therein.

13.2. The Contractor shall also require individual permission from the United States Department of State to handle items which are subject to United States (US) International Traffic in Arms Regulations (ITAR), through the appropriate means, such as, but not limited to DSP-5, DSP-83, Technical Assistance Agreements (TAAs) or a Third Party Transfer authorisation. A broker's license

on its own does not provide the Contractor with any permission to view or handle ITAR items in any way.

13.3. The Authority will not intentionally Task items subject to ITAR to the Contractor and intends to remove any such items from a Surplus Asset prior to Tasking. Where the Contractor becomes aware of any items in his possession which are subject to ITAR, the Contractor shall notify the Authority at the earliest opportunity including details of all those who have had access and in any event no later than 5 Business Days after such discovery. In such circumstances, the Contractor will take immediate steps to prevent further disclosure to any other party and confirm such measures to the Authority.

13.4. In the circumstances described in Condition 13.3 of the Contract, the Contractor shall provide full cooperation with the Authority to prepare a voluntary disclosure to the US Department of State accordingly.

#### **14. AUTHORITY CONSENT TO SALES**

14.1. The Contractor requires the prior written consent from the Authority for any proposed sale and its specific terms and conditions of sale, where:

14.1.1. A Customer or any intended end-user is registered or located in a State, Territory or Country, where the Authority has given Notice that sales are prohibited for national security or other associated reasons; or

14.1.2. A UK export licence has been refused; or

14.1.3. Any necessary application for a foreign export control approval has not been granted; or

14.1.4. There is any conflict with a proposed Government to Government Sale; or

14.1.5. The reputation of the Authority could be harmed or is considered novel and contentious by the completion of such a sale; or

14.1.6. A Customer is the Contractor, any servants, Directors, employees or agents of the Contractor or any of its parent companies or subsidiaries, whether directly or indirectly.

14.1.7. The Authority, acting reasonably, has used its discretion to identify any other reason and has given Notice to prevent a specific individual sale.

14.2. In all other circumstances, the Contractor shall be free to sell Surplus Assets without further recourse to the Authority

14.3. Whilst the Authority will give reasonable consideration to all proposals received where any of the circumstances at 14.1 above apply, and consider any reasonable representations from the Contractor, the Authority's decision shall be final and conclusive.

## **15. PRICE**

- 15.1. All prices stated are in Pounds Sterling (£), exclusive of VAT.
- 15.2. Where any sale is proposed to be conducted in a currency other than Pounds Sterling (£) for the convenience of the Customer, the Contractor shall seek express permission from the Authority. The Authority will at its discretion have the right to decide which exchange rate shall be used to calculate the gross selling price in Pounds Sterling (£). In the absence of such determination, the exchange rate published in the Financial Times on the day payment is received from the Customer shall apply.

### **Item 1.1 and Item 2 of the Schedule of Requirements**

- 15.3. The Contractor and the Authority shall share the proceeds of all sales of Surplus Assets Tasked by the Authority to the Contractor, whether or not such sales are Contractor to Customer or Government to Government, in accordance with the firm, non-revisable percentage share applicable according to the aggregate gross revenue, as stated in the Schedule of Requirements. Unless expressly agreed by the Authority, full payment shall be received from the Customer before title may transfer from the Authority.
- 15.4. The aggregate sales revenue shall be calculated on the sum of the gross selling prices of each individual Contractor to Customer sale, excluding any Contractor purchase of Surplus Assets and shall include the value of each individual applicable Government to Government sale for the purposes of determining the firm percentage share applicable under either Item 1.1a or 1.1b of the Schedule of Requirements.
- 15.5. The firm percentage share shall be calculated against the gross selling price paid by the Customer to the Contractor or another Government to the Authority, exclusive of VAT. Unless otherwise stated in Condition 18 of the Contract or the Schedule of Requirements, the same firm, non-revisable percentage share under Items 1.1a and 1.1b of the Schedule of Requirements shall apply to the initial 4 years duration of the Service Period, any Option Years exercised and the Drawdown Period under Item 4 of the Schedule of Requirements.
- 15.6. The Contractor's share allocation shall represent the total fee due to the Contractor for providing the Services under Item 1 of the Schedule of Requirements and shall be deemed to cover the Contractor's costs in full for providing such Services and all documentation under Item 2 of the Schedule of Requirements. The Contractor may not claim for any other costs in respect of providing such Services except as provided for in Condition 9.2 of the Contract and agreed in accordance with Condition 23 of the Contract. For the avoidance of any doubt, any refurbishment of Surplus Assets is a decision solely for the Contractor and any such costs invested by the Contractor to increase the gross selling price shall be deemed to be included in the agreed firm, non-revisable percentage share.

15.7. Further to DEFCON 613, liability, for determining applicability of VAT and paying to HMRC any VAT charged to the Customer against the full gross selling price prior to applying the share calculation, shall either be:

15.7.1. the responsibility of the Contractor, in respect of Contractor to Customer sales; or

15.7.2. the responsibility of the Authority in respect of Government to Government sales.

Item 1.2 of the Schedule of Requirements

15.8. The prices shall be firm per tonne/pro rata, as stated in the Schedule of Requirements.

Item 3 of the Schedule of Requirements

15.9. The prices of each individual task shall be agreed in accordance with DEFCON 643 (Edn 12/14) following the process detailed in Condition 23 of the Contract prior to any authority to proceed being given by the Authority. Such prices may only be agreed by an Authority's Commercial Officer, as detailed in Box 1 of DEFFORM 111 – Appendix to Contract.

Item 4 of the Schedule of Requirements

15.10. Unless otherwise stated, the prices for the Sales of Surplus Assets under Item 1.1 of the Schedule of Requirements or for the Recycling or Destruction of Surplus Assets under Item 1.2 of the Schedule of Requirements shall be the same during the Drawdown Period as the initial 4 years duration of the Service Period and any Option Years exercised.

**16. PAYMENT**

Item 1.1 of the Schedule of Requirements – Contractor to Customer Sales

16.1. The Contractor shall make a monthly payment to the Authority, for each month of the Service Period including any Option year periods as may be exercised and during the Drawdown Period under Item 4 of the Schedule of Requirements. The sum of the payment shall be calculated by summing the total of all payments received by the Contractor from Customers in relation to sales of Surplus Assets during the preceding Calendar Month multiplied by the Authority's percentage share.

16.2. The Contractor shall make the payment required in Condition 16.1 on the 1<sup>st</sup> Business Day of each month by BACS payment in accordance with Annex J to the Contract and shall simultaneously submit the proforma at Annex I to the Contract by email. On receipt of each payment and the proforma, a formal invoice shall be issued by the Authority.

16.3. Prior to making the monthly payment to the Authority in accordance with Conditions 16.1 and 16.2 of the Contract, the Contractor shall ensure



that the Authority's share of all proceeds from each individual sale of Surplus Assets shall be transferred into a separate bank account within one Business Day of receipt, and shall be separately recorded and accounted for. The bank account shall be an imprest account with a trust in favour of the Authority.

- 16.4. If the Contractor fails to make payment of any sum due to the Authority (whether under this or any other Contract with the Authority), or ceases or formally notifies the Authority of its intention to cease business, or is otherwise in breach of the Contract, or if the Contract becomes liable to be terminated, the Authority shall be entitled at any time, and with reasonable notice to the Contractor, to enter any premises where it believes Surplus Assets may be held and to remove its Surplus Assets from such premises. Nothing in this Condition shall limit the liability of the Contractor to pay the Authority its share of the sale price of the Surplus Assets or affect any claim by the Authority for any breach of the Contract.

