

FLEET/00280
THE PROVISION OF AN ONBOARD LAUNDRY SERVICE TO MAJOR
ROYAL NAVY SURFACE WARSHIPS

TERMS AND CONDITIONS

1. GENERAL TERMS AND CONDITIONS

This Contract shall be subject to the following standard Defence Terms and Conditions of Contract (DEFCONS) & (DEFFORMS)

- 1.2 DEFCON76 (Edn.12/06) – Contractor's personnel at Government Establishments
- DEFCON501 (Edn.03/15) - Definitions and Interpretations
 - DEFCON503 (Edn.12/14) - Formal Amendments To Contract
 - DEFCON515 (Edn.10/04) - Bankruptcy and Insolvency
 - DEFCON516 (Edn.04/12) - Equality
 - DEFCON518 (Edn.11/12) - Transfer
 - DEFCON520 (Edn.07/11) - Corrupt Gifts and Payments of Commission
 - DEFCON521 (Edn.04/12) - Sub-Contracting to Supported Businesses
 - DEFCON524 (Edn.10/98) – Rejection
 - DEFCON525 (Edn 10/98) - Acceptance
 - DEFCON526 (Edn.08/02) - Notices
 - DEFCON527 (Edn.09/97) – Waiver
 - DEFCON529 (Edn.09/97) - Law (English)
 - DEFCON530 (Edn.12/14) - Dispute Resolution (English Law)
 - DEFCON531 (Edn.11/14) - Disclosure of Information
 - DEFCON532A (Edn.06/10) - Protection Of Personal Data (Where Personal Data is not being processed on behalf of the Authority)
 - DEFCON534 (Edn.06/97) – Prompt Payment (Subcontractors)
 - DEFCON537 (Edn.06/02) - Rights of Third Parties
 - DEFCON538 (Edn.06/02) - Severability
 - DEFCON539 (Edn.08/13) – Transparency
 - DEFCON550 – (Edn.02/14) – Child Labour and Employment Law
 - DEFCON566 (Edn.07/14) - Change of Control of Contractor
 - DEFCON614 (Edn.09/03) - Default
 - DEFCON620 (Edn.06/14) - Contract Change Control Procedure
 - DEFCON621B - (Edn.10/04) – Transport (If Contractor Is Responsible For Transport)”
 - DEFCON632 – (Edn.08/12) – Third Party Intellectual Property – Rights and Restrictions
 - DEFCON642 (Edn.06/14) – Progress meetings
 - DEFCON656 (Edn.03/06) – Break
 - DEFCON661 (Edn.10/06) – War Risk Indemnity
 - DEFCON670 (07/14) – Tax Compliance
 - DEFCON660 - (Edn.11/14) – Reportable Official and Official-Sensitive Security Requirements

2. COMPLIANCE WITH THE ELECTRONIC TRANSACTIONS AGREEMENT

2.1 The Authority and the Contractor shall comply with the Electronic Transactions Agreement comprised in the completed DEFFORM 30.

3. SPECIFICATIONS, PLANS, ETC

- 3.1 DEFCON129J (Edn.07/08) - The Use Of The Electronic Business Delivery Form
DEFCON502 (Edn.06/14) - Specifications Changes
DEFCON602A (Edn.12/06) - Quality Assurance (With Quality Plan)
- 3.2 Quality Assurance Representative
All reference to the QAR in documents which form part of this Contract shall be read as referring to the Authority specified in Box 7 of DEFFORM 111.

4. DURATION

- 4.1 The Vesting Date shall be the 1st January 2016.
- 4.2 Where appropriate, a phase-in period for each ship, as agreed between the Authority and the Contractor, shall apply.
- 4.3 Contract amendment, arising as a result of the Authority exercising its right to extend this Contract shall be implemented in accordance with DEFCON 503 (Edn 06/14) Formal Amendments to Contract.
- 4.4 In the period between the Effective Date and Vesting Day the Contractor shall carry out the activities required to assume responsibility for the delivery of the Services in accordance with the Contractor's Transition Plan (Schedule 4).

5. OPTION PERIODS

- 5.1 The Authority shall have options to extend the Contract for two further periods each of one years' duration from 1st January 2019 (Option Period 1) and from 1st January 2020 (Option Period 2). The Option Periods will be accepted by the Authority at the Firm Prices provided by the Contractor on the Pricing Schedule. The decision whether or not to exercise the Option Periods and the length of any Option Period shall be at the sole discretion of the Authority. The Authority shall notify the contractor not less than 90 calendar days before the expiry of the Contract of any decision to exercise either of the two Option Periods.
- 5.2 Unless otherwise stated in the Contract, in the event the Authority exercises either of the Options for less than the full Option Period, the price to be paid for that portion of the Option shall be a pro-rata amount of the agreed price for the full Option Period.

6. EMPLOYEE TRANSFER ARRANGEMENTS

- 6.1 The provisions of Schedule 3 (Transfer Regulations Part 1 – Employee Transfer Arrangements on Entry) shall apply to the Contract.
- 6.2 The provision of Schedule 3 (Transfer Regulations Part 2 – Staff Transfer Arrangements on Exit) shall apply to the Contract.

7. PRICE

- 7.1 The Firm Prices to be paid under the contract are detailed at Pricing Schedule (Schedule 3) and are inclusive of all services required to satisfy the Statement of

Requirement (SOR)(Schedule 1). All prices are firm, not subject to variation and are exclusive of VAT

8. LOANS

- 8.1 DEFCON611 (Edn.07/10) – Issued Property
DEFCON694 (Edn.02/12) – Accounting from property of the Authority

8.2 GOVERNMENT FURNISHED ASSETS

A list of Government Furnished Assets can be found at Annex D to the SOR.

9. DELIVERY

- 9.1 DEFCON5J (Edn.03/15) - Unique Identifiers
Where used in conjunction with contracts for services, Clause 2 of the DEFCON shall not apply.
DEFCON507 (Edn.10/98) – Delivery

10. SECURITY ASPECTS LETTER

- 10.1 For the purposes of this contract, Laundry Staff have no access to classified information or secure compartments other than privileged information relating to the ships programme that will be provided via the Fleet Laundry Administrator and the Ship's Laundry Officer; therefore, there is no requirement for a Security Aspects Letter.

11. PAYMENTS/RECEIPTS

- 11.1 DEFCON509 (Edn.09/97) - Recovery of Sums Due
DEFCON513 (Edn.06/10) - Value Added Tax
DEFCON522 - (Edn.07/99) – Payment
DEFCON522J (Edn.05/03) - Payment under P2P
DEFCON523 (Edn.03/99) - Payment of Bills Using the Bankers Automated Clearing Service (BACS) System
DEFCON534 (Edn.06/97) - Prompt Payment (Sub-Contracts)

12. GOVERNANCE AND CONTRACT MANAGEMENT

- 12.1 DEFCON604 (Edn.06/14) – Progress Reports
DEFCON609 (Edn.06/14) - Contractor's Records
DEFCON647 (Edn.09/13) - Financial Management Information
Contract Management Meetings
DEFCON697 (Edn 07/13) - Contractors on Deployed Operations

SPECIAL TERMS AND CONTITIONS OF CONTRACT**1. Definitions and Interpretations**

In addition to DEFCON 501 (Edn 06/14) the following words shall have the meanings specified and shall be construed and interpreted accordingly::

"The Authority"	Means the Secretary of State for Defence
"BR3"	Means "Naval Personnel Management "
"Contract Management Plan"	Means Management Plan (Schedule Schedule 5) written by the Contractor to provide details of their intention to manage the Contract.
"Contractor"	Means any Contractor appointment
"Contractor Default"	Means any one or more of the following: (a) a breach by the Contractor of any of its obligations under this Contract which materially and adversely affects the provision of the Services; (b) a Persistent Breach occurs; (c) a court makes an order that the Contractor be wound up or a resolution for a voluntary winding-up of the Contractor is passed; (d) any receiver or receiver manager in respect of the Contractor is appointed or possession is taken by or on behalf of any creditor of any property that is the subject of a charge; (e) any voluntary arrangement is made for a composition of debts or a scheme of arrangement is approved under the Insolvency Act 1986 or the Companies Act 2006 for the Contractor; (f) an administration order is made, or an administrator is appointed, in respect of the Contractor; (g) a breach by the Contractor of its obligations under clause 30 (Assignment) ; (h) a failure to commence the provision of any Service described in the Statement Of Requirements; (i) a breach by the Contractor of its obligations to take out and maintain insurances required under Law; (j) a breach by the Contractor of Clause 24 (Security Requirements); and (k) a Personal Data Breach occurs;
"Contractor's Executive Management"	means the Contractor's executive management board as appointed by the Contractor and indentified in the Deliverable Contract Quality Plan as part of the Contract Management Plan (Schedule 5)

