



Ministry  
of Defence



**MINISTRY OF DEFENCE,  
DEFENCE EQUIPMENT & SUPPORT**

Contract Number: TSSP/124

Description: The Provision and Support of Combined Arms Tactical  
Trainer (CATT)

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## **CONTRACT TSSP/124 – TABLE OF CONTENTS**

SCHEDULE OF REQUIREMENTS .....	1
2 GENERAL CONDITIONS .....	6
2.1 DEFCONS.....	6
2.2 DEFINITIONS AND INTERPRETATIONS.....	7
2.3 CHANGE OF CONTROL OF CONTRACTING ENTITY.....	10
2.4 DOCUMENTATION AND ORDER OF PRECEDENCE.....	11
2.5 COMMENCEMENT AND DURATION.....	11
2.6 SERVICE PROVISION AND MAINTENANCE.....	12
2.7 BOOKING OF CATT SYSTEM.....	12
2.8 CONTRACTORS RESPONSIBILITY.....	13
2.9 SECURITY AND NON-DISCLOSURE (USA).....	14
2.10 CONTRACT CHANGE PROCEDURE.....	15
2.11 DISPUTE RESOLUTION.....	17
2.12 SUSTAINABLE PROCUREMENT – LEGISLATIVE REQUIREMENTS.....	17
3 SPECIFICATIONS, PLANS, ETC.....	18
3.1 DEFCONS.....	18
3.2 PERFORMANCE OF WORK.....	18
3.3 QUALITY ASSURANCE.....	18
3.4 SAFETY AND ENVIRONMENTAL CASE.....	20
3.5 OBSOLESCENCE.....	20
3.6 RISK MANAGEMENT PROCESS.....	21
4 PRICE.....	21
4.1 DEFCONS.....	21
4.2 PRICING – SCHEDULE OF REQUIREMENTS (ITEM 1).....	22
4.3 PRICING – SCHEDULE OF REQUIREMENTS (ITEMS 2 TO 5).....	22
4.4 OPTION PERIOD.....	22
4.5 VARIATION OF PRICE.....	22
4.6 GAINSHARE.....	22
5 INTELLECTUAL PROPERTY RIGHTS AND INFORMATION.....	23
5.1 RECORDS.....	23
5.2 INTERNATIONAL COLLABORATION.....	24
5.3 INTELLECTUAL PROPERTY RIGHTS (OTHER THAN SOFTWARE).....	26
5.4 INTELLECTUAL PROPERTY RIGHTS IN SOFTWARE.....	30
5.5 INVENTIONS AND DESIGNS.....	39
5.6 THIRD PARTY IPR.....	41
5.7 COPYRIGHT.....	46
5.8 RELEASE OF DATA TO THE UNITED STATES GOVERNMENT.....	47
5.9 COMMERCIAL EXPLOITATION.....	47
5.10 PROCEDURE FOR MAKING DIRECT AGREEMENTS WITH SUB-CONTRACTORS.....	48
5.11 AUTHORISATION BY THE CROWN FOR USE OF THIRD PARTY INTELLECTUAL PROPERTY RIGHTS.....	48
6 LOANS.....	48
6.1 DEFCONS.....	48
6.2 CONTRACTORS PERSONNEL AT GOVERNMENT ESTABLISHMENTS.....	48
6.3 ASSETS.....	49
6.4 SUPPLY OF GOVERNMENT FURNISHED ASSETS (GFX).....	49
7 DELIVERY.....	53
7.1 DEFCONS.....	53
7.2 ACCEPTANCE.....	53
7.3 DELIVERY.....	53
7.4 MEASURES IN A CRISIS.....	54
7.5 FORCE MAJEURE.....	55
8 PAYMENTS/RECEIPTS.....	56
8.1 DEFCONS.....	56
8.2 PAYMENT – SCHEDULE OF REQUIREMENTS.....	56
8.3 MILESTONE (INTERIM) PAYMENTS.....	56
8.4 ADDITIONAL HOURS (OVERTIME).....	57
8.5 OBSOLESCENCE MANAGEMENT TASKS.....	58
8.6 ACCIDENTAL, NEGLIGENT OR DELIBERATE DAMAGE BY AUTHORITY RELATED PARTIES.....	59
9 CONTRACT ADMINISTRATION.....	60
9.1 DEFCONS.....	60