Item 1.1 of the Schedule of Requirements – Government to Government (G2G) Sales

- 16.5. For the duration of the Service Period including any option year periods as may be exercised and during the Drawdown Period under Item 4 of the Schedule of Requirements, the Authority will inform the Contractor of:

16.5.1. the price agreed for a Government to Government sale within 15 Business Days of completion of each sales agreement concluded between the Authority and the G2G Customer; and

16.5.2. a payment received by the Authority under such sales agreement, within 15 Business Days of receipt of the payment.

- 16.6. The Contractor shall make a claim for payment of the agreed percentage share of each payment, calculated in accordance with Condition 15 of the Contract, via the Authority's Contracting, Purchasing and Finance (CP&F) electronic procurement tool within 15 Business Days of receiving notification from the Authority of a payment received in accordance with Condition 16.5.2 of the Contract.

- 16.7. Payment will be made by the Authority within 30 Calendar Days of the date of receiving a valid claim for payment from the Contractor.

- 16.8. The Contractor shall not withhold payment due to the Authority under Condition 16.1 to offset any revenue owed by the Authority following a G2G Sale to be paid in accordance with Condition 16.7 of the Contract.

Item 1.2 of the Schedule of Requirements

- 16.9. The Contractor shall make a single consolidated, itemised claim for payment quarterly in arrears against the Authority's "Standard Purchase Order (SPO)" raised on the Authority's Contracting, Purchasing and Finance (CP&F) electronic procurement tool, subject to the Contractor providing

advance notice of the amount of the claim to enable the Authority to raise the “Standard Purchase Order (SPO)”.

- 16.10. After the Drawdown Period has commenced, the Contractor shall make a single final claim for payment on completion of all recycling or destruction of GDR assets remaining at the end of the Service Period, including any option year periods as may be exercised.

#### KPI Payments under Item 1 of the Schedule of Requirements

- 16.11. The Authority will raise a request for Defence Business Services to raise an invoice whenever a KPI payment becomes due in accordance with Condition 37 of the Contract. The Contractor shall make the payment required by BACS payment in accordance with Annex J to the Contract within 20 Business Days of the invoice being raised.

#### Item 3 of the Schedule of Requirements

- 16.12. The Contractor shall make claims for payment against the Authority’s “Standard Purchase Order (SPO)” raised on the Authority’s Contracting, Purchasing and Finance (CP&F) electronic procurement tool upon the satisfactory completion of all tasks as denoted by the completion of Part 4 of each individual task, or as otherwise agreed in the relevant task.

### **17. MINIMUM SELLING PRICE (MSP)**

- 17.1. The Contractor shall be responsible for determining the gross selling prices of Surplus Assets. The Authority will set a Minimum Selling Price (MSP) as defined in Condition 1.2.18 of the Contract in respect of a sale of all vehicle assets and any other Surplus Asset, as it deems necessary.
- 17.2. Where the Authority requires an MSP, the Authority will normally specify as part of the Tasking. The application of an MSP shall be based upon the sums which the Authority could reasonably expect to achieve taking into account past sales and the Authority’s own costs of achieving such a sale or will be set in order to guarantee a minimum amount returned to the Authority. The Authority may consult the Contractor prior to setting an MSP and reserves the right to alter or withdraw an MSP at any time, including against Surplus Assets to which a different MSP had previously been applied. The Authority will not exercise these rights unreasonably and will seek to avoid and minimise changes in this regard.
- 17.3. The Contractor shall be deemed to have accepted the application of an MSP, unless within 25 Business Days of collection or notification of the MSP, whichever is the later, the Contractor notifies the Authority otherwise. Should the Contractor believe the MSP is excessive and not indicative of current or future market valuation, it shall submit to the Authority its own valuation of the Surplus Asset, supported by evidence. The Authority will consider the Contractor’s recommendations and advise the Contractor of any revision to the MSP. The Authority’s decision in this regard shall be final.

- 17.4. Where no Minimum Selling Price is set, the Contractor shall provide detailed evidence to support the gross selling price achieved for any Surplus Assets, within 15 Business Days of any request by the Authority, where the Authority believes such prices are below the market value. In the event that this evidence fails to fully satisfy the Authority, the Authority may submit evidence to the contrary and propose a settlement to resolve such differences. Where it is not possible to reach agreement through negotiation, either party may seek to resolve the dispute in accordance with DEFCON 530.

## **18. OPTIONS AND OPTION PRICES**

- 18.1. The option prices detailed below are firm prices not subject to variation.

- 18.2. In addition to the duration of the Service Period detailed at Item 1 of the Schedule of Requirements, the Contractor hereby grants to the Authority the following irrevocable options to procure further durations of the Service in accordance with the Terms and Conditions set out in this contract or any such subsequent contract or contracts where such options are taken up, it being agreed that the Authority has no obligation to exercise such options.

- 18.2.1. Further periods of up to twelve (12) whole Calendar Months in total per option, with three option year periods in total offered to the Authority, in addition to the four year period already ordered under Item 1 of the Schedule of Requirements, at a firm price of:

### **18.2.1.1. Option Year 1:**

#### **Item 1.1 - Sales of Surplus Assets**

- a. Percentage share of the Gross Selling Price of each Surplus Asset, in respect of all sales up to an aggregate gross revenue of [REDACTED]:

	<b>Retained by Contractor</b>	<b>/</b>	<b>Paid to Authority</b>
<b>Vehicles:</b>	[REDACTED]	/	[REDACTED]
<b>Spares/Tyres:</b>	[REDACTED]	/	[REDACTED]

- b. Percentage share of the Gross Selling Price of each Surplus Asset, in respect of all sales above an aggregate gross revenue of [REDACTED]:

	<b>Retained by Contractor</b>	<b>/</b>	<b>Paid to Authority</b>
<b>Vehicles:</b>	[REDACTED]	/	[REDACTED]
<b>Spares/Tyres:</b>	[REDACTED]	/	[REDACTED]

#### **Item 1.2 - Recycling/Disposal of GDR**

**Spares:** [REDACTED] per tonne/pro rata  
**Tyres:** [REDACTED] per tonne/pro rata

#### 18.2.1.2. Option Year 2:

##### Item 1.1 - Sales of Surplus Assets

a. Percentage share of the Gross Selling Price of each Surplus Asset, in respect of all sales up to an aggregate gross revenue of [REDACTED]:

	<b>Retained by Contractor</b>	<b>/</b>	<b>Paid to Authority</b>
<b>Vehicles:</b>	[REDACTED]	/	[REDACTED]
<b>Spares/Tyres:</b>	[REDACTED]	/	[REDACTED]

b. Percentage share of the Gross Selling Price of each Surplus Asset, in respect of all sales above an aggregate gross revenue of [REDACTED]:

	<b>Retained by Contractor</b>	<b>/</b>	<b>Paid to Authority</b>
<b>Vehicles:</b>	[REDACTED]	/	[REDACTED]
<b>Spares/Tyres:</b>	[REDACTED]	/	[REDACTED]

##### Item 1.2 - Recycling/Disposal of GDR

**Spares:** [REDACTED] per tonne/pro rata  
**Tyres:** [REDACTED] per tonne/pro rata

#### 18.2.1.3. Option Year 3

##### Item 1.1 - Sales of Surplus Assets

a. Percentage share of the Gross Selling Price of each Surplus Asset, in respect of all sales up to an aggregate gross revenue of [REDACTED]:

	<b>Retained by Contractor</b>	<b>/</b>	<b>Paid to Authority</b>
<b>Vehicles:</b>	[REDACTED]	/	[REDACTED]
<b>Spares/Tyres:</b>	[REDACTED]	/	[REDACTED]

b. Percentage share of the Gross Selling Price of each Surplus Asset, in respect of all sales above an aggregate gross revenue of [REDACTED]:

	<b>Retained by Contractor</b>	<b>/</b>	<b>Paid to Authority</b>
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	<b>Contractor</b>	/	<b>Authority</b>
<b>Vehicles:</b>	██████████	/	██████████
<b>Spares/Tyres:</b>	██████████	/	██████████

Item 1.2 - Recycling/Disposal of GDR

<b>Spares:</b>	██████████	per tonne/pro rata
<b>Tyres:</b>	██████████	per tonne/pro rata

provided that the Authority exercises such options by no later than 3 months before the commencement of each option period and provided that the duration of the extended Service Period under Item 1 of the Schedule of Requirements does not exceed 7 years in total.