"Contractor's Senior Management"	Means the Contractor's senior contract delivery team as appointed by the Contractor and as identified in the Deliverable Quality Plan
"Contractor's Establishment Delivery Team"	Means the nominated Contractor Employees responsible for the local level delivery team as identified in the Deliverable Quality Plan
"Crown Laundry"	Means laundry processed by the Contractor in accordance with the Contract for which the Authority is liable for payment.
"Effective Date"	means the Date of Contract Signature
"Embarked Military Forces"	means other Military Personnel joining the Ship
" Establishments"	'Establishment' or 'site' shall be deemed to include any of Her Majesty's Ships or Vessels and Service Stations;
"Expiry Date"	Means 2359 hours on 31 Dec 2018 being the date 3 years after Vesting Day in accordance with clause 4 (Duration) or, as otherwise agreed in the event that the Authority opts to extend the term of this Contract in accordance with clause 4.3.
"Fleet Laundry Administrator"	Means the Single point of contract for Navy Command personnel issues.
"Follow on Contractor"	Means the person who may be contracted by the Authority to deliver the services after the expiry date.
"Laundry Staff"	Means Contractor staff on board Ships
"NBCD"	Means Nuclear, Biological and Chemical Defence Exercises.
"Non Crown Laundry"	Means laundry processed by the Contractor in accordance with the Contract, which is not publicly funded for and for which individuals are liable for payment.
"P2P"	Means "Purchase to Payment" MoD electronic payments tool.
"Persistent Breach"	Has the meaning set out in clause 28 (Failure of Performance);
"Relevant Procedures"	Contractors and sub Contractor personnel policies as required under SOR
"Required Action"	Means the Authority Action notified by the Authority and and consequential additional action it may believe is necessary (together the required action)
"Ships Laundry Officer"	Officer on board responsible for overseeing laundry provision
"Termination Date"	Means the date that this Contract, or any part, is terminated in accordance with the

	terms of this Contract.
"Transition Plan"	means the plan detailing the overall approach to transition of Services as identified in the Contractor's Tender and included at Schedule 4.
"Transition Period"	Means the period between Contract award and Vesting Day.
"Vesting Day"	Means 0000 hours on 1 Jan 2016 being the date on which the Contractor commences the provision of the Services pursuant to this Contract.

2. Precedence

2.1. In the event of any conflict or inconsistency between the provisions of the Terms and Conditions of the Contract and the Statements of Requirement, Schedules or Annexes, or between any of the Schedules or Annexes, the conflict shall be resolved according to the following descending in order of priority:

- (a) DEFCON 537 (Edn 06/02) Rights of Third Parties
- (b) The body of this Contract and the terms and conditions herein
- (c) Schedule 1 Statement of Requirement
- (d) Schedules 2 to 6
- (e) Management Plans

2.2. In the event of any conflict between or inconsistency between the schedules and the Annexes to the Schedules, the Schedules shall prevail.

2.3. If a Party becomes aware of any inconsistency within or between the documents referred to in this Clause 3 such Party's representative (being either the Authority's Representative or the Contractor's Representative) shall notify the other's representative immediately, and the Parties will seek to resolve such inconsistency in accordance with the Governance arrangements set out in the Contract. If either Party considers the inconsistency to be material then the matter shall be determined in accordance DEFCON 530 (Edn 07/04) Dispute Resolution.

3. Warranties and Undertakings

3.1. The Contractor warrants and represents to the Authority as at Effective Date that;

- 3.1.1. it is properly constituted and incorporated under the laws of England and Wales and has the corporate power to own its assets and to carry on its business as it is now being conducted;
- 3.1.2. it has the corporate power to enter into and to exercise its rights and perform its obligations under this Contract;

- 3.1.3. all action necessary on the part of this Contractor to authorise the execution of, and the performance of, its obligations under this Contract has been taken;
- 3.1.4. no arrangements are in place that have, or may have, the result in any sale, transfer or disposal of any legal, beneficial, equitable or other interest in any, or all, of the shares of the Contractor.
- 3.1.5. the obligations expressed to be assumed by the Contractor under this Contract are, or in the case of any such document executed after the Effective Date shall be, legal, valid, binding and enforceable to the extent permitted by Law;
- 3.1.6. the execution, delivery and performance by it of this Contract does not contravene any provision of:
 - 3.1.6.1. any existing Legislation binding on this Contractor including Legislation which has been enacted but is not yet in force;
 - 3.1.6.2. the memorandum and articles of association of the Contractor;
 - 3.1.6.3. any order or decree of any court or arbitrator which is binding on the Contractor; or
 - 3.1.6.4. any obligation which is binding upon the Contractor or upon any of its assets or revenues;
- 3.1.7. no claim is presently being assessed and no litigation, arbitration or administrative proceeding is presently in progress or, to the best of the knowledge of the Contractor (having made all due enquiry), pending or threatened against it or any of its assets which shall, or might, have a material adverse effect on the ability of the Contractor to perform its obligations under this Contract;
- 3.1.8. it is not the subject of any other obligation, compliance with which shall, or is likely to, have a material adverse effect on the ability of the Contractor to perform its obligations under this Contract;
- 3.1.9. no Contractor Default has occurred which is continuing, nor has any event or circumstance occurred or arisen which, with the giving of notice, lapse of time, determination or satisfaction of any other clause may become a Contractor Default;
- 3.1.10. it is not in breach of any of its obligations under this Contract;
- 3.1.11. no proceedings or other steps have been taken and not discharged (nor, to the best of the knowledge of the Contractor, having made all due enquiry, threatened) for its winding-up or dissolution or for the appointment of a receiver, administrative receiver, administrator, liquidator, trustee or similar officer in relation to any of its assets or revenues;
- 3.1.12. the copies of any Contract Documents which the Contractor has delivered or, when executed, shall deliver to the Authority's Representative, are or, as the case may be, shall be, true and complete copies of such documents and there are not in existence any other agreements or documents replacing or relating to any of this Contract which would materially affect the interpretation or application of any such document;

3.1.13. in entering into this Contract it has not committed any Prohibited Act; and

3.1.14. there is not, and nor has there been, any infringement or alleged infringement of any third party's Intellectual Property Rights in connection with the Contract by the Contractor,

and the Authority relies upon such warranties and representations.

Contractor Undertakings

3.2. The Contractor covenants and undertakes with the Authority that for so long as this Contract remains in full force:

3.2.1. it will obtain, comply with the terms of, and do all that is necessary and within its powers to maintain in full force and effect all necessary corporate and other actions required to authorise the execution of, and the performance of its obligations under, this Contract;

3.2.2. it shall give the Authority's Representative notice of any litigation, arbitration, administrative, adjudication or mediation proceedings before or of any court, arbitrator, administrator, adjudicator or mediator or other Authority dispute forum against itself or a Sub-Contractor which would adversely affect, to an extent which is material in the context of the Contract, the Contractor's ability to perform its obligations under this Contract, unless such notice is precluded by the rules of the dispute forum. Such notice shall be given within 20 Business Days of the Contractor becoming aware such proceedings may be threatened or pending, and immediately after the commencement;

3.2.3. it will not voluntarily enter into liquidation or a dissolution;

3.2.4. it shall not cease to be resident in the United Kingdom or sell, transfer, lend or dispose of (other than by way of security) in whole, or in part, its undertaking, business or trade outside the United Kingdom;

3.2.5. it shall not undertake the performance of its obligations under this Contract otherwise than through itself or a Sub-Contractor;

3.2.6. it shall not, without the written consent of the Authority's Representative (such consent not to be unreasonably withheld or delayed), incorporate any company or purchase or acquire or subscribe for any shares in any company unless such company is involved in the provision of the Services;

3.2.7. it shall not, without the written consent of the Authority's Representative (such consent not to be unreasonably withheld or delayed), make any loans or grant any credit or give any guarantee or indemnity to or for the benefit of any person, or otherwise voluntarily or for consideration assume any liability (whether actual or contingent) in respect of any obligation of any other person except in the ordinary course of business and/or as contemplated by this Contract;

3.2.8. it shall not change or cease its business or start any other business which is materially different from that to be carried on by it under this Contract; and

3.2.9. it shall comply with Establishment Standing Orders.