9.2 PERFORMANCE MONITORING, MEETINGS AND REPORTS..... 60  
9.3 OVERSEAS EXPENDITURE AND IMPORT/EXPORT LICENCES ..... 62  
9.4 EXIT STRATEGY ..... 63  
9.5 CATT SYSTEM SURVEY ..... 63  
9.6 SPARES ON EXPIRY OR TERMINATION..... 64  
9.7 PUBLICITY ..... 64  
9.8 SPECIFIED MANAGEMENT INFORMATION (MI)..... 64

**LIST OF SCHEDULES TO THIS CONTRACT TSSP/124:**

Schedule 1 – Statement of Requirement

Schedule 2 – Statement of Work

Schedule 3 – Payment Mechanism

Schedule 4 – Government Furnished Assets (GFX)

Schedule 5 – DEFFORM 68 (Edn 02/19) – Hazardous Articles, Materials or Substances Statement by the Contractor

Schedule 6 – Commercial Exploitation

Schedule 7 – DEFFORM 315 (Edn 12/19) – Contract Data Requirements List

Schedule 8 – DEFFORM 177 (Edn 03/80) – Design Rights and Patents (Sub-Contractors Agreement)

Schedule 9 – Expiry Spares List

Schedule 10 – Overtime Approval Form

Schedule 11 – Training Demand Levels

Schedule 12 – DEFFORM 532 (Edn 10/19) – Personal Data Particulars

Schedule 13 – DEFFORM 111 (Edn 05/19) – Addresses and Other Information

Schedule 14 – Exit Management Plan

Schedule 15 – Performance Indicators

Schedule 16 – DEFFORM 701 (Edn 04/06) – Head Agreement for Licence Terms for Commercial Software Purchased by the Secretary of State for Defence

Schedule 16A – DEFFORM 701 (Edn 04/06) – Annex to the Head Agreement

Schedule 16B – DEFFORM 701 (Edn 04/06) – Attachment to Annex to Head Agreement

Schedule 17 – Engineering Change Proposal and Obsolescence Proposal Task List

Schedule 18 – DEFFORM 528 (Edn 12/17) – Import and Export Controls

Schedule 19 – Labour Rates

Schedule 20 – Specified Management Information

Schedule 21 – Contract Performance

Schedule 22 – Employee Transfer Arrangements on Exit

Schedule 23 – Engineering Change Proposal Task Approval Form

Schedule 24 – Obsolescence Management Task Approval Form

Schedule 25 – Generic Task Approval Form

Schedule 26 – Non DEFFORM 315 (Contract Deliverables)

Schedule 27 – SOR Product Descriptions (ILS)

Schedule 28 – DEFFORM 539A (Edn 08/13) - Tenderer's Commercially Sensitive Information Form

Schedule 29 – DEFFORM 139 (Edn 09/19) – MOD SME Spend Data Collection

# SCHEDULE OF REQUIREMENTS

<b>Name and Address of Tenderer</b>  Lockheed Martin (UK) Ltd Rotary and Mission Systems. The Torishma Building Brook Lane Westbury Wiltshire BA13 4ES	<b>MINISTRY OF DEFENCE</b>	<b>Contract No</b>  <b>TSSP/124</b>
	Schedule of Requirements for <b>Combined Arms Tactical Trainer (CATT)</b>	
<b>Issued With</b>  <b>DEFFORM 8</b>	<b>Contract Issued on 25<sup>h</sup> February 2020</b>	<b>Previous Contract No</b> <b>TSSP/084</b>

## Requirements

TABLE 1 – INITIAL CONTRACT DURATION

Item Number	Reference	Description	Unit Price (£) (Ex VAT)	Price All £ (Ex VAT)
1	Schedule 1 (Statement of Requirement), Schedule 2 (Statement of Work)	Provision of Training Services from 01/03/2020 to 28/02/2023 in accordance with Terms and Conditions of the Contract.	<b>REDACTED</b>	
2	Schedule 1 (Statement of Requirement), Schedule 2 (Statement of Work), Schedule 3 (Payment and Performance Mechanism)	Undertake Authority approved Obsolescence Tasks from 01/03/2020 to 28/02/2023		To be agreed per task iaw Schedule 24 (Obsolescence Mgmt TAF) and Schedule 17 (Engineering Change Proposal and Obsolescence Proposal Task List)
3	Schedule 1 (Statement of Requirement), Schedule 2 (Statement of Work), Schedule 3 (Payment and Performance Mechanism)	Undertake Authority approved Overtime from 01/03/2020 to 28/02/2023		To be agreed iaw Schedule 3 (Payment and Performance Mechanism)