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

18.3.1. of extension of the Service Period whether constituting any breach of the Contract; or

18.3.2. for the duration of which the Authority is prevented from exercising any such option by reason of any other breach of the Contract by the Contractor.

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

## **19. DUTY OF CARE AUDIT**

19.1. The Contractor shall provide access to records, including Sub-contractor records, relevant to this Contract, to enable the Authority's appointed Safety Auditor to carry out safety audits and other assessment activities to meet the Authority's safety and environmental requirements.

19.2. In addition to the provisions of DEFCON 608, the Authority shall have the right to undertake Duty of Care audits, relating to Health & Safety and Environmental management issues. Prior to each visit, the Authority will provide the Contractor with two questionnaires. The audit itself will then comprise of a review of all documentation relating to Safety, Health, and Environmental (SH&E) management and legislative compliance, and physical assessment of the site and work practices to ensure their compliance with the Contractor's SH&E management systems and applicable legislation. The first audit may occur within 3 months of the start of the Service Period and further audits will be carried out annually for the duration of the Contract. After each audit, the Authority shall produce a report, which shall be copied to the Contractor. The Contractor shall act upon the recommendations within the audit report within the timescales detailed in the report.

## **20. CERTIFICATION/ACCREDITATION, LICENCES AND PERMITS**

- 20.1. Throughout the Duration of the Service Period, the Contractor, or where applicable, the relevant Sub-contractor and/or Consortium Member, shall possess and maintain certification/accreditation and all legally required licences and permits to enable the full provision of Services under the Contract, which shall include each of the following or their equivalents as a minimum:
- 20.1.1. UKAS (or equivalent) accredited certification to ISO 9001:2008, or ISO 9001:2015 by no later than September 2018
  - 20.1.2. UKAS (or equivalent) accredited certification to ISO 14001:2004, or ISO 14001:2015 by no later than September 2018
  - 20.1.3. Environmental Permits that relate to the collection, transportation and storage pending disposal of Surplus Assets within the scope of this Contract, in accordance with COSHH regulations;
  - 20.1.4. Waste Electronic and Electronic Equipment (WEEE) permit for collection, transportation and storage of Electronic Equipment in accordance with COSHH regulations;
  - 20.1.5. Health & Safety Management – the Contractor must maintain as a minimum an appropriate and documented Organisational Health & Safety Management System;
  - 20.1.6. Site Waste Management Permit;
  - 20.1.7. Waste Carrier License;
  - 20.1.8. Permit for the keeping, use of and disposal of radioactive materials in accordance with the Radioactive Substances Regulations of the Environmental Permitting Regulations 2010;
  - 20.1.9. Permit of compliance with the Vehicle End of Life Regulations 2003, 2005, 2010;
  - 20.1.10. Section 5 registration as a Firearms Dealer;
  - 20.1.11. Cyber Essentials Plus.
- 20.2. If any of the requirements of the certification/accreditation, licences and permits listed in Condition 20.1 of the Contract change or are replaced during the period of the Contract, the Contractor or where applicable, the relevant Sub-contractor, shall secure such new or changed certification/accreditation, licences and permits in order to ensure compliance at all times with Condition 20.1 of the Contract. The Contractor shall provide copies of updated certification, licenses or permits within 10 Business Days of the Contractor's or the relevant Sub-contractors' receipt of such updated certification, licenses or permits.

- 20.3. Where the Contractor or where applicable, the relevant Sub-contractor, fails to maintain any of the certification/accreditation, licences and permits listed in Condition 20.1 of the Contract, the Contractor shall give Notice to the Authority within 5 Business Days of the Contractor becoming non-compliant with Condition 20.1 of the Contract. Such non-compliance shall be considered a material breach of its obligations under the Contract. In such circumstances, the Authority shall have the right to terminate the Contract in accordance with the provisions of Condition 38 of the Contract.

## **21. DOCUMENT ACCEPTANCE AND REJECTION**

- 21.1. The Contractor shall submit documentation as required under Item 2 of the Schedule of Requirements.
- 21.2. Where the Contractor is required to submit a document in draft for the Authority's agreement, the Authority will provide its agreement, comments or amendments for incorporation or its rejection of the document within 10 (ten) Business Days of issue of the draft document. The Contractor shall either action comments or amendments for incorporation in the document or shall discuss with the Authority to reach mutual agreement on the appropriate changes necessary to enable a resubmission 10 (ten) Business Days after receipt of the Authority's comments. The Authority may provide its agreement, further comments or amendments for incorporation within a further 10 (ten) Business Days.
- 21.3. If the documentation presented by the Contractor does not conform to the relevant reporting requirement or in the case of a draft be deemed to be insufficient in content, the Authority may reject the document within 10 (ten) Business Days of receipt of the document. If the Authority rejects any document, the Authority will provide feedback for the rejection when giving Notice to the Contractor of the rejection.
- 21.4. Should the Contractor disagree with any such rejection, it shall give Notice to the Authority and provide supporting evidence within 10 (ten) Business Days of the Authority's Notice. Where it is not possible to reach agreement through negotiation, either party may seek to resolve the dispute in accordance with DEFCON 530.

## **22. GOODS FOR DESTRUCTION OR RECYCLING (GDR) AUDIT REQUIREMENTS**

- 22.1. The Authority will undertake quarterly audits of Goods for Destruction or Recycling (GDR) selected for recycling and disposal. The first audit may occur within the first three (3) Calendar Months of commencement of the Service Period. The Authority may direct the Contractor that audited items for destruction are to be refurbished for sale should the Authority believe the items to be capable of resale.

- 22.2. The Authority reserves the right to undertake additional audits of Goods for Destruction or Recycling (GDR) at any time in order to ensure satisfactory completion of works. The Authority will not undertake additional audits unreasonably. Should the Authority undertake any additional audit, this will in no way defer the next quarterly audit.

## **23. EXTRAORDINARY TASKS**

- 23.1. All Extraordinary Tasks requested under Item 3 of the Schedule of Requirements shall be initiated and defined by the use of a Tasking Form at Annex C to the Contract. An Extraordinary Task may be used for any of the following circumstances including nil cost changes and may be raised by the Contractor or the Authority:
- 23.1.1. Any proposed Contractor purchase of Surplus Assets, subject to Condition 14.
- 23.1.2. Any proposed on-site sale, where a Surplus Asset remains at an Authority or Central Government Body site such as for example in relation to a Surplus Asset located outside the UK.
- 23.1.3. In the event that the Authority recalls Surplus Assets in accordance with Conditions 9 or 34 of the Contract.
- 23.1.4. Where an individual Tasking is novel or contentious, or results in a material change in the normal service and which has materially affected the costs of the service such that the balance of the percentage share is materially affected in such related individual sale.
- 23.1.5. Goods Received in Error (GRIE) in accordance with Section 1 of the Statement of Requirement (StOR) at Annex A to the Contract.
- 23.1.6. For Government to Government Sales where the sale concerns Surplus Assets which have not been tasked to the Contractor or where the Authority requires additional work outside the scope of the Statement of Requirement (StOR) at Annex A to the Contract, subject to Conditions 24 and 25 of the Contract.
- 23.1.7. Any additional work required during the Drawdown Period or upon expiry of the Contract, where such work is outside the scope of the Contract.
- 23.1.8. Any gifting of Surplus Assets by the British government to any foreign government.
- 23.2. All Tasking Forms shall use a uniquely numbered serial number. Following formal agreement of the Extraordinary Task, it shall be added to the list at Annex D to the Contract at the next suitable Amendment.
- 23.3. Where the Contractor completes Part 1, the Contractor shall submit for the Authority's approval prior to completing the Part 2 quotation. The



Contractor shall provide a fully completed Part 2 within 10 Business Days of receipt of an authorised Part 1 or within 15 Business Days if the Contractor is required to undertake a site visit in order to quote for the Extraordinary Task. Any quotation shall be valid for acceptance by the Authority for at least 30 Business Days. This quotation shall be signed and submitted in soft copy (both MS Office compatible and PDF format) and be capable of being easily printed.