Status of Contractor Warranties and Undertakings

- 3.3. All warranties, representations, undertakings, indemnities and other obligations made, given or undertaken by the Contractor in this Contract are cumulative and none shall be given a limited construction by reference to any other.

Contractor's Due Diligence

- 3.4. The Contractor shall be deemed to have:

- 3.4.1. satisfied itself as to the assets to which it shall acquire rights and the nature and extent of the risks assumed by it under this Contract;
- 3.4.2. satisfied itself as to the feasibility and strategy of its Transition Plan (Schedule 4); and
- 3.4.3. without prejudice to DEFCON 531(Edn 12/14) (Disclosure of Information), satisfied itself as to the ownership of any Intellectual Property Rights and as to its rights to use Intellectual Property Rights to perform its obligations under this Contract.

Accuracy of Information

- 3.5. The Contractor shall be responsible for the accuracy of all documentation and information supplied to the Authority by the Contractor in connection with the provision of the Services and shall pay the Authority any extra costs occasioned by any discrepancies, errors or omissions.

Authority Disclosed Data

- 3.6. Subject to clause 3.10, the Authority does not give any warranty or undertaking as to the relevance, completeness, accuracy or fitness for any purpose of any data disclosed by the Authority during the course of the procurement of this Contract and neither the Authority nor any of its agents or employees shall be liable to the Contractor in contract, tort (including negligence or breach of statutory duty), statute or otherwise as a result of:
- 3.7. any inaccuracy, omission, unfitness for any purpose or inadequacy of any kind whatsoever in any data disclosed by the Authority during the course of the procurement of this Contract; or
- 3.8. any failure to make available to the Contractor any materials, documents, drawings, plans or other information relating to this Contract.

No Relief

- 3.9. Subject to clause 3.10, the Contractor shall not in any way be relieved from any obligation under this Contract, nor shall it be entitled to claim against the Authority on grounds that any information, whether obtained from the Authority or otherwise (including information made available by the Authority), is incorrect or insufficient and it shall make its own enquiries as to the accuracy and adequacy of that information.

Fraudulent Statements

- 3.10. Nothing in this clause 3.10 shall exclude any liability which the Authority or any of its agents or employees would otherwise have to the Contractor

in respect of any statements made fraudulently or fraudulent omissions to make statements prior to the Effective Date.

4. Co-operation

- 4.1. Each Party agrees to co-operate, at its own cost, with the other Party in the fulfilment of the purposes and intent of this Contract. Neither Party shall be under any obligation to perform any of the other Party's obligations under this Contract.
- 4.2. Each Party shall, in fulfilling their obligations under this Contract, take all reasonable steps to preserve the reputation and good name of the other Party.
- 4.3. The Parties shall give effect to the procedure set out in clause 9 (Governance and Contract Management)
- 4.4. The Authority undertakes to the Contractor that it shall not, except insofar as it is exercising any entitlement provided in this Contract, wilfully or materially impede the Contractor in the performance of its obligations under this Contract (having regard always to the interactive nature of the activities of the Authority and of the Contractor and to any operations or activities carried out by the Authority on or at the Establishments for the purposes contemplated by this Contract or any other of the Authority's legal duties or other functions).

5. Scope of Contract

- 5.1. The Contractor shall provide the Services set out in the Statement of Requirements in accordance with the terms of this Contract from Vesting Day.
- 5.2. The scope of work for the provision of the Services under this Contract is reflected in Schedule 1 (Statement of Requirements) & Schedules 1-6.
- 5.3. In the event that the Authority identifies additional requirements or changes to existing Services, the Contractor may be requested to submit a proposal for consideration by the Authority in advance of a formal amendment being made DEFCON 503 (Edn.12/14) applies.

6. Provision of Services

- 6.1. The Contractor shall provide the Services in accordance with the terms of this Contract from Vesting Day.
- 6.2. The Contractor undertakes to the Authority that:
 - 6.2.1. it shall perform or procure that the Services and its obligations are performed:
 - 6.2.1.1. in an efficient, effective and safe manner;
 - 6.2.1.2. so as to satisfy Schedule 1 (Statement of Requirements & Schedules 1-6);
 - 6.2.1.3. in compliance with Law;
 - 6.2.1.4. in accordance with Good Industry Practice; and

- 6.2.1.5. using suitable goods and materials that are not Prohibited Materials;
- 6.2.2. it shall be responsible for all goods and materials brought onto the Establishments by or on behalf of the Contractor or any Sub-Contractor; and
- 6.2.3. it shall perform its obligations under this Contract in a manner that will enable the Authority to comply with the Law.

Authority Policies

- 6.3. In providing the Services, the Contractor shall;
 - 6.3.1. comply with the Authority's policy on Security contained in JSP 440;
 - 6.3.2. comply with the Authority's policy on smoking in the workplace contained in JSP 375;
 - 6.3.3. comply with the Authority's health and safety handbook contained in JSP 375;
 - 6.3.4. comply with the Authority's policy on sustainable procurement contained in JSP 418;
 - 6.3.5. take account of the Authority's initiatives relating to disabled persons, including the Authority's policy document entitled "Positive about Disability";
- as may be amended from time to time; and
- 6.3.6. have in place procedures to ensure, and use reasonable endeavours to ensure, that employees of the Contractor or any Sub-Contractor do not consume, or become under the influence of, alcohol or narcotics while performing their obligations under this Contract or any Sub-Contract.

No Disruption

- 6.4. The Contractor shall provide the Services so as to co-ordinate with the Authority's operations on the Establishments and shall take reasonable care to ensure that it does not interfere with the operations or activities of the Authority or any Authority Contractor.
- 6.5. The Authority undertakes to the Contractor that it shall not, except as expressly permitted under this Contract, wilfully impede the Contractor in the performance of its obligations under this Contract (having regard always to the interactive nature of the activities of the Authority and of the Contractor and to any operations or activities carried out by the Authority in or at the Establishments for the purposes contemplated by this Contract or any other of the Authority's statutory duties or other functions).

Standards of Employees

- 6.6. The Contractor shall ensure that its employees and those employees employed by its Sub-Contractors delivering the Services shall:
 - 6.6.1. subject to clause 6.7, possess all the necessary qualifications, licences, permits, skills and experience to discharge their responsibilities effectively, safely and in conformance with all relevant Law;

- 6.6.2. be trained in customer care and conduct themselves in a polite and orderly fashion conducive to working in a military environment; and
- 6.6.3. meet and comply with the requirements of the Authority's security policies, regulations and instructions and shall be trained to conform with the required security standards as detailed in clause 27.
- 6.7. In respect of employees transferred to the Contractor pursuant to TUPE and who do not have the necessary qualifications, licences, permits, skills and experience referred to in clause 6.6.1 at the time of transfer to the Contractor, the Contractor shall take all necessary steps to ensure that the standards of such employees meet the standards required by clause 6.6.1 as soon as reasonably practicable after the date on which such employees transferred to the Contractor and in any event no later than 1 month following Vesting Day.