	Performance Mechanism), Schedule 11 (Overtime Approval Form)			
4	Schedule 1 (Statement of Requirement), Schedule 2 (Statement of Work)	Undertake Authority approved repair, refurbishment or replacement of items through accident, misuse or neglect from 01/03/2020 to 28/02/2023		To be agreed iaw Schedule 3 (Payment and Performance Mechanism) and Schedule 25 (Generic TAF).
5	Schedule 1 (Statement of Requirement), Schedule 2 (Statement of Work)	Develop and supply Authority approved enhancements to the CATT Training Service from 01/03/2020 to 28/02/2023		To be agreed per task iaw Schedule 23 (Engineering Change Proposal TAF), Schedule 25 (Generic TAF) and Schedule 17 (Engineering Change Proposal and Obsolescence Proposal Task List)

TABLE 2 – OPTION YEARS

To be exercised in accordance with Contract Condition 2.5 (Commencement and Duration)

Item Number	Reference	Description	Unit Price (Ex VAT)	Price All £ (ex-VAT)
<b>CONTRACT YEAR 4</b> <b>1 MARCH 2023 – 29 FEBRUARY 2024</b>				
1	Schedule 1 (Statement of Requirement), Schedule 2 (Statement of Work)	Provision of Training Services from 01/03/2023 to 29/02/2024 in accordance with Terms and Conditions of the Contract.	<b>REDACTED</b>	Fixed Price, subject to Variation of Price calculation iaw Condition 4.5 (Variation of Price) of the TSSP/124 Contract Conditions.
2	Schedule 1 (Statement of Requirement), Schedule 2 (Statement of Work), Schedule 3 (Payment and Performance Mechanism)	Undertake Authority approved Obsolescence Tasks from 01/03/2023 to 29/02/2024		To be agreed per task iaw Schedule 24 (Obsolescence Mgmt TAF) and Schedule 17 (Engineering Change Proposal and Obsolescence Proposal Task List)
3	Schedule 1 (Statement of Requirement), Schedule 2 (Statement of Work), Schedule 3 (Payment and Performance Mechanism),	Undertake Authority approved Overtime from 01/03/2023 to 29/02/2024		To be agreed iaw Schedule 3 (Payment and Performance Mechanism)

	Schedule 11 (Overtime Approval Form)			
4	Schedule 1(Statement of Requirement), Schedule 2 (Statement of Work)	Undertake Authority approved repair, refurbishment or replacement of items through accident, misuse or neglect from 01/03/2023 to 29/02/2024		To be agreed iaw Schedule 3 (Payment and Performance Mechanism) and Schedule 25 (Generic TAF).
5	Schedule 1 (Statement of Requirement), Schedule 2 (Statement of Work)	Develop and supply Authority approved enhancements to the CATT Training Service from 01/03/2023 to 29/02/2024		To be agreed per task iaw Schedule 23 (Engineering Change Proposal TAF), Schedule 25 (Generic TAF) and Schedule 17 (Engineering Change Proposal and Obsolescence Proposal Task List)
<b>CONTRACT YEAR 5 1 MARCH 2024 – 28 FEBRUARY 2025</b>				
6	Schedule 1 (Statement of Requirement), Schedule 2 (Statement of Work)	Provision of Training Services from 01/03/2024 to 28/02/2025 in accordance with Terms and Conditions of the Contract.	<b>REDACTED</b>	Fixed price, subject to Variation of Price calculation iaw Condition 4.5 (Variation of Price) of the TSSP/124 Contract Conditions.
7	Schedule 1 (Statement of Requirement), Schedule 2 (Statement of Work), Schedule 3 (Payment and Performance Mechanism)	Undertake Authority approved Obsolescence Tasks from 01/03/2024 to 28/02/2025		To be agreed per task iaw Schedule 24 (Obsolescence Mgmt TAF) and Schedule 17 (Engineering Change Proposal and Obsolescence Proposal Task List)
8	Schedule 1 (Statement of Requirement), Schedule 2 (Statement of Work), Schedule 3 (Payment and Performance Mechanism), Schedule 11 (Overtime Approval Form)	Undertake Authority approved Overtime from 01/03/2024 to 28/02/2025		To be agreed iaw Schedule 3 (Payment and Performance Mechanism)
9	Schedule 1(Statement of Requirement), Schedule 2 (Statement of Work)	Undertake Authority approved repair, refurbishment or replacement of items through accident, misuse or neglect from 01/03/2024 to 28/02/2025		To be agreed iaw Schedule 3 (Payment and Performance Mechanism) and Schedule 25 (Generic TAF).