- 23.4. The Authority may require that the Contractor attends the site specified in the Tasking Form to undertake an on-site inspection at a mutually agreed time, which shall be within 5 Business Days of receiving a Tasking Form Part 1, to estimate the disposal method and manpower required to effect clearance of the Surplus Asset, if applicable. While the Authority reserves the right to require these inspection visits it will not exercise that right unreasonably.
- 23.5. Where the Contractor provides a quotation in Part 2 of the Tasking Form, the Contractor shall include a breakdown of costs for completing the work and identify any additional or different costs specific to the Extraordinary Task. The Authority shall require the following information to be provided in Part 2 of the Tasking Form, where applicable:
- 23.5.1. A full cost breakdown;
  - 23.5.2. Sales Return, and any proposed arrangements for payment by the Contractor to the Authority, if appropriate;
  - 23.5.3. Any dependencies on the Authority;
  - 23.5.4. Any assumptions or exclusions;
  - 23.5.5. Programme/Project Plan including completion dates and critical milestones, detailing dates of all deliverables required/proposed to be supplied including any proposed packaging specifications which shall remain achievable during the validity of the quotation;
  - 23.5.6. Any specific risks and proposed mitigation;
  - 23.5.7. A statement confirming compliance with the Terms and Conditions of the Contract or the Contractor shall identify any proposed changes for the Authority's consideration.
- 23.6. The Authority will evaluate the quotation and written notification will be given to the Contractor of the Authority's decision using Part 3 of the Tasking Form at Annex C to the Contract. In accordance with DEFCON 630, the Authority reserves the right to: seek clarification, negotiate the terms of these Extraordinary Tasks, seek competitive tenders for any Extraordinary Tasks or to not authorise the Contractor to proceed with the Extraordinary Task.

- 23.7. No work shall be undertaken on the proposed Extraordinary Task until authorised by the Authority using part 3 of the Tasking Form at Annex C to the Contract.
- 23.8. On completion of the Extraordinary Task, the Contractor shall complete and return Part 4 of the Tasking Form at Annex C to the Contract.
- 23.9. The Contractor shall provide at each progress meeting a list of all Extraordinary Tasks authorised under Item 3 of the Schedule of Requirements to enable inclusion at Annex D to the Contract by Amendment to Contract in accordance with DEFCON 503. The Authority will remain responsible for the producing the Amendment but will do so minimising contract administration by consolidating such changes over several months or with other Amendments that may be needed and subject to resources and priorities.

## **24. GOVERNMENT TO GOVERNMENT (G2G) SALES**

- 24.1. The Contractor shall provide support to the Authority in accordance with Section 5 of the Statement of Requirement (StoR) at Annex A to the Contract, in relation to any G2G Sale transacted between the Authority and a G2G Customer, of Surplus Assets Tasked under this Contract whether at the premises of the Contractor or not. In relation to providing such support, the Contractor shall be entitled to the agreed percentage share under Item 1 of the Schedule of Requirements in accordance with Condition 15 of the Contract, except where the Authority has exercised its right to recall Surplus Assets in accordance with Condition 9 of the Contract.
- 24.2. The Authority may at its absolute discretion refrain from Tasking Surplus Assets to the Contractor for any reason including for the purposes of gifting, or conducting a direct sale, to a foreign nation itself. In such circumstances, the Contractor shall not be required to provide any support to the Authority in accordance with Section 5 of the Statement of Requirement (StOR) at Annex A to the Contract and shall not therefore be entitled to the agreed percentage share under Item 1 of the Schedule of Requirements nor any other payment.
- 24.3. In the event of a G2G Sale under the provisions of Condition 24.1 of the Contract, the Authority reserves the right at its absolute discretion to require the Contractor to ring fence Surplus Assets in order to support such a sale, by Notice to the Contractor at any time on or after Tasking in accordance with Condition 24.5 of the Contract. Unless otherwise agreed by the Authority, the Contractor shall remove the specified ring fenced Surplus Assets from sale and cease any marketing activity, negotiations or refurbishment works immediately or as soon as is practicable.
- 24.4. The Contractor shall ensure that its employees are aware of such Notice and take such steps as may be reasonably practical to implement such Notice.

- 24.5. Such Notice will include:
- 24.5.1. Details of the Surplus Assets by quantity, description (not Serial number) including any associated equipment;
  - 24.5.2. the period Surplus Assets shall be ring fenced for, normally, not more than 6 months; and
  - 24.5.3. the identity of the prospective G2G Customer.
- 24.6. Within five Business Days of receipt of such Notice, the Contractor shall inform the Authority if it believes the Authority should not require the Contractor to ring fence Surplus Assets. The Authority will give due consideration to such information and notify the Contractor of its decision within a further twenty (20) Business Days. The Authority's decision shall be final and conclusive.
- 24.7. The ring fence period shall commence upon receipt of such Notice and end on:
- 24.7.1. the expiry of the period included within the Notice; or
  - 24.7.2. the date of Transfer of Title, where agreement of a G2G Sale has been confirmed by the Authority; or
  - 24.7.3. the date included in any further Notice by the Authority to cease a ring fence period, at the Authority's discretion.
- 24.8. Should the Authority wish to extend the requirements included in such Notice, the Authority shall issue a new Notice. Such extension requests will be kept to a minimum and avoided wherever possible.
- 24.9. Unless otherwise notified by the Authority, upon expiry of the ring fence period in accordance with Conditions 24.7.1 or 24.7.3 of the Contract, the Contractor shall be free to resume all sales and marketing activity, including any refurbishment works where required.

## **25. ACCEPTANCE PROCESS GOVERNMENT TO GOVERNMENT (G2G) SALES**

- 25.1. In the event of a G2G Sale under the provisions of Condition 24 of the Contract and on completion of the requirements of the G2G Sale, the acceptance process shall be conducted between the Authority and the G2G Customer on the Contractor's premises, unless otherwise agreed by the Authority and the G2G Customer. The Contractor shall provide access and support as necessary to facilitate such activity. For the avoidance of any doubt, any Additional Services that may be provided by the Contractor shall be subject to the provisions of Condition 26 of the Contract.

## **26. ADDITIONAL SERVICES**

- 26.1. Where a Customer or G2G Customer requires Additional Services, the Contractor may offer quotations.
- 26.2. The Authority offers no warranty to the Customer or G2G Customer or any indemnity to the Contractor for any Additional Services undertaken by the Contractor for the Customer or G2G Customer and shall not be held liable for the performance of the Additional Services in any respect. Any acceptance process shall therefore be solely a matter for the Contractor and the Customer or G2G Customer.
- 26.3. In the event that the Customer or G2G Customer purchases Additional Services, the Authority shall not be held liable for any failure by the Customer or G2G Customer to pay the full price or part thereof at the time or time(s) agreed by the Contractor with the Customer or G2G Customer.
- 26.4. For the avoidance of doubt, the Contractor may not commence any Additional Services in relation to refurbishment or modification of any Surplus Asset for a G2G Customer prior to agreement of a G2G Sale being confirmed by the Authority, unless expressly agreed by the Authority. Work on such Additional Services in relation to refurbishment or modification of any Surplus Asset may commence prior to transfer of Title of the relevant Surplus Assets passing from the Authority to the G2G Customer, subject to agreement of the scope of work with the Authority and on condition that such work has been agreed by a legally enforceable sales agreement between the Contractor and the G2G Customer. In such circumstances, the Contractor accepts all liability associated with such Additional Services in relation to refurbishment or modification of the Surplus Assets, including any work that may be required to restore the Surplus Asset to its previous state if the Authority so requires, should the sales agreement with the G2G Customer not proceed for any reason.