Disciplinary Procedures

- 6.8. The Contractor shall procure that there is set up and maintained by it and by all of its Sub-Contractors appropriate personnel policies and procedures covering discipline, grievance and performance in respect of all staff (the "**Relevant Procedures**"). The Contractor shall procure that the Relevant Procedures are published in written form and that copies of them and revisions and amendments to them are available to the Authority at each Establishment for inspection at all reasonable times. The Contractor shall amend the Relevant Procedures, or procure their amendment, from time to time in accordance with any objection raised by the Authority, acting reasonably.
- 6.9. The Authority's Representative may require the Contractor to apply the Relevant Procedures (or procure that they are applied) to any staff member if:
 - 6.9.1. that staff member commits an act of misconduct (whether or not in the course of his duties); or
 - 6.9.2. that staff member is incompetent or negligent,
 if, in the reasonable opinion of the Authority's Representative, it would be conducive to the orderly and effective provision of any of the Services. The Contractor shall immediately comply with that requirement at its own risk and cost. For the avoidance of doubt, this clause does not limit the Contractor's obligation to comply with clause 6.8

List of Staff

- 6.10. Subject to clause 26 (Security Requirements), the Contractor shall procure that the Authority's Representative is given details of all Proposed Staff (other than employees) and that the Authority shall have a right to make representations promptly to the Contractor in respect of any such Proposed Staff member's employment if:
 - 6.10.1. the person has previously been engaged in the carrying out of this Contract and is considered by the Authority's Representative as a result to be unsatisfactory; or
 - 6.10.2. there is any other good and substantial reason why the person should not be engaged in carrying out the Services,

and the Contractor must have due regard to those representations (although the final decision whether to appoint Proposed Staff will be a matter for the Contractor).

- 6.11. The Contractor shall be required to apply the Government's Baseline Personnel Security Standard (BPSS) to those individual employees, sub-contractors and agents who will require access to Government Establishments, including any of Her Majesty's Ships or Vessels and Service Stations.

Access

- 6.12. Save as required by Law, the Contractor shall procure that the Authority (including the Authority's Representative) has access to all relevant information which demonstrates that the Contractor has complied with the provisions of this clause 6 Contract Management Plans.

- 6.13. The Contractor has prepared the Contract Management Plans at Schedule 5 and the Contractor shall be solely responsible for:

6.13.1. any discrepancies, errors or omissions in the Contract Management Plans; and

6.13.2. any failure of the Contract Management Plans to comply with the Authority's Statement of Requirements, notwithstanding that the Contract Management Plans have been seen or acknowledged by the Authority or approved or not objected to or commented on by the Authority.

7. Business Continuity

- 7.1. The Contractor shall comply with its obligations contained in the relevant Statement of Requirement (Schedule1)

8. Transition and Implementation

- 8.1. During the Transition Period, the Contractor shall implement the Transition Plan set out in Schedule 4 (Transition Plan) to enable it to ensure the smooth and seamless transfer of the Services from the Previous Contract to this Contract.

9. Governance and Contract Management

Contractor Management

- 9.1. The Contractor shall nominate a Contract Manager who shall be responsible for ensuring satisfactory performance of the Contract and act as a focal point for correspondence and engagement with the Authority representatives. The name and telephone number of the Contract Manager shall be provided to the Fleet Laundry Administrator (FLA). Additionally the Contractor shall provide a list of contact telephone numbers for use in the event of emergencies occurring outside normal working hours.

Meetings

- 9.2. In accordance with DECON 642 Edn 06/14 (Progress Meetings) the Contractor Establishment Delivery Team, the Fleet Laundry Administrator & Commercial Manager will meet as required but no less than on a

quarterly basis. The quarterly meeting shall be held on a convenient date in the first 2 weeks of every quarter or as otherwise agreed between the parties. In addition to this all parties shall attend Annually a meeting within two weeks of the anniversary of the first Quarterly meeting.

9.3. The composition and Terms of Reference for this meeting will be agreed between the Parties but will include as a minimum;

9.3.1. review and consider Contractor performance reports against the Key Performance Indicators (KPIs) & Performance Indicators (PI's) Annex F to Schedule 1 refer

9.3.2. raise matters of Unsatisfactory Performance with the Contractor

9.3.3. discuss and resolve any operational issues.

9.3.4. review security matters

Progress Reports

9.4. For the purposes of DEFCON 604 Edn 06/14 (Progress Reports) the Contractor shall submit monthly reports at within 10 days following the end of each month or as otherwise agreed between the Parties.

9.5. The Progress Report produced by the Contractor shall include but not be limited to;

9.5.1. a summary of the Contractor's Performance to include explanatory text where appropriate and including the following as a minimum;

9.5.1.1. monthly narrative summary of overall performance

9.5.1.2. performance against all KPIs and PI's

9.5.1.3. performance trends and their influences

9.5.1.4. proposed actions to recover and/or enhance performance

9.5.1.5. details of failures

9.5.1.6. claims for any relief events

9.5.1.7. any issues which require referral to the Authority or Contractor Senior Management Team

Contractor Management Plan

9.6. The Contractor shall (in accordance with the terms of this Contract and otherwise to the reasonable satisfaction of the Authority) implement the Contract Management Plan set out in Schedule 5 (Contract Management Plan).

10. Contractor's Conduct on Authority Establishments

10.1. Subject to clause 13 the Contractor shall, and shall procure that any Sub-Contractor shall, in providing the Services at the Establishments:

10.1.1. not breach any provisions of the Authority's Title;

- 10.1.2. not use or occupy the Establishments for any purpose other than the provision of the Services;
- 10.1.3. not deposit on the Establishments any materials which are not required for the provision of the Services;
- 10.1.4. procure that those parts of the Establishment which are from time to time occupied by the Contractor and/or Sub-Contractor for the purpose of the provision of the Services are maintained in a clean, orderly, safe and secure state; and
- 10.2. No act or omission of the Authority or an Authority Contractor shall result in the Contractor being in breach of clause 10.1 unless such act or omission arises out of or in connection with the Authority or an Authority Contractor:
 - 10.2.1. acting on the instruction of the Contractor or a Sub-Contractor; and/or
 - 10.2.2. failing to supervise and/or take reasonable care to supervise (where appropriate) the performance of any person engaged in the provision of the Services.

11. Government Furnished Assets

- 11.1. The Authority shall make available to the Contractor free of charge the Government Furnished Assets on the dates, locations and for the periods specified in Annex D to Schedule 1.
- 11.2. The Contractor shall not create or grant any form of benefit or interest in Government Furnished Assets whether by way of security or otherwise.

Allotment, use and Maintenance of Equipment and Facilities

- 11.3. The Authority shall allot, on ordinary loan to the Contractor and as appropriate, plant equipment and facilities. The Contractor shall be entitled to use the said facilities for the purpose of the contract and for no other purpose whatsoever, unless the prior written approval of the Commercial Branch (DefComrclCC-Navy3) has been obtained. The Authority reserves the right to vary the numbers and types of the said facilities allotted for the purpose of the contract.
- 11.4. Immediately prior to occupation the Contractor shall agree with the Designated Officer or his agent an inventory detailing the condition of the allotted facilities, buildings and loan items. In addition to the requirements of DEFCON 611 (Edn 07/10) the Contractor shall account for all issues of Government property (including arising there from) and shall maintain complete records of receipt, use or disposal as instructed in the Statement of Requirement or as may otherwise be required by the Authority. The Authority may determine the form of the records and the extent of the information to be recorded therein and may require the Contractor to comply with an approved stock recording scheme. The records shall be subject to audit by the Authority and by the Controller and Auditor General and shall also be available to authorised representatives of the Authority for inspection or for the extraction of information. The records shall be retained for a period of 6 years after the Contractor's responsibilities for the loaned stores have been discharged.
- 11.5. The Contractor shall ensure that no Employee, agent or sub-contractor shall use or occupy any allotted facilities as living or sleeping quarters, or

carry out any business or trading activity within the confines of the Establishment, and no advertisement, sign or notice of any description shall be exhibited.