10	Schedule 1 (Statement of Requirement), Schedule 2 (Statement of Work)	Develop and supply Authority approved enhancements to the CATT Training Service from 01/03/2024 to 28/02/2025		To be agreed per task iaw Schedule 23 (Engineering Change Proposal TAF), Schedule 25 (Generic TAF) and Schedule 17 (Engineering Change Proposal and Obsolescence Proposal Task List)
<b>CONTRACT YEAR 6 1 MARCH 2025 – 28 FEBRUARY 2026</b>				
11	Schedule 1 (Statement of Requirement), Schedule 2 (Statement of Work)	Provision of Training Services from 01/03/2025 to 28/02/2026 in accordance with Terms and Conditions of the Contract.	<b>REDACTED</b>	Fixed price, subject to Variation of Price calculation iaw Condition 4.5 (Variation of Price) of the TSSP/124 Contract Conditions.
12	Schedule 1 (Statement of Requirement), Schedule 2 (Statement of Work), Schedule 3 (Payment and Performance Mechanism)	Undertake Authority approved Obsolescence Tasks from 01/03/2025 to 28/02/2026		To be agreed per task iaw Schedule 24 (Obsolescence Mgmt TAF) and Schedule 17 (Engineering Change Proposal and Obsolescence Proposal Task List)
13	Schedule 1 (Statement of Requirement), Schedule 2 (Statement of Work), Schedule 3 (Payment and Performance Mechanism), Schedule 11 (Overtime Approval Form)	Undertake Authority approved Overtime from 01/03/2025 to 28/02/2026		To be agreed iaw Schedule 3 (Payment and Performance Mechanism)
14	Schedule 1 (Statement of Requirement), Schedule 2 (Statement of Work)	Undertake Authority approved repair, refurbishment or replacement of items through accident, misuse or neglect from 01/03/2025 to 28/02/2026		To be agreed iaw Schedule 3 (Payment and Performance Mechanism) and Schedule 25 (Generic TAF).
15	Schedule 1 (Statement of Requirement), Schedule 2 (Statement of Work)	Develop and supply Authority approved enhancements to the CATT Training Service from 01/03/2025 to 28/02/2026		To be agreed per task iaw Schedule 23 (Engineering Change Proposal TAF), Schedule 25 (Generic TAF) and Schedule 17 (Engineering Change Proposal and Obsolescence Proposal Task List)
<b>CONTRACT YEAR 7</b>				

16	Schedule 1 (Statement of Requirement), Schedule 2 (Statement of Work)	Provision of Training Services from 01/03/2026 to 28/02/2027 in accordance with Terms and Conditions of the Contract.	<b>REDACTED</b>	Fixed price subject to Variation of Price calculation iaw Condition 4.5 (Variation of Price) of the TSSP/124 Contract Conditions.
17	Schedule 1 (Statement of Requirement), Schedule 2 (Statement of Work), Schedule 3 (Payment and Performance Mechanism)	Undertake Authority approved Obsolescence Tasks from 01/03/2026 to 28/02/2027		To be agreed per task iaw Schedule 24 (Obsolescence Mgmt TAF) and Schedule 17 (Engineering Change Proposal and Obsolescence Proposal Task List)
18	Schedule 1 (Statement of Requirement), Schedule 2 (Statement of Work), Schedule 3 (Payment and Performance Mechanism), Schedule 11 (Overtime Approval Form)	Undertake Authority approved Overtime from 01/03/2026 to 28/02/2027		To be agreed iaw Schedule 3 (Payment and Performance Mechanism)
19	Schedule 1 (Statement of Requirement), Schedule 2 (Statement of Work)	Undertake Authority approved repair, refurbishment or replacement of items through accident, misuse or neglect from 01/03/2026 to 28/02/2027		To be agreed iaw Schedule 3 (Payment and Performance Mechanism) and Schedule 25 (Generic TAF).
20	Schedule 1 (Statement of Requirement), Schedule 2 (Statement of Work)	Develop and supply Authority approved enhancements to the CATT Training Service from 01/03/2026 to 28/02/2027		To be agreed per task iaw Schedule 23 (Engineering Change Proposal TAF), Schedule 25 (Generic TAF) and Schedule 17 (Engineering Change Proposal and Obsolescence Proposal Task List)

## **2 GENERAL CONDITIONS**

### **2.1 DEFCONS**

DEFCON 68 (Edn. 02/19) – Supply of Data for Hazardous Articles, Materials and Substances