## **27. SUB-CONTRACTS**

- 27.1. The Contractor shall ensure that the Conditions of Contract and the associated rights, powers and privileges accruing to the Authority are reflected in any sub-contracts.

## **28. TRANSFER OF UNDERTAKINGS PROTECTION OF EMPLOYMENT (TUPE)**

- 28.1. The Contractor agrees that the provisions of Annex F to the Contract (Transfer Regulations) shall apply to any Relevant Transfer of staff under this Contract.

## **29. SUSTAINABLE PROCUREMENT**

- 29.1. 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.

29.2. 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's Designated Officer.

29.3. 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 its obligations under the Contract. In such circumstances, the Authority shall have the right to terminate the Contract in accordance with the provisions of Condition 38 of the Contract.

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

### **30. BANK BOND OR PARENT COMPANY INDEMNITY FOR THE PURPOSES OF THE AVERAGE MONTHLY SALES VOLUME**

30.1. The Contractor shall hold a valid irrevocable Parent Company Indemnity in the form of a DEFFORM 24 in accordance with Appendix 1 to Annex G to the Contract. If the Contractor does not have a Parent Company, then the Contractor must provide a Bank Bond in the form of a DEFFORM 24A in accordance with Appendix 2 to Annex G to the Contract.

30.2. If the Contractor provides the Authority with a Bank Bond this shall be for the minimum value of £325,000 (Three-Hundred Twenty Five Thousand Pounds) which is calculated on the anticipated average monthly sales volume amount. As it is calculated on an average, this value is subject to revision at the Authority's discretion. If the Authority requires the value to be increased, the Contractor must submit an updated Bank Bond in accordance with the Authority's instructions.

30.3. Because of the Authority's financial exposure, no Contractor to Customer Sales or Taskings shall be made by the Contractor or the Authority under the Contract if the Contractor does not hold a valid and accepted Parent Company Indemnity or Bank Bond.

30.4. The Contractor must hold the Parent Company Indemnity or Bank Bond for the duration of the Contract in accordance with Condition 2 of the Contract, for any Option periods as defined in Condition 18 of the Contract and for the Drawdown Period in accordance with Condition 39 of the Contract.

- 30.5. If for any reason the Parent Company Indemnity or Bank Bond is withdrawn or changed by the Contractor in any way, the Contractor shall immediately notify the Authority. If the Authority agrees to the change, the Contractor must submit a new version of the Parent Company Indemnity or Bank Bond in accordance with the Authority's instructions and prior to any sales or Taskings taking place. The Contractor must not use this as a way to negotiate the terms of the Parent Company Indemnity or Bank Bond.
- 30.6. Further to sub-Clause 30.5 of this Condition of the Contract, where the Contractor decides to register or move its place of business to a jurisdiction outside of England and Wales, the Contractor shall provide a new Parent Company Indemnity or Bank Bond in accordance with sub-Clauses 30.1 or 30.2 of this Condition of the Contract, as appropriate. In this event, the Contractor shall give Notice to the Authority not less than 30 Business Days before such a change is implemented.
- 30.7. Without prejudice to any other right or remedy under the Contract, the Authority reserves the right to terminate the Contract under the provisions of Condition 38 of the Contract, if the Contractor does not hold a valid and accepted Parent Company Indemnity or Bank Bond.

### **31. CONTRACT ADMINISTRATION**

- 31.1. For the purposes of Clause 1 of DEFCON 604, the frequency of progress reports shall be quarterly and delivered no later than 5 Business Days prior to the next progress meeting. The progress reports shall be in accordance with the Contractor's standard reporting format where existing, and include the following information:
- 31.1.1. Update on progress against the contractual deliverables including any supply of documentation in preceding period and activities planned for the forthcoming period;
  - 31.1.2. Sale of Surplus Assets, including an overview of Service reports in the period: Sales; Stock; Waste; Goods Received, plus Annual Stock Check Report every 4th meeting.
  - 31.1.3. Goods for Destruction and Recycling (GDR) Report, including Certificates of Completion/Destruction.
  - 31.1.4. Unused.
  - 31.1.5. Performance of and progress against existing Extraordinary Tasks and any new Extraordinary Tasks proposed.
  - 31.1.6. Summary of Goods Received in Error (GRIE) and Discrepancy Items received in the period and status;
  - 31.1.7. Update on previously recorded actions, as per an action tracker.

31.1.8. Review of Risks on joint risk register, and any agreed mitigation actions.

31.1.9. Financial Issues, including payment status and forecasts.

31.1.10. Commercial / Contractual issues, including.

31.1.10.1. KPI performance report, detailing achievement against individual KPIs in the period;

31.1.10.2. Summary details of Extraordinary Tasks agreed for inclusion in Annex D to the Contract by Amendment;

31.2. For the purposes of Clause 1 of DEFCON 642, the frequency of progress meetings shall be quarterly, held at the Authority's premises unless otherwise agreed, normally within 15 Business Days of the end of each quarterly KPI reporting period. Additionally, there shall be a Contract launch meeting no later than one month of the commencement of the Service Period and a Contract exit meeting no later than the expiry of the Drawdown Period, unless otherwise agreed.

31.3. The Chairman of the progress meetings shall be the Authority's Designated Officer as defined in Box 2 of the DEFFORM 111 Appendix to Contract or an authorised representative unless otherwise agreed.

31.4. The Contractor shall be responsible for issuing all calling notices for the meetings giving not less than four weeks advance notice of the meeting date and detailing any information required from attendees (excluding the initial launch meeting). The Contractor shall prepare and issue an agenda (which shall include the subjects included in Condition 31.1 of the Contract as a minimum) to the Authority for agreement and in support of each quarterly meeting, no later than 5 Business Days prior to the meeting.

## **32. STATEMENT OF GOOD STANDING**

32.1. The Contractor shall complete, sign and submit to the Authority's Designated Officer the Statement of Good Standing at Annex H to the Contract, as follows:

32.1.1. within 10 Business Days of each of the first three anniversaries of the date of Contract; or

32.1.2. at least 10 Business Days prior to each option expiry date specified in Condition 18 of the Contract, which shall be a pre-requisite for the Authority to exercise any such option; or

32.1.3. not later than twelve (12) Calendar Months after a previous statement has been supplied until the expiry of the Contract.

- 32.2. Should the Contractor fail to supply the Statement of Good Standing in accordance with Condition 32.1 of the Contract or within 10 Business Days of any other Authority request, such non-compliance shall be considered a material breach of its obligations under the Contract. In such circumstances, the Authority shall have the right to terminate the Contract in accordance with the provisions of Condition 38 of the Contract.