- 11.6. The Authority shall have the right to make any alteration or addition to the facilities allotted. The Contractor shall not alter, modify or otherwise cause to be changed or amended in any way any electrical service or the connection of any machinery or plant, nor construct any new buildings, facilities or structures without the prior approval of the Authority in writing. Where such approval is given, the work shall be carried out to the satisfaction of the Designated Officer or an officer nominated by him.
- 11.7. Maintenance of all fire protection and prevention equipment shall be the responsibility of the Authority. The Contractor shall ensure that the appropriate and necessary fire precautions and the required security measures are taken in the allotted facilities and shall conform to such instructions as may be given, in writing, by the Authority. Fire drills and practices shall be carried out on a regular basis in consultation with the Designated Officer. The Contractor shall ensure co-operation of his employees in any fire prevention measures organised on the Establishment and shall notify the Ships Laundry Officer of any change in working practice or other occurrences likely to increase the fire risk or introduce new hazards.
- 11.8. The Contractor shall be responsible for making the building(s), windows, doors and other apertures usually closed, secure and fire safe at the end of each day. Any failure to do so which results in expenses being incurred by the Authority shall be deemed to be a default on the part of the Contractor and such expenses shall be recovered from the Contractor by the Authority.
- 11.9. Except as otherwise provided for in the Contract:
- 11.9.1. Maintenance and repair of allotted facilities and buildings shall be performed by the Authority without charge to the Contractor. The Contractor shall be responsible for monitoring the condition of the facilities and buildings and initiating requests for maintenance and repair without delay.
- 11.9.2. The Authority shall provide, free of charge, and solely for the purposes of the performance of the Contract:
- 11.9.2.1. Heating, lighting and water (including drinking water)
- 11.9.2.2. Electrical power.
- 11.9.3. The Contractor shall be responsible for ensuring that all allotted facilities,, plant and equipment are kept in a clean and tidy condition at all times.
- 11.9.4. The Contractor shall inform the Commercial Branch of the Authority if Government property, services or facilities not specified as for issue are used by him for the purpose of the Contract and shall pay a fair and reasonable price therefore.
- 11.9.5. Whilst the Authority shall endeavour to ensure the continuity of the allotted property, services and facilities any failure to do so shall not be deemed to be a breach of the Contract. Under such circumstances the

Contractor shall continue to perform the Contract subject to any changes agreed with the Commercial Branch.

- 11.9.6. The Contractor shall on completion or determination of the Contract, hand back in the same condition excepting fair wear and tear the allotted facilities and buildings together with the fixtures and any other loaned items to the Authority. The Contractor shall accept financial responsibility for the cost of making good any dilapidation or deficiencies.

Access to Premises

- 11.10. Equipment and Facilities allotted to the Contractor shall be open at all reasonable times for inspection by the Ships Laundry Officer or other authorised representatives of the Authority.
- 11.11. The Contractor shall give reasonable access and facilities to representatives of the Authority to permit the observance of the performance of the Contract and shall make available for inspection as required the allotted equipment and facilities.
- 11.12. The Contractor shall give full access as required to the allotted equipment and facilities to any agent of the Authority for the purpose of a repair, maintenance or cleaning service.

12. Performance Management

- 12.1. The Contractor shall from time to time procure that all Sub-Contractors and any other persons for whom it is responsible comply with the provisions of Schedule 5 (Contract Management Plan).
- 12.2. The Contractor shall provide the Authority's Representative with relevant particulars of any aspects of its performance which fail to meet the requirements of this Contract (unless otherwise notified in writing by the Authority) in accordance with Schedule 5 (Contract Management Plan).
- 12.3. The Authority may at all reasonable times observe, inspect and satisfy itself as to the adequacy of the Contractor's monitoring of performance pursuant to Schedule 5 (Contract Management Plan) (including carrying out sample checks and any other auditing required).

13. Contract Price

- 13.1. The Authority will pay to the Contractor the Contract Prices for the satisfactory delivery of the Services. The Contract Prices are firm (non-variable) and exclude VAT. Details of the Contract Price are set out in Pricing Schedule (Schedule 2).
- 13.2. In the event that the Authority exercise its options to extend this Contract in accordance with the provisions of clause 4 (Duration) the pricing of the extensions shall be based on the Option Prices set out in Schedule 2. In the event that the Authority, at its sole discretion, elects to extend by a period of less than one year then the Price for the period of the extension shall be based on a pro-rata calculation for the period concerned.

14. Payment

- 14.1. Subject to the Authority's rights under the Contract the Authority shall pay the Contractor the Contract Prices utilising the electronic purchasing using the Defence Electronic Commerce Service (DECS) in accordance with

DEFCON5J, DEFCON129J, DEFCON522J and the narrative condition titled Compliance with Electronic Transaction Agreement - DEFFORM 30. The Authority will not accept commercial invoices for payment.

- 14.2 Claims should be submitted monthly in arrears on completion of the task in accordance with the Statement of Requirement and the Firm monthly price on the Pricing Schedule by the submission of an invoice in line with the Standard Purchase Order (SPO) on the P2P system; this will be receipted by the DO or his representative.

- 14.3 DEFCON 509 (Edn.09/97) - Recovery of Sums Due shall apply.

15. Disputed Amounts

- 15.1. The Authority may withhold payment of any amount it believes the Contractor is not entitled to pursuant to this Contract ("**Disputed Amount**") pending agreement or determination of the Contractor's entitlement in relation to the Disputed Amount, subject to notifying the Contractor of such belief (and the reasons for it) on or before the day on which the Disputed Amount would (but for this clause 15.1) otherwise fall due.
- 15.2. The Authority shall pay any undisputed amounts on or before the day on which they fall due.
- 15.3. Within 5 Business Days following receipt by the Contractor of any notice served by the Authority pursuant to clause 15.1 above (or such other notice regarding the existence of a Disputed Amount as may be served by the Authority pursuant to this Contract), the Contractor shall respond by notifying the Authority as to whether or not it agrees with the statements made in that notice and the grounds for such agreement or disagreement. If the Contractor indicates that it does agree, or if the Contractor fails to make such a response within that time limit, the Authority shall be entitled:
- 15.4. If the Contractor responds pursuant to clause 15.3 that it does not agree with all or any of the statements made in any notice served by the Authority pursuant to clause 15.1 above (or such other notice regarding the existence of a Disputed Amount as may be served by the Authority pursuant to this Contract), the matter or matters in question shall be determined under DEFCON 530 Edn 12/14 (Dispute Resolution).
- 15.5 the Authority shall pay such amount to the Contractor or the Contractor shall repay such amount to the Authority (as relevant) with interest in each case on that amount at the Prescribed Rate calculated on a daily basis and compounded quarterly from the date on which payment should have been made (in the case of failure to pay by the Authority) or from the date on which over-payment was made (in the case of excessive claims by the Contractor) until all relevant monies have been paid in full and whether before or after judgment.

16. Insurance

- 16.1. Without prejudice to its obligation to indemnify the Authority, the Contractor shall take out in the appropriate insurances and other insurances as required by Law in respect of the Contractor's obligations under this Contract. Such insurances shall be maintained in full force and effect throughout the Contract Period and for such additional period as may be required. Where appropriate, the Contractor shall ensure that each of its

Sub-Contractors procures, and maintains in full force and effect, the Required Insurances and any other insurances as required by Law in accordance with the terms of this Contract.

17. Entire Agreement

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

18. Quality Assurance

- 18.1. The Contractor shall develop, implement and comply with the following Quality Standards which shall cover all aspects of the provision of the Services under this Contract:

18.1.1. BS EN ISO 9001:2008 - Quality Management Systems;

19. Controlled Information

- 19.1. This Condition shall apply in addition to and notwithstanding DEFCON 531 Edn 11/14 (Disclosure of Information) or any other confidentiality condition of the Contract.

- 19.2. or the purposes of this Condition 'Controlled Information' shall mean any information in any written or tangible form which is disclosed to the Contractor by or on behalf of the Authority under or in connection with the Contract, and which is identified by the legend 'Controlled Information' or other approved legend notified to the Contractor. Controlled Information shall exclude information provided by oral communication.

- 19.3. The Contractor shall:

- 19.3.1. Hold the Controlled Information and not to use it other than for the purpose of discharging its obligations under the Contract;
- 19.3.2. Not to copy the Controlled Information except as strictly necessary for the purpose of discharging its obligations under the Contract;
- 19.3.3. Not to disclose the Controlled Information to any third party unless so authorised in writing beforehand by the Authority;
- 19.3.4. Protect the Controlled Information diligently against unauthorised access and against loss and;
- 19.3.5. Act diligently to ensure that:
- 19.3.6. Controlled Information is disclosed to its employees only to the extent necessary for the purpose of discharging its obligations under the Contract;
- 19.3.7. Employees to whom Controlled Information is disclosed are made aware of and required to comply with the terms of this Condition.