DEFCON 501 (Edn. 11/17) – Definitions and Interpretations

DEFCON 503 (Edn. 12/14) – Formal Amendments to Contract

DEFCON 515 (Edn. 02/17) – Bankruptcy and Insolvency

DEFCON 516 (Edn. 04/12) – Equality

DEFCON 518 (Edn.02/17) – Transfer

DEFCON 520 (Edn. 05/18) – Corrupt Gifts and Payments of Commission

DEFCON 526 (Edn. 08/02) – Notices

DEFCON 527 (Edn. 09/97) – Waiver

DEFCON 529 (Edn. 09/97) – Law (English)

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

DEFCON 531 (Edn. 11/14) – Disclosure of Information

DEFCON 532B (Edn. 05/18) – Protection of Personal Data (Where Personal Data is being processed on behalf of the Authority)

- The Contractor will not retain personal trainee data for longer than required (10 days post training event) to generate the relevant post training report

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. 12/18) – Change of Control of Contractor

DEFCON 620 (Edn. 05/17) – Contract Change Control Procedure

DEFCON 646 (Edn. 10/98) – Law and Jurisdiction (Foreign Suppliers)

DEFCON 658 (Edn. 10/17) – Cyber

- Further to DEFCON 658 the Cyber Risk Level of the Contract is 01(one) as defined in Def Stan 05-138.

DEFCON 659A (Edn. 02/17) – Security Measures

## 2.2 DEFINITIONS AND INTERPRETATIONS

### 2.2.1 Definitions

Notwithstanding, and in addition to, the provisions contained in DEFCON 501 (Edn.11/17), the following expressions shall, in the Contract, have the meaning hereby respectively assigned to them, except where the context requires otherwise.

**“After Action Review (AAR)”** means post-exercise feedback session with the trainees, as directed by the Army. The Contractor provides direct support to military training staff, assisting in the preparation of the review as directed by military training staff. The reviews are supported by exercise data.

**“Assets”** means all or any part of the equipment and any other items comprising the CATT System.

**“Authority Related Parties”** means the Authority, all service personnel who attend the CATT Facilities, Authority employees, servants, agents or contractors, or any other person invited by the Authority Project Manager to enter the Sites or use the CATT Facilities.

**“Battlegroup Headquarter”** means a group of individuals tasked with the formation and management of the battlegroup or a place where this activity is carried out.

**“CATT Facilities”** means the CATT System and the buildings in which it is contained at both the German Site and the Warminster Site.

**“CATT System”** means:

- a) the simulators, computers, inter-connecting networks, exercise control, Battlegroup Headquarters, the content of the echelon areas and After Action Review (AAR), and Systems Engineering Reference Facility (SERF); and
- b) the Data Pack; and
- c) the CATT documentation.

**“CCTT”** means the Command and Control Tactical Trainer from which CATT was originally developed.

**“Commencement Date”** means 1 March 2020, start date of contract.

**“Contract”** means this document TSSP/124 Terms and Conditions for the Provision of the Combined Arms Tactical Trainer and all accompanying Schedules, Annexes and Appendix.

**“Contract Expiry”** means the contract end date pursuant to Condition 2.5 (Commencement and Duration).

**“Contract Period”** means the period from the Commencement Date to the Expiry Date.

**“Contract Year(s)”** means each consecutive 12 monthly period commencing from the Contract Commencement Date.

**“Contractor Employees”** means any person who is an employee or director of the Contractor or who occupies the position of a director of the Contractor, by whatever title given.

**“Contractor’s Representatives”** means the Contractor, and their sub-contractors of any tier and any of their directors, officers, employees, servants and workmen in relation to the CATT System (including Contractor Employees).

**“Contractor’s Scheme”** means the one or more retirement benefits schemes established by the Contractor or in which it participates, and a reference to the Contractor’s Scheme shall, where appropriate, include a reference to the trustees or administrators thereof.

**“Data Pack”** has the definition set out at Condition 5.3.1 (Intellectual Property Rights (Other Than Software), Definitions) of this Contract.

**“Dispute Committee”** means the Authority’s Project Manager and Commercial Manager (as set out in Schedule 13 (DEFFORM 111)) or their authorised representative and the Contractor’s equivalent senior management representatives in relation to the Contract.

**“Employee Liability Information”** shall have the same meaning as in regulation 11(2) of the Transfer Regulations.

**“Employing Sub-Contractor”** means any sub-contractor of the Contractor providing all or any part of the services who employs or engages any person in providing the services.

**“Executive Steering Committee”** means the committee referred to in clause 9.2 (Performance Monitoring, Meetings and Reports) that comprises the Authority’s Project Team Leader and the equivalent senior management representatives of the Contractor.