### **33. ISSUED PROPERTY**

- 33.1. Surplus Assets under the control of the Contractor in accordance with Condition 7 of the Contract shall be considered Issued Property to be used in the execution of the Contract and for no other purpose, without the prior approval in writing of the Authority. All Issued Property shall remain the property of the Authority until either Title is transferred in accordance with Condition 6 of the Contract or such property has been recycled or destroyed as evidenced by a Certificate of Completion.
- 33.2. Neither the Contractor, nor any subcontractor, nor any other person, shall have a lien on Issued Property, for any sum due to the Contractor, subcontractor or other person, and the Contractor shall take all such steps as may be necessary to ensure that the Title of the Authority, and the exclusion of any such lien, are brought to the notice of all subcontractors and other persons dealing with any Issued Property.
- 33.3. Upon receipt of any Issued Property, the Contractor shall check the Issued Property to:
- 33.3.1. verify that it corresponds with the Issued Property specified in the Tasking or other delivery documentation; and
  - 33.3.2. conduct a reasonable visual inspection; and
  - 33.3.3. conduct any additional inspection and testing as may be necessary and practicable to check that the Issued Property is as described in the Routine Task Form and is not otherwise defective or deficient.
- 33.4. Within 20 days of receipt of Issued Property, subject to the checks under Condition 33.3, the Contractor shall
- 33.4.1. supply a Goods Received Report to the Authority under Item 2.4 of the Schedule of Requirements;
  - 33.4.2. and where appropriate, separately notify the Authority of any defects, deficiencies or discrepancies discovered by submitting a Part 1 Extraordinary Task Form under Item 2.6 of the Schedule of Requirements in accordance with Condition 23 of the Contract.
- 33.5. The Contractor shall be responsible for maintenance of the Issued Property in the same condition as received or better to ensure the value of the Issued Property does not degrade.



- 33.6. The Contractor shall open and maintain a Public Store Account (PSA) in accordance with DEF STAN 05-099. The Goods Received Report required under Item 2.4 of the Schedule of Requirements may be produced from the PSA. The Contractor shall ensure that all property of the Authority recorded in the PSA, including but not limited to Issued Property, is available for inspection by the Authority at any reasonable time.
- 33.7. The Contractor shall on being given two (2) Calendar Months advance notice permit, and co-operate with, the Authority to conduct audits of the property of the Authority recorded in the PSA in a manner to be determined by the Authority. Where the Authority has reasonable grounds to believe that the property of the Authority has not been used in accordance with the terms of the Contract, then such audits may be conducted without advance notice.
- 33.8. Once Title to any Surplus Asset has passed to the Contractor or a third party in accordance with Condition 6 of the Contract, the Contractor shall update the PSA in accordance with DEF STAN 05-099. Upon expiry of the Contract, the Contractor shall within twenty (20) Business Days invite the Defence Internal Audit Asset Accounting Centre (DIA AAC) to audit and formally close the PSA, informing the Authority's Designated Officer of arrangements.

#### **34. UNSOLD STOCK**

- 34.1. Should the Contractor fail to sell or be unlikely to sell any Surplus Asset within ten (10) Calendar Months of collection by the Contractor excluding any ring fence period applicable, the Contractor shall notify the Authority prior to the expiry of the ten (10) Calendar Month period. The Contractor shall then have the remainder of the period until either:

34.1.1. fifteen (15) Calendar Months from collection by the Contractor excluding any ring fence period applicable, or until the end of the Drawdown Period whichever is the shorter; or

34.1.2. by a specific target date agreed expressly by the Authority, which shall be agreed no later than 3 months before the date of expiry of the fifteen (15) Calendar Months from collection by the Contractor;

to sell the Surplus Asset at or above any MSP notified by the Authority in accordance with Condition 17 of the Contract. If a Surplus Asset is not sold after the expiry of the fifteen (15) Calendar Month period, the Contractor shall pay the Authority's percentage share of the Minimum Selling Price (MSP) of each applicable Surplus Asset to the Authority in accordance with Condition 16.11 of the Contract. Title shall remain vested in the Authority until the Contractor completes a sale. The Contractor shall pay any balance remaining of the Percentage share of the Gross Selling Price of each Surplus Asset once sold.

- 34.2. Unused.

- 34.3. The Contractor's notification under Condition 34.1 of the Contract shall include the following additional information for consideration and agreement by the Authority:
- 34.3.1. Marketing activity undertaken, detailing any interest and/or negotiations, together with any feedback that may have been received about the suitability of the item for purchase, its condition or the price;
  - 34.3.2. a review of the price and any valid commercial justification for the sale having not been achieved: and
  - 34.3.3. a proposed marketing and pricing plan, including route to market and timescales to achieve the sale of the unsold Surplus Assets within a total period of fifteen (15) months from collection by the Contractor.
- 34.4. Subject to Condition 34.1 of the Contract, where the Contractor and the Authority are unable to agree the proposed marketing and pricing plan submitted under Condition 34.3 of the Contract, the Authority reserves the right to recall such Surplus Assets in accordance with Condition 9 of the Contract. In such circumstances, the Contractor shall additionally be liable for return transportation, Loading and Unloading of such Surplus Assets to a location nominated by the Authority within ten (10) Business Days of the Extraordinary Task being approved by the Authority, or such other date as may be detailed in the Tasking Form. Should the Contractor have undertaken any refurbishment work on the Surplus Asset, Title to any parts used during the refurbishment will transfer to the Authority. The Authority will in no way be liable for any cost of labour or parts already borne by the Contractor.

### **35. COMMERCIAL RISK**

- 35.1. The Contractor acknowledges that any risk assessment which has been, or may be, undertaken in connection with this Contract has been, or will be, a project management function only. Such risk assessment does not affect the legal relationship between the parties. The issuing of any risk assessment questionnaire and the process of risk assessment generally, including without limitation, the identification of (or failure to identify):
- 35.1.1. particular risks and their impact; or
  - 35.1.2. risk reduction measures, contingency plans and remedial actions
- 35.2. shall not in any way limit or exclude the Contractor's obligations under this Contract and shall be entirely without prejudice to the Authority's rights, privileges and powers under this Contract. Where any risks identified as a result of any risk assessment questionnaire and risk assessment generally are agreed by the parties to be those of the Authority, these shall be subject to being accepted expressly and unequivocally by the Authority.

### **36. STRATEGY ON EXPIRY OF CONTRACT**

- 36.1. Twelve (12) months prior to the expiry date of the initial 4 year Service Period under Item 1 of the Schedule of Requirements, the Contractor shall submit a proposed Contract Exit Strategy Plan (CESP) to the Authority's Designated Officer.
- 36.2. The CESP shall detail, to the satisfaction of the Authority how the Contractor shall:
- 36.2.1. manage sales of stock during the remaining two years of the Contract. This shall demonstrate the difference in strategies appropriate to the final twelve (12) Calendar Months of the Service Period and the following twelve (12) Calendar Months Drawdown Period. This shall include a proposed marketing and pricing plan, including route to market and timescales to achieve the maximum sales by volume and the optimum gross selling price of the Surplus Assets held and anticipated to be Tasked within the final 12 months of the Service Period under Item 1 of the Schedule of Requirements. No further Taskings shall be made by the Authority during the twelve (12) Calendar Months Drawdown Period. This plan should demonstrate the least material impact on the market valuation of Surplus Assets and ensure all Surplus Assets are sold prior to expiry of the Drawdown Period;
- 36.2.2. manage at its cost the transfer to the Authority or his authorised representative of any remaining unsold Surplus Assets prior to the expiry of the Drawdown Period in accordance with Condition 39 of the Contract; and
- 36.2.3. ensure he complies with his ongoing obligations and responsibilities to manage any unsold Surplus Assets remaining in its possession as detailed in the Statement of Requirement (StOR) at Annex A to the Contract and in accordance with Condition 5.1 of the Contract, until they have been transferred to the Authority or its authorised representative.
- 36.3. Where the Authority exercises any options to extend the Service Period in accordance with Condition 18 of the Contract, the Contractor shall provide an updated CESP twelve (12) months prior to the extended Service Period expiry date and finally prior to the commencement date of the Drawdown Period.
- 36.4. Agreement by the Authority to the CESP or any updates of the CESP shall be governed by the acceptance procedure in Condition 21 of the Contract.