- 19.4. Where Controlled Information is provided to the Contractor, it shall:

- 19.4.1. Compile a register of that Controlled Information, which shall include explicit description of the Controlled Information, a record of the number of copies made and a record of all access to the Controlled Information including access to any copies of the Controlled Information.

- 19.4.2. Maintain this register for the duration of the Contract and for two years following completion of the Contract.
- 19.4.3. Make the register of access available to the Authority upon reasonable notice for inspection and audit for so long as it is required to be maintained under this Condition; and,
- 19.4.4. At the completion of the Contract, return to the Authority all original and duplicate copies of the Controlled Information, or else at the Authority's option destroy these copies and provide a certificate of destruction to the Authority.
- 19.5. This Condition shall not diminish or extinguish any right of the Contractor to copy, use or disclose any other information to the extent that it can show:
 - 19.5.1. That the information concerned was or has become published or publicly available for use without breach of any provision of the Contract or any other agreement between the parties;
 - 19.5.2. That the information was already known to it (without restrictions on disclosure or use) prior to receiving it under or in connection with the Contract;
 - 19.5.3. That the information concerned was lawfully provided by a third party without restriction on use or further disclosure; or
 - 19.5.4. From its records, that the information was derived independently of the Controlled Information;

To the extent that copying use or disclosure of this other information shall not disclose its relationship to any Controlled Information.

20. Non-Solicitation

- 20.1. The Contractor undertakes that during the term of this Contract, and for the period of 6 months after the Expiry Date, or, if this Contract is terminated before the Expiry Date, the Termination Date, it shall not directly solicit or attempt to directly solicit services from any employees of the Authority or entice or attempt to entice any employees of the Authority away from the Authority.
- 20.2. Where an employee of the Authority responds on its own account to an advertisement made by the Contractor to the wider public, such response shall not be construed as the Contractor directly soliciting or attempting to directly solicit services from any employee of the Authority or enticing or attempting to entice any employees away from the Authority.

21. Employee Relations

- 21.1. During the Transition Phase, the Contractor shall engage and consult with the Authority and previous Contractor Employees and their relevant representatives in accordance with the Transition Plan contained in 4 (Transition Plan).

22. Redundancy

- 22.1. The Parties shall comply with their respective redundancy related obligations set out in Schedule 3 (TUPE).

23. TUPE and Pension Matters

- 23.1. The provisions of Schedule 3 (TUPE) to the Terms and Conditions of Contract shall apply to the transfer of employees associated with the transfer of the Services at Vesting Day and at the Expiry Date.

24. Security Requirements

- 24.1. The ESyO (NAVY EXCELLENT-ESyO) is responsible for all security on this Contract. For the avoidance of doubt, this shall include personnel security, physical security and IT security. The Contractor shall provide the name of the Contractor Security Officer to the Authority. The Contractor's Security Officer and the ESyO shall liaise in relation to relevant Establishment security matters.
- 24.2. The security requirements set out in this clause 24 shall apply to the Contractor, Contractor Employees and any Sub-Contractor, agent and representative authorised to act on behalf of the Contractor. For the avoidance of doubt, the Contractor is not relieved from any obligation contained in this Contract as a result of a breach of this clause 24.

Personnel Security

- 24.3. The Contractor shall ensure that all the Contractor Employees (including Sub-Contractors, agents and representatives) delivering Services under this Contract have sufficient clearances in place.
- 24.4. As set out in DEFCON 76 Edn 12/06 the Contractor must obtain a Baseline Personnel Security Standard or Baseline Standard check for each Contractor Employee (including Sub-Contractors, agents and representatives) and provide the information to the Authority. Information on the Baseline Personnel Security Standard is contained in the Cabinet Office document "HMG Baseline Personnel Security Standard" (available on the website www.cabinetoffice.gov.uk). For the avoidance of doubt, security clearance received by way of any other contract with any Government Department or via the Contractor's List X Status does nothing to remove or alter any of the obligations on the Contractor under this clause 24.
- 24.5. In the event that the Authority requires any Contractor Employee (including Sub-Contractor) to have clearances additional to the Baseline Standard, the Contractor shall co-operate, and shall ensure its employees and Sub-Contractors co-operate, with the Authority to enable such additional clearances to be obtained.

Physical Security

- 24.6. The Contractor shall ensure that all Contractor Employees abide by the physical security requirements of each Designated Officer, as shall be notified to it from time to time. The Contractor shall ensure that all Contractor Employees, agents and sub-contractors shall co-operate with and obey instructions or directions given by Ships Security Officer, MOD Police, Military Police and Establishment Military Guard Force, in pursuance of their duties.

IT Security

- 24.7. The Contractor shall ensure that all Contractor Employees shall abide by the IT security requirements of ESyO (NAVY EXCELLENT-ESyO), as shall be notified to it from time to time.

25. Public Relations and Publicity

- 25.1. The Contractor shall not by itself, its employees or agents, and shall procure that its Sub-Contractors shall not:

25.1.1. communicate with representatives of the press, television, radio or other communications media on any matter concerning this Contract or the Project;

25.1.2. photograph or film in or upon any Establishment;

25.1.3. erect or exhibit on any part of the Establishments any signs or trade boards; or

25.1.4. exhibit or attach to any part of the Establishments any notice or advertisement,

unless the Authority's Representative has given its prior written approval or as otherwise required to comply with the Law.

26. Recourse to Public Funds

- 26.1. The Contractor shall at all times perform its obligations under this Contract at its own risk and without recourse to Government or other public funds or guarantees now or in the future, save with the prior written agreement of the Authority's Representative.

- 26.2. The Contractor confirms that it has not applied and has no intention (as at the date of this Contract) of applying for any Government or European Union grants or funding or any other public funds or guarantees for the purpose of performing its obligations under this Contract. If the Contractor is or becomes entitled to apply for any such grants or funding in relation to its obligations under this Contract, it shall inform the Authority's Representative and obtain its consent before submitting the relevant application. The Authority's agreement to the Contractor's application will be given on condition that, should the Contractor receive any such grant or funding, the payments made by the Authority to the Contractor in accordance with this Contract will be reduced by the amount of the grant or funding.

27. Termination and Expiry of the Contract

- 27.1. This Contract shall terminate automatically on the Expiry Date unless it has been terminated earlier in accordance with the provisions of this Contract. The Contractor shall not be entitled to any compensation for termination of this Contract on the Expiry Date.

28. Failure of Performance

- 28.1. If a breach of this Contract by the Contractor has continued or occurred frequently for a period of 6 months, the Authority may serve a notice on the Contractor:

28.1.1. specifying that it is a formal warning notice;

28.1.2. giving reasonable details of the breach; and

28.1.3. stating that such breach is a breach which, if it recurs frequently or continues, may result in a termination of the whole or part of this Contract.

28.2. If, following service of such a warning notice, the breach specified has continued or recurred frequently after the date falling 30 days after the date of service of such notice, then the Authority may serve another notice on the Contractor specifying that it is a final warning notice:

28.2.1. stating that the breach specified has been the subject of a prior formal warning notice served on the Contractor; and

28.2.2. stating that if such failure continues or recurs frequently within a 3 month period after the date of service of the final warning notice then such breach shall constitute a "**Persistent Breach**".

Right to Terminate

28.3. If a Contractor Default has occurred, the Authority shall be entitled to terminate the whole or any part of this Contract in accordance with the provisions of clause 32.4 and subject to the provisions of clauses 32.5 to 32.8.