**“Executive Steering Committee Meeting”** means the meetings of the Executive Steering Committee which are referred to at clause 9.2 (Performance Monitoring, Meetings and Reports).

**“Expiry Date”** means the date as defined as Contract Expiry pursuant to Condition 2.5 (Commencement and Duration).

**“Expiry Spares List”** means a list of spares which would be sufficient to maintain and service the CATT System for six (6) months, as set out at Schedule 10 (Expiry Spares List) to this Contract.

**“GDPR”** means General Data Protection Regulations 2016 as amended or replaced from time to time

**“German Site”** means the site of the CATT System at Sennelager, Germany.

**“Good Industry Practice”** means the exercise of such degree of skill, diligence, prudence and foresight as would reasonably and ordinarily be expected from a skilled and experienced person, seeking to comply with its contractual obligations and seeking to avoid liability arising under any duty of care that might reasonably apply to or to be expected from that person, complying with all applicable laws and engaged in the same type of undertaking and under the same or similar circumstances and conditions as the Contractor and any sub-contractor.

**“Independent Surveyor”** means an objective and unbiased individual/entity jointly appointed by the Contractor and the Authority to carry out a condition survey of the CATT System.

**“Key Performance Indicator (KPI)”** means the performance standards set out in the Schedule of Requirements under each heading and also set out in the table at Annex 1 to Schedule 21 (Contract Performance).

**“Key Personnel”** means the Suitably Qualified and Experienced Personnel referenced at Section 3 (General Service Provision) of the TSSP/124 Schedule 2 (Statement of Work).

**“Large Scale Training Exercise”** means a Training Exercise which is larger than a battlegroup (for example, a brigade).

**“Lifetime Buy”** means the purchase of sufficient stock of an obsolete or discontinued item or component to prevent the need to replace any part of a system or sub-system.

**“Liquidated Damages”** are a pre-agreed sum to compensate for the financial loss that arises from the Contractor’s failure to perform their contractual obligations.

**“Monthly Invoice Amount”** shall have the meaning given to that term in paragraph 2 of Part 1 of Schedule 3 (Payment Mechanism)

**“Monthly Service Payment”** shall have the meaning given to that term in paragraph 1 of Part 1 of this Schedule 3 (Payment Mechanism)

**“New Provider”** means any replacement provider or providers engaged to provide the Contractor Deliverables (or part thereof) or substantially similar Contractor Deliverables or the Authority itself where the Contractor Deliverables or substantially similar Contractor Deliverables or part thereof continue to be provided by the Authority after partial termination, termination or expiry of this Contract.

**“Parties”** means the Authority and the Contractor, along with any relevant sub-contractors, involved in the undertaking of the Contract.

**“Prime Contractor”** means the “Contractor”, who has responsibility for performance of the Contract.

**“Project Team Leader”** means the Training Simulations Systems Programme (TSSP) Team Leader or any alternative as designated by the Project Team Leader.

**“QPM”** means Quarterly Progress Meetings”

**“Service Credit(s)”** shall mean the deductions to be made from the Monthly Service Payment in accordance with Part 2 of this Schedule 3 (Payment Mechanism)

**“Service Failure Point”** shall mean the points to be accrued by the Contractor in accordance with Part 2 of this Schedule 3 (Payment Mechanism)

**“Site Quartermaster”** means the Military point of contact responsible for all inventory located at the specific site.

**“Site(s)”** means the Germany Site and the Warminster Site.

**“Statement of Requirements”** means the Authority’s requirements as set out in Schedule 1.

**“Statement of Works”** means the Contractor’s statement of works set out in Schedule 2 (Statement of Work) for meeting the Schedule 1 (Statement of Requirements).

**“Systems Engineering Reference Facility (SERF)”** means a room within the CATT facility devoted to Engineering activity; software bug fixing and Engineering development.

**“Task Approval Form (or TAF)”** means the form annexed to this Contract at Schedule 23 (Engineering Change Proposal TAF), 24 (Obsolescence Management TAF) and 25 (Generic TAF).

**“Training Event”** means a CATT Training Event (e.g. a Sub Unit Training Event or a Land Warfare School Training Course) or other scheduled / unscheduled CATT Training Event requested by the Authority.

**“Training Exercise”** means a course or a series of events and related exercises conducted within the CATT System by troops over a day or series of days.