### **37. KEY PERFORMANCE INDICATORS**

- 37.1. The Contractor and the Authority agree that performance under the Contract shall be assessed on a monthly basis against each Key Performance Indicator (KPI) detailed at Annex E to the Contract from the

commencement of the Service Period until the expiry of the Drawdown Period.

37.2. The Contractor shall monitor its performance and provide a monthly KPI report under Item 2.9 of the Schedule of Requirements and in accordance with Condition 31 of the Contract. The KPI report shall include supporting evidence of performance against each KPI and show whether each KPI has been met in full, exceeded or not met for each monthly period. The Authority may reasonably challenge any information contained within the report where the Authority believes any information provided is incorrect. Where it is not possible to reach agreement through negotiation, either party may seek to resolve the dispute in accordance with DEFCON 530.

37.3. There are two types of KPI, as follows:

37.3.1. Type one KPIs are considered essential elements of the Authority's requirement.

37.3.2. Type two KPIs whilst important elements of the Authority's requirements, are not considered to be as essential as Type one KPIs.

37.4. Where the Contractor fails to meet in full or exceed KPIs, the Authority shall be entitled to the following remedies:

37.4.1. All Type one and Type two KPIs

37.4.1.1. The Contractor shall pay to the Authority the amount of damages specified in Annex E to the Contract for the relevant KPI.

37.4.1.2. Where the KPI has been met in full or exceeded in the immediately preceding month, payment of the damages by the Contractor shall be suspended for one month to allow the Contractor one opportunity in the immediately following month to rectify its performance for the relevant KPI. If the relevant KPI is met in full or exceeded in the immediately following monthly period, the damages shall be waived. If the KPI remains not met, the Contractor shall pay the amount of damages specified in Annex E to the Contract in full for both periods and any further consecutive periods.

37.4.1.3. Where the KPI has not been met in the immediately preceding month, the Contractor shall not be given any rectification opportunity and shall pay the amount of damages specified in Annex E to the Contract in full.

37.4.1.4. All damages becoming payable by the Contractor to the Authority as provided for in this Condition shall be paid in accordance with Condition 16.11 of the Contract.

37.4.2. Type one KPIs

37.4.2.1. The Authority reserves the right to terminate the Contract in accordance with Condition 38 of the Contract, should the Contractor fail to achieve any combination of type one KPIs:

37.4.2.1.1. over three successive monthly periods; or

37.4.2.1.2. any four individual monthly periods in any rolling twelve month period.

37.4.3. Type two KPIs

37.4.3.1. The Authority reserves the right to terminate the Contract in accordance with Condition 38 of the Contract should the Contractor fail to achieve any combination of type two KPIs:

37.4.3.1.1. over four successive monthly periods; or

37.4.3.1.2. any six individual monthly periods in a twelve month period in any rolling twelve month period.

37.5. The Authority will not claim any contractual remedies for non-achievement against the KPIs during the first quarter of the Service Period, which will be considered an introductory trial period. Equally, any non-achievement against the KPIs during this introductory trial period will not count towards the number of instances stated in Conditions 37.4, 40.2 or 40.3 of the Contract.

### **38. TERMINATION**

38.1. In addition to any other rights and remedies, the Authority shall have the rights detailed in Clause 38.2 of the Contract where the Contractor is in material breach of its obligations under the Contract, including but not limited to circumstances where the Contractor:

38.1.1. fails to provide the Articles or Services (or any part thereof) under Items 1, 3 and 4 of the Schedule of Requirements by the relevant date specified;

38.1.2. provides Articles or Services (or any part thereof) under Items 1, 3 and 4 of the Schedule of Requirements that are not in accordance with the Schedule of Requirements and / or the Specification;

38.1.3. commits a material breach of the services provided under Items 1 and 4 of the Schedule of Requirements as defined by the level of performance against Key Performance Indicators in accordance with Conditions 40.3.3 or 40.3.4 of the Contract;

38.1.4. fails to support the Authority in a G2G sale in accordance with Condition 24 of the Contract;

- 38.1.5. fails to pay to the Authority its percentage share of the gross selling price in accordance with Condition 16.1 of the Contract;
  - 38.1.6. fails to submit a monthly KPI report under Item 2.8 of the Schedule of Requirements on time;
  - 38.1.7. or its relevant Sub-contractor, ceases to hold any of the quality standards, accreditation, certification or licenses in accordance with Condition 20 of the Contract;
  - 38.1.8. fails to provide an annual Statement of Good Standing in accordance with Condition 32 of the Contract;
  - 38.1.9. is convicted for any criminal breaches of the economic, social and environmental legislation in accordance with Condition 29.3 of the Contract;
  - 38.1.10. is in breach of any statute or otherwise commits a material breach of its obligations under the Contract.
- 38.2. Where the Contractor is in material breach in accordance with Condition 38.1 of the Contract, the following remedies shall apply:
- 38.2.1. if the material breach is under Conditions 38.1.1, 38.1.2, 38.1.3, 38.1.5, 38.1.6 or 38.1.9 of the Contract, the Contractor shall at its option and expense, within 20 Business Days of notification by the Authority, either (a) carry out such remedial services as is necessary to correct the Contractor's failure or otherwise to rectify the material breaches or (b) supply a proposed rectification plan for agreement by the Authority and rectify the material breaches in accordance with the obligations and dates agreed in such rectification plan. In the event of failure by the Contractor to remedy the material breach(es) within 20 Business Days or carry out the rectification plan in accordance with the obligations and dates set out in the plan then the Authority shall have the right to terminate the Contract or the relevant part thereof with immediate effect, and without liability of the Authority, by giving written Notice to the Contractor; or
  - 38.2.2. if the material breach is under Conditions 38.1.4, 38.1.7, 38.1.8 or 38.1.10 of the Contract, the Authority shall have the right to terminate the Contract or the relevant part thereof with immediate effect without liability of the Authority, by giving written Notice to the Contractor, including instructions for the safe storage, handling and return of Surplus Assets or other Issued Property in the Contractor's possession to the Authority.
- 38.3. In either of Conditions 38.2.1 or 38.2.2 of the Contract, the Authority may also refuse to accept the provision of any further Articles or Services by the Contractor.

- 38.4. In the event that the Authority terminates the Contract (or part thereof) under Condition 38.2 of the Contract, the Authority may additionally purchase substitute services from elsewhere and claim from the Contractor the amount by which the aggregate of the cost of purchasing and of performing such services in this way exceeds the amount which would have been payable to the Contractor in respect of all the Services so replaced if they had been delivered or performed in accordance with the Contract. The Authority will take all reasonable steps to mitigate the additional costs of purchasing and of performing services.
- 38.5. Should the Authority terminate this Contract under Clause 38.2 or otherwise in accordance with the terms of the Contract, the Contractor shall provide the latest updates of the applicable documentation and the Property Store Account (PSA) at no cost to the Authority within 60 Business Days of the date of termination, unless otherwise agreed.
- 38.6. The Authority's rights and remedies under this Condition 38 of the Contract are in addition to its rights and remedies implied by statute and common law.
- 38.7. Any references to DEFCON 514 within the text of any DEFCONs called up in this Contract shall be construed as meaning this Condition 38 of the Contract.

### **39. CONTRACT DRAWDOWN**

- 39.1. Upon expiry of the Service Period under Item 1 of the Schedule of Requirements, there shall be a twelve (12) months Drawdown Period, as detailed under Item 4 of the Schedule of Requirements.
- 39.2. The Authority shall not make any further Taskings of Surplus Assets to the Contractor during this Drawdown Period, however in all other respects:
- 39.2.1. the Contractor shall continue to meet its Contractual duties and obligations to perform the Services in relation to the Surplus Assets remaining in its possession in accordance with the Statement of Requirement (StOR) at Annex A to the Contract and supply the relevant documentation required under Item 2 of the Schedule of Requirements; and
- 39.2.2. the Authority shall retain all its rights and powers contained within the Contract.
- 39.3. The Contractor shall actively market and sell all remaining Surplus Assets prior to the expiry of the Drawdown Period in accordance with the agreed Contract Exit Strategy Plan, as supplied and updated under Item 2.13 of the Schedule of Requirements and in accordance with Condition 36 of the Contract. Unless otherwise agreed, the Contractor shall not hold any Surplus Assets after expiry of the Drawdown Period. Should any unsold Surplus Assets remain in the Contractor's possession, the Authority will not be liable for any storage or return transportation costs.