28.4. If a Contractor Default has occurred and the Authority wishes to terminate the whole or any part of this Contract pursuant to clause 32.1, it must serve a notice (the "**Termination Notice**") on the Contractor stating:

28.4.1. that the Authority is terminating this Contract (or part) for Contractor Default;

28.4.2. where relevant, the part of this Contract that the Authority is terminating;

28.4.3. the type and nature of Contractor Default that has occurred, giving reasonable details; and

28.4.4. that this Contract (or part) shall (subject to clauses 32.5 to 32.8 below) terminate on the day (the "**Contractor Default Termination Date**") falling 40 Business Days after the date the Contractor receives the Termination Notice.

Rectification

28.5. Where a Termination Notice cites a Contractor Default of the type and nature falling under limb [(a)] [material breach] and/or limb [(h)] [failure to commence the provision of the Service] and/or limb [(i)] [failure to take out Insurance] and/or limb [(k)] [breach of personal data protection] of the definition of "**Contractor Default**" in clause 1 (Definitions and Interpretation), the Contractor shall, in consultation with the Authority, have the opportunity to set out how it intends to remedy such Contractor Default.

28.6. Where the Authority agrees with such proposed remedy, and the remedy is implemented as agreed, the Termination Notice in question shall be deemed to be revoked.

28.7. Where the Authority agrees with such proposed remedy, and the remedy is not implemented as agreed, the Contractor Default Termination Date

shall be the day falling 40 Business Days after the date by which the remedy was agreed to be implemented.

- 28.8. If by the day falling 40 Business Days after the date the Contractor receives the Termination Notice (or such later date as the Authority, at its discretion, may agree) the Authority considers that such proposed remedy will not restore the provision of the Services or any part in accordance with the terms of this Contract, and/or that such proposed remedy will not rectify all breaches of this Contract, the Authority may terminate the whole or part of this Contract immediately (and the Contractor Default Termination Date shall be the day falling 40 Business Days after the date the Contractor receives the Termination Notice (or such later date as the Authority, at its discretion, may agree)).

Termination Date for Contractor Default

- 28.9. Following the issue of a Termination Notice pursuant to clause 28 above, and where the Authority is terminating the whole of this Contract, this Contract shall (subject to clause 28 above) terminate on the Contractor Default Termination Date.

29. Co-Operation on Expiry or Termination of Contract

- 29.1. Further to the provisions of DEFCON 625 the following provisions shall apply;

- 29.2. During the final 12 months before the Expiry Date, or during any notice period applying to an earlier termination of this Contract or any part in accordance with its terms, the Contractor shall co-operate fully with the transfer of responsibility for the provision of the Services (or any part) from the Contractor to any person (a "**Follow-On Contractor**") or to the Authority as so directed by the Authority, and for the purposes of this clause the meaning of the term "co-operate" shall include:

- 29.2.1. liaising with the Authority and/or any Follow-On Contractor, and providing reasonable assistance and advice concerning the provision of the Services and transfer of such provision to the Authority or to such Follow-On Contractor;

- 29.2.2. allowing any such Follow-On Contractor access (at reasonable times and on reasonable notice) to any Establishments and/or assets used in the provision of the Services, but not so as to interfere with or impede the provision of the Services; and

- 29.2.3. without prejudice to the obligations of the Contractor pursuant to DEFCON 531 Edn 11/14 (Disclosure of Information), providing to the Authority and/or to any Follow-On Contractor all and any information concerning:

- 29.2.3.1. any Establishments; and

- 29.2.3.2. provision of the Services,

which is reasonably required for the efficient transfer of responsibility for performance of the Contractor's obligations, but excluding any information which is commercially sensitive to the Contractor (and for the purpose of this clause 33 "commercially sensitive" shall mean information which would, if disclosed to a competitor of the Contractor, give that competitor a competitive advantage over the Contractor and thereby prejudice the business of the

Contractor, but shall not include any information referred to in Schedule 3 (TUPE)).

29.3. For a period of 6 months after the Expiry Date or the Termination Date in accordance with its terms, the Contractor shall provide all reasonable assistance, guidance and information to the any Follow-On Contractor or the Authority (as the case may be), and shall be paid monthly in arrears its reasonable costs actually incurred and directly arising from such provision, subject to:

29.3.1. such provision having been expressly requested or approved by the Authority in advance; and

29.3.2. the Contractor providing satisfactory evidence of the same to the Authority at the end of each month.

29.4. Without prejudice to the provisions of clause 29, the Contractor shall use all reasonable endeavours so as to facilitate the smooth transfer of responsibility for provision of the Services (or any part) to a Follow-On Contractor or to the Authority, as the case may be, and the Contractor shall take no action at any time during the Contract Period or thereafter which is calculated or intended, directly or indirectly, to prejudice or frustrate or make more difficult such transfer.

29.5. Following the Expiry Date or any earlier Termination Date, the Contractor shall, with the Authority's consent (not to be unreasonably withheld), be allowed reasonable access to land and/or premises owned or controlled by the Authority in order to carry out winding-down activities.

29.6. During the final 12 months before the Expiry Date, or during any notice period applying to an earlier termination of this Contract (or any part), the Contractor shall protect and preserve property in its possession in which the Authority has an interest.

29.7. The Authority may request that Sub-Contracts be novated to the Authority on the same terms as the Sub-Contracts, and the Contractor shall give all reasonable assistance to the Authority in seeking the novation of Sub-Contracts placed in support of the provision of the Services under this Contract are novated to the Authority as requested. All costs (including the Contractor's reasonable and proper costs) associated with any such novation of Sub-Contracts shall be borne by the Authority.

30. Assignment of this Contract by the Contractor

30.1. The Contractor shall not sub-contract, assign, underlet, charge, sell, bargain or otherwise deal in any way with the benefit of this Contract in whole or in part except with the prior written consent of the Authority's Representative.

Transfer of this Contract by the Authority

30.2. The rights and obligations of the Authority under this Contract shall not be assigned, novated or otherwise transferred (whether by virtue of any Legislation or any scheme pursuant to any Legislation or otherwise) other than in respect of the whole of this Contract to any person, other than to any public body (being a single entity) acquiring the whole of this Contract and having the legal capacity, power and authority to become a party to and to perform the obligations of the Authority under this Contract being:

30.2.1. a Minister of the Crown pursuant to an order under the Ministers of the Crown Act 1975; or

30.2.2. any other public body whose obligations under this Contract are unconditionally and irrevocably guaranteed (in a form reasonably acceptable to the Contractor) by the Authority or a Minister of the Crown having the legal capacity, power and authority to perform the obligations under the guarantee and the obligations of the Authority under this

31. Authority Step-In

31.1. In this clause 31 references to the Authority taking action shall be deemed to include references to the Authority procuring the taking of action by others on behalf of the Authority.

31.2. If the Authority believes it needs to take action in connection with the Services due to the matters specified in clause 31.2, then the Authority shall be entitled to take action in accordance with clauses 31.4 and 31.5.

31.3. If the Authority has stepped into this Contract pursuant to clause 31.2, the provisions of clause 31.6 shall apply.

31.4. If the Authority reasonably believes that it needs to take action in connection with the Services;

31.4.1. because a serious risk exists to the health or safety of persons or property or to the environment; and/or

31.4.2. to discharge a statutory duty; and/or

31.4.3. because the Authority invokes clause 31.6; and/or

31.4.4. because a Contractor Default has occurred,

then the Authority shall be entitled to take action in accordance with clause 31.5 & 31.6.

31.5. If clause 31.4 applies and the Authority wishes to take action, the Authority's Representative shall notify the Contractor's Representative of the following:

31.5.1. the action it wishes to take;

31.5.2. the reason for such action;

31.5.3. the date it wishes to commence such action;

31.5.4. the time period which it believes shall be necessary for such action; and

31.5.5. to the extent practicable, the effect on the Contractor and its obligation to provide the Services during the period such action is being taken.

31.6. Following service of such notice, the Authority shall take such action as notified under clause 31.5 and any consequential additional action as it reasonably believes is necessary (together, the "**Required Action**") and the Contractor shall give all reasonable assistance to the Authority while it is taking the Required Action.