**“Warminster Site”** means the site of the CATT System at Warminster, UK.

## 2.2.2 Interpretations

2.2.2.1 In addition to the explanations in DEFCON 501 (Edn.11/17) Definitions and Interpretations, in this Contract, except where the context otherwise requires:

2.2.2.1.1 A reference in this Contract to any Condition, Clause, sub Clause, paragraph, Schedule or Annex is, except where it is expressly stated to the contrary, a reference to such Clause, sub Clause, paragraph, Schedule or Annex of this Contract.

2.2.2.1.2 Any reference to this Contract or to any other document shall include any permitted variation, amendment, or supplement to such document.

2.2.2.1.3 A reference to a person also includes firms, partnerships and corporations and their successors and permitted assignees or transferees.

2.2.2.1.4 References to a public organisation (other than the Authority) shall be deemed to include a reference to any successor to such public organisation or any organisation or entity which has taken over either or both the functions and responsibilities of such public organisation. References to other persons (other than the Authority) shall include their successors and assignees.

## 2.3 CHANGE OF CONTROL OF CONTRACTING ENTITY

2.3.1 The Authority’s strategy for the supply of services in support of the Combined Arms Tactical Trainer (CATT) may be subject to change during the period of this Contract and this could result in the need for the Authority to consider novating the Contract to a third party. If the Authority decides that it needs to consider novating the Contract to a third party then it will give the Contractor a minimum of three (3) months’ notice of its intention and will meet the Contractor to discuss the novation within the first three (3) months of this period of notice. The Contractor agrees that it will not unreasonably withhold agreement to any proposed novation to a third party.

2.3.2 During the period of notice, the Parties shall agree a limit of liability that may be required in the event of any incident or event, that is proven to be the fault of either of the new Contracting entity or the Contractor, which requires a halt to production and delivery of any of the Schedule of Requirements (ScOR) Items.

2.3.3 Any change of Contracting entity shall not prejudice the existing rights of the Authority or the Contractor under the Contract nor create or imply any rights of either the Contractor or the Authority additional to those detailed in the existing Contract. The prices recorded within the terms and conditions shall also remain unchanged in the event of a change of control of Contracting entity.

2.3.4 The Contractor shall not be required to submit any advice or information, which would be in breach of either any pre-existing non-disclosure agreement or any regulations governing the supply of information to third parties.

2.3.5 For the purposes of this Condition 'Control' shall mean the power of a person or organisation to manage the Contract in accordance with the Conditions of Contract;

2.3.5.1 by means of implementing any remedial action required as a result of a breach of the terms and conditions of the Contract; or

2.3.5.2 by virtue of any powers conferred by the constitutional or corporate documents, or any other document, regulating the Contract.

2.3.6 For the purposes of this Contract and only in the event of a change of Contracting entity, any references to "MOD, the "Authority" and/or the "Secretary of State for Defence" shall equally mean the Contracting entity contractor.

## **2.4 DOCUMENTATION AND ORDER OF PRECEDENCE**

2.4.1 The Contractor shall check all Authority supplied documentation and references detailed under the Contract, within 10 business days of receipt, and immediately notify the Authority of any discrepancy, inconsistency, omission or error.

2.4.2 Should there be any conflict in the Contract documentation, the order of precedence stated shall be as follows:

2.4.2.1 The Terms and Conditions of this Contract and contained Schedule of Requirements (ScOR)

2.4.2.2 The Statement of Requirements

2.4.2.3 All other Schedules to this Contract except Schedule 2 (Statement of Works)

2.4.2.4 Schedule 2 (Statement of Works) to this Contract.

2.4.3 In the event of any conflict in any document, or any conflict between documents with the same order of precedence, the Parties shall agree the proper construction of the documentation. Should the Parties be unable to agree a resolution to the conflict, the matter shall be referred to the Dispute Resolution process referred to under Condition 2.11 (Dispute Resolution).

## **2.5 COMMENCEMENT AND DURATION**

2.5.1 The Contractor shall, notwithstanding the provisions of Condition 4.4 (Option Period) provide or procure the provision of the Contractor Deliverables from 01 March 2020 through to Contract Expiry on 28 February 2023.

2.5.2 The Authority may, at its sole discretion, exercise the options, as detailed under Condition 4.4 (Option Period), to extend the Contract:

- a) such extension(s) shall follow on directly after the Expiry Date and shall be for a potential period of up to forty-eight (48) months, split into four (4) individual twelve (12) month periods.

2.5.3 In the event that the Authority exercises the options to extend the Contract duration set out in Clause 2.5.2 (Commencement and Duration) above, the Monthly Service Payment for the option period shall be the Monthly Service Payment set out in relation to the relevant Contract Year(s) in Part 1 of Schedule 3 (Payment and Performance Mechanism).