- 39.4. The Contractor shall dispose of all remaining Goods for Destruction and Recycling (GDR) under Item 1.2 of the Schedule of Requirements as a single, consolidated activity and claim a final payment in accordance with Condition 16.9/16.10 of the Contract.
- 39.5. Where appropriate, the Authority or the Contractor may still propose Extraordinary Tasks under Item 3 of the Schedule of Requirements in accordance with Condition 23 of the Contract. For the avoidance of doubt, this may not include the tasking of new Surplus Assets to the Contractor.
- 39.6. For the avoidance of doubt, all Key Performance Indicators (KPIs) except the "Collection" KPI, shall continue to apply to performance during the Drawdown Period.
- 39.7. The Drawdown Period may be shortened from the twelve (12) months period by mutual agreement, provided all Surplus Assets under the Contract have been sold and Title has transferred.

#### **40. ACCEPTANCE OF THE SERVICES PROVIDED UNDER ITEM 1 AND ITEM 4 OF THE SCHEDULE OF REQUIREMENTS**

- 40.1. Acceptance shall be based on the Contractor's performance against the three individual monthly periods for each of the five KPIs at Annex E to the Contract on a quarterly basis from the date of commencement of the Service Period under Item 1 of the Schedule of Requirements until the expiry of the Drawdown Period under Item 4 of the Schedule of Requirements. The total number of KPIs measured in the quarter is fifteen (15), five KPIs x 3 individual monthly periods.
- 40.2. Acceptance shall be assessed in accordance with Condition 37 of the Contract against the KPI information provided in the quarterly progress report, as follows:
- 40.2.1. Achieving the met in full or exceeded thresholds for more than 90% of the KPIs (14 out of 15) shall constitute the Authority's acceptance of the service in full. Achieving the met in full or exceeded thresholds for less than 90% of the KPIs for three quarters in succession shall constitute a material breach.
- 40.2.2. Achieving the met in full or exceeded thresholds for 75% or more of the KPIs (12 out of 15) shall constitute the minimum acceptable level of service the Authority may accept for a single quarter. Achieving the met in full or exceeded thresholds for less than 75% of the KPIs for more than one quarter in succession shall constitute a material breach.
- 40.2.3. Achieving the met in full or exceeded thresholds for less than 60% of the KPIs (9 out of 15) in one quarter shall constitute a material breach.



40.3. Where performance of the Services is in material breach, the Contractor shall have the opportunity to restore performance of the Services to an acceptable level of service as defined in Condition 40.2.1 or 40.2.2 of the Contract in the immediately following quarter. Where performance of the Services:

40.3.1. is restored to a fully acceptable level of service (90% or more), performance of the Services for the quarter will no longer be considered a material breach and shall not count toward the number of occasions described in Condition 40.3.4 of the Contract.

40.3.2. is restored to the minimum acceptable level of service (75% or more), performance of the Services for the quarter will count towards the number of occasions described in Condition 40.3.4 of the Contract.

40.3.3. is not restored to the minimum acceptable level of service (75% or more), the Authority shall have the right to terminate the Contract in accordance with Condition 38 of the Contract.

40.3.4. has been in material breach on two or more separate occasions, the Authority shall have the right to terminate the Contract in accordance with Condition 38 of the Contract.

## **41. INSURANCE**

41.1. Without prejudice to its liability to indemnify or otherwise be liable to the Authority under this Contract, the Contractor shall for the periods specified in Annex B to the Contract take out and maintain or procure the taking out and maintenance of the insurances as set out under this Condition 41 of the Contract Annex B to the Contract and any other insurances as may be required by Law, together referred to as the Required Insurances. The Contractor shall ensure that each of these Required Insurances are effective in each case not later than the date on which the relevant risk commences.

41.2. The Required Insurances shall be taken out and maintained with insurers who are of good financial standing and of good repute in the international insurance market.

41.3. Where specified in Annex B to the Contract, the Contractor shall ensure that the relevant policy of insurance:

41.3.1. shall contain an indemnity to principals clause or additional insureds equivalent, under which the Authority shall be indemnified in respect of claims made against the Authority arising from death or bodily injury or third party property damage, and for which the Contractor is legally liable in respect of this Contract;

41.3.2. names the Authority as co-insured for its separate interest with attendant non vitiation, waiver of subrogation and notice of cancellation provisions

- 41.4. The Contractor shall discharge in full all duties and obligations in respect of the Insurance Act 2015 when procuring, maintaining or amending any insurance(s) required by this Contract, including in circumstances where the Contractor is required to name the Authority on any such insurance policies to protect the Authority's separate interests.
- 41.5. The Contractor shall not take any action or fail to take any action or (insofar as is reasonably within its power) permit anything to occur in relation to it which would entitle any insurer to refuse to pay any claim under any of the Insurances.
- 41.6. The Authority may elect (but shall not be obliged) where Notice has been provided to the Contractor to purchase any insurance which the Contractor is required to maintain pursuant to this Contract but has failed to maintain in full force and effect, and the Authority shall be entitled to recover the reasonable premium and other reasonable costs incurred in connection therewith as a debt due from the Contractor.
- 41.7. The Contractor shall from the date of this Contract and within fifteen (15) working days after the renewal of each of the Required Insurances, provide evidence, in a form satisfactory to the Authority, that the Required Insurances are in full force and effect and meet in full the requirements of this Condition 41 of the Contract and Annex B to the Contract. Receipt of such evidence by the Authority shall not in itself constitute acceptance by the Authority or relieve the Contractor of its liabilities and obligations under this Contract.
- 41.8. The Contractor shall notify the Authority in writing at least ten (10) days prior to the cancellation, suspension, termination or non-renewal of any of the Required Insurances. This Condition 41.8 of the Contract shall not apply where the termination of any Required Insurances occurs purely as a result of a change of insurer in respect of any of the Required Insurances required to be taken out and maintained in accordance with this Condition 41 of the Contract.
- 41.9. The Contractor shall promptly notify to insurers any matter arising from, or in relation to, this Contract for which it may be entitled to claim under any of the Required Insurances. In the event that the Authority receives a claim relating to this Contract, the Contractor shall co-operate with the Authority and assist it in dealing with such claims including without limitation providing information and documentation in a timely manner.
- 41.10. Except where the Authority is the claimant party, the Contractor shall give the Authority Notice within twenty (20) working days after any insurance claim in excess of fifty thousand pounds £50,000 relating to this Contract on any of the Required Insurances or which, but for the application of the applicable policy excess, would be made on any of the Required Insurances and full details of the incident giving rise to the claim.
- 41.11. Where any Required Insurance requires payment of a premium, the Contractor shall be liable for such premium.

- 41.12. Where any insurance referred to in this Condition 41 of the Contract and Annex B to the Contract is subject to an excess or deductible below which the indemnity from insurers is excluded, the Contractor shall be liable for such excess or deductible and shall indemnify the Authority against any loss or claims which would otherwise be insured but for the excess or deductible. The Contractor shall not be entitled to recover from the Authority any sum paid by way of excess or deductible under the Required Insurances whether under the terms of this Contract or otherwise.
- 41.13. All insurance proceeds received in respect of the Property Damage "All Risks" insurance as specified in Annex B to the Contract shall be used to reinstate, repair or replace the insured property in respect of which the insurance proceeds were received.