Effect of Step-In on Contractor Failure of Performance

31.7. If the Required Action is taken as a result of a Contractor Default then for so long as and to the extent that the Required Action is taken, and this prevents the Contractor from providing the Services:

31.7.1. the Contractor shall be relieved from its obligations to provide such part of the Services; and

31.7.2. in respect of the period in which the Authority is taking Required Action, the Contract Price due from the Authority to the Contractor shall be adjusted accordingly and the Contractor shall pay to the Authority any costs incurred by it taking the Required Action to the extent such costs are in excess of the Contract Price which would have been due to the Contractor if the Contractor had been providing the Services affected by the Required Action.

31.8. The Authority's right to take any Required Action for Contractor Default under clause 31.7 does not waive the Authority's right to terminate in accordance with clause 32 (Failure of Performance).

Effect of Step-In Without Contractor Failure of Performance

31.9. Subject to clause 31.10, if the Required Action is taken other than as a result of a breach of the obligations of the Contractor under this Contract, then for so long as and to the extent that the Required Action is taken, and this prevents the Contractor from providing any part of the Services:

31.9.1. the Contractor shall be relieved from its obligations to provide such part of the Services; and

31.9.2. in respect of the period in which the Authority is taking the Required Action and provided that the Contractor provides the Authority with reasonable assistance (such assistance to be at the expense of the Authority to the extent incremental costs are incurred), the Contract Price due from the Authority to the Contractor shall equal the amount the Contractor would receive if it were satisfying all its obligations and providing the Services affected by the Required Action in full over that period.

Authority Step-Out

31.10. The Authority's Representative may at any time during the period of the Required Action notify the Contractor's Representative that the Authority wishes to cease the Required Action and the date on which it intends to cease the Required Action.

31.11. On the date on which the Required Action ceases:

31.11.1. the Authority will be released from all of its obligations and liabilities in relation to the Required Action arising prior to the cessation of the Required Action other than its obligations to pay the Contractor pursuant to this clause 36; and

31.11.2. the Contractor shall resume all or any part of the Services which were the subject of the Required Action.

32. National Audit Office Access

32.1. For the purpose of the examination and certification of the Authority's accounts, or any examination pursuant to Section 6(1) of the National Audit

Act 1983 or any re-enactment thereof of the economy, efficiency and effectiveness with which MOD has used its resources, the Comptroller and Auditor General may examine such documents as he may reasonably require which are owned, held or otherwise within the control of the Contractor and which relate to the Main Contract or Contracted Task and may require the Contractor to produce such oral or written explanations as he considers necessary. For the avoidance of doubt it is hereby declared that the carrying out of an examination under Section 6(3)(d) of the National Audit Act 1983 or any re-enactment thereof in relation to the Contractor is not a function exercisable under this Main Contract, or any Contracted Task.

33. Independent Contractor

- 33.1. Nothing in this Contract shall be construed as creating a partnership or as a contract of employment between the Authority and the Contractor.
- 33.2. Save as expressly provided otherwise in this Contract, the Contractor shall not be, or be deemed to be, an agent of the Authority, and the Contractor shall not hold itself out as having authority or power to bind the Authority in any way.
- 33.3. Neither Party shall place, or cause to be placed, any orders with suppliers or otherwise incur liabilities in the name of the other Party or any representative of the other Party.

34. Waiver

- 34.1. No act or omission of either Party shall by itself amount to a waiver of any right or remedy unless expressly stated by that Party in writing. In particular, no reasonable delay in exercising any right or remedy shall by itself constitute a waiver of that right or remedy.
- 34.2. No waiver in respect of any right or remedy shall operate as a waiver in respect of any other right or remedy and nor shall it amend, delete or add to the terms, conditions or provisions of this Contract unless (and then only to the extent) expressly stated in that waiver.

35. Counterparts

- 35.1. This Contract may be executed in any number of counterparts, all of which when taken together shall constitute one and the same instrument.

36. Freedom of Information

- 36.1. The Contractor shall, so far as matters involve the Contractor or related information, facilitate the Authority's compliance with the Freedom of Information Act 2000, the Data Protection Act 1998, the Environmental Information Regulations 2004 and any other applicable Legislation governing access to information (the "**FOI Legislation**").
- 36.2. The Contractor acknowledges that, in order to be compliant with the FOI Legislation, the Authority may be obliged to provide information, on request, to third parties that relates to this Contract and/or any part of the preceding tender process.
- 36.3. Notwithstanding anything in this Contract to the contrary, including the obligations of confidentiality imposed on the Parties pursuant to DEFCON 531 (Disclosure of Information), if the Authority receives a request for

information falling within the scope of the FOI Legislation, the Authority shall, subject to clause 42.4, be entitled to disclose all information (in whatever form) as necessary in order to ensure its compliance with the FOI Legislation (and in this regard the Authority's decision as to whether it is necessary to disclose such information to ensure compliance shall be final and binding on the Contractor).

- 36.4. Prior to disclosing any information that the Authority believes to be the Contractor's Commercially Sensitive Information, the Authority shall consult with the Contractor as to the proposed disclosure and subsequently shall notify the Contractor of its decision whether or not to disclose the information in question.
- 36.5. If the Authority receives a request for information falling within the scope of the FOI Legislation, and requires the Contractor's assistance in obtaining such information, the Contractor shall respond to any related request for assistance from the Authority, at its own cost and within 10 days of receiving the request for assistance or such shorter period as the Authority may prescribe as being necessary to comply with its obligations under the FOI Legislation.
- 36.6. The Authority shall not be liable for any loss, damage, harm or other detriment suffered by the Contractor arising from the disclosure of any information falling within the scope of the FOI Legislation or as otherwise disclosed by the Authority as permitted under clause 42.3.

37. Mitigation

- 37.1. Each of the Authority and Contractor shall at all times take all reasonable steps to minimise and mitigate any loss for which it is entitled to bring a claim against the other Party to this Contract.

38. Co-Operation With Inquiries

- 38.1. In the event that an accident or other incident occurs and that a Board of Inquiry or Unit Inquiry is convened in accordance with regulations from time to time in force to investigate such a matter, the Contractor shall make available to the Officer in Charge of that Inquiry all relevant information and facilities including access to his personnel for the purpose of immediate and detailed investigations. If so requested by the Officer in Charge of the investigation, the Contractor shall undertake his own investigation and shall submit written reports to that Officer.
- 38.2. In connection with any such Inquiry, the Contractor shall take all reasonable steps to assist the Inquiry in reaching its findings and give evidence to the Inquiry if requested. To this end, the Contractor shall give evidence if called upon to do so before a Board of Inquiry or Unit Inquiry. If any of the duties of this Main Contract or any Contracted Task are sub-contracted by the Contractor, then the Contractor shall include as a Condition in the sub-contract, a stipulation that the sub-contractor shall take all reasonable steps to assist a Board of Inquiry or Unit Inquiry in reaching its findings.

39. Risk

- 39.1. The Contractor acknowledges that any risk assessment by the Contractor which has been, or may be, undertaken in connection with the Contract or the Contracted Tasks, as appropriate, has been, or will be, a contract management function only. Such risk assessment does not affect the legal

relationship between the Parties. The process of risk assessment by the Contractor, including the identification of (or failure to identify)

- a) particular risks and their impacts; or
- b) risk reduction measures, contingency plans and remedial actions

shall not in any way limit or exclude the Contractor's obligations under the Contract or Contracted task, as appropriate, and shall be entirely without prejudice to the Authority's rights, privileges and powers under the Contract or Contracted task, as appropriate.

39.2. The Contractor shall raise a Risk Management Plan (RMP) that shall be forwarded to the Authority (Commercial and DOs) for approval within one month of the start of the Contract. The RMPs shall identify risks to the Services, assess and evaluate those risks, propose appropriate risk removal or mitigation measures, including a timetable for implementation, and identify fallback positions should risk occur. All such RMPs shall be compatible with any other plans raised for the programme, and shall include a Risk Register, the content of which is to be agreed between the DO or NPOC and the Contractor.

39.3. The RMP shall identify the relevant individuals and define their responsibilities for risk management under the Contract. The Contractor shall identify in the RMP his written procedure for risk management. The RMP shall be subject to regular formal reviews by the Contractor and the Authority, to ensure continuing adequacy and compliance with requirements under the Main Contract. Reviews should also show the reduction of risk to the services due to the application of risk management measures.