## **2.6 SERVICE PROVISION AND MAINTENANCE**

2.6.1 The Contractor shall provide or procure the provision of the Contractor Deliverables in accordance with all elements of the Contract and with all the skill, care, diligence and attention reasonably to be expected of an experienced contractor complying with Good Industry Practice.

2.6.2 The Contractor shall be responsible for the maintenance, repair and replacement of any and all CATT system components which are required to meet the Statement of Requirements at Schedule 1 to the Contract. To procure a Lifetime Buy in relation to any component the Contractor shall utilise the Schedule 23 (Engineering Change Proposal TAF), 24 (Obsolescence Management TAF) or Schedule 25 (Generic TAF) tasking procedures, adhering to the Obsolescence Management Tasks process outlined at Schedule 3 (Payment Mechanism), and shall not enter into any arrangements without the prior written consent of the Authority.

## **2.7 BOOKING OF CATT SYSTEM**

2.7.1 The Contractor shall utilise the military electronic booking system in accordance with Schedule 1 (Statement of Requirements) on which it shall book the Training Exercises the Authority requires by date and time, including, where appropriate, the time required for any preparatory activities by the Contractor.

### Training Exercises other than Large Scale Training Exercises

2.7.2 The Authority shall book any Training Exercise which does not constitute a Large Scale Training Exercise with as much notice as is reasonably practicable and in any event, at least one (1) business day before the time of the Training Exercise. If the Authority is unable to give one (1) business day notice the Contractor shall use all reasonable endeavours to accommodate the late booking request but the provisions of Schedule 3 – Part 2 (Payment Mechanism) shall not operate if the Contractor cannot accommodate the late booking request. If, however, the Contractor accepts the late booking request, the provisions of Schedule 3 – Part 2 (Payment Mechanism) shall operate in full.

### Large Scale Training Exercises

2.7.3 The Authority shall submit to the Contractor a written request for a Large Scale Training Exercise (giving details of the training requirement) with as much notice as is reasonably practicable and in any event at least one hundred and eighty (180) calendar days before the time of the Large Scale Training Exercise.

2.7.4 The Contractor shall respond in writing, through the submission of a Firm Price quotation which shall be in strict accordance with the Single Source Contract Regulations 2014 (SSCR) within thirty (30) days from the date of the Authority's written request. The Authority may, at its sole discretion, accept or decline the quotation in writing within a further thirty (30) calendar days.

2.7.5 For the avoidance of doubt, until such time as the Authority provides its acceptance of the quotation, in writing, it will not be responsible for any costs incurred by the Contractor in respect of the Large Scale Training Exercise. If a quote is accepted by the Authority in writing, the Contractor shall then enter the Large Scale Training Exercise into the electronic booking system. In the period between acceptance of the quote by the Authority and the date of the Large Scale Training Exercise

the Authority shall have the right to make minor changes to the requirement for the Large Scale Training Exercise at no additional cost.

2.7.6 If the Authority is unable to submit its request for a Large Scale Training Exercise with one hundred and eighty (180) days' notice the Contractor shall use all reasonable endeavours to provide a quotation, which shall be in strict accordance with the Single Source Contract Regulations 2014 (SSCR), and accommodate the late request. If the Contractor provides a quote and accepts the late booking request, the provisions of Schedule 3 – Part 2 (Payment Mechanism) shall operate in full.

2.7.7 If the Authority wishes to cancel a booking for a Large Scale Training Exercise made in accordance with this Clause 2.7, it shall do so in writing to the Contractor with as much notice as is reasonably practicable. Following any such cancellation the Authority shall pay to the Contractor all costs reasonably and properly incurred by it in its preparation for the Large Scale Training Exercise and any necessary reinstatement of the CATT System.

## **2.8 CONTRACTORS RESPONSIBILITY**

2.8.1 For the purposes of this Contract and the work performed thereunder, the Contractor shall be designated as the Prime Contractor, and shall accordingly be wholly responsible to the Authority for the timely, economic and proper execution of the Contract subject to its provisions.

2.8.2 Where the Contractor subcontracts any part of the Contract, this will be in accordance with DEFCON 534 (Edn. 06/17) (Subcontracting and Prompt Payment) and DEFCON 675 (Edn. 09/19) (Advertising Subcontracts (Defence and Security Public Contracts Regulations 2011 only)).

2.8.3 The Contractor shall ensure that the terms and conditions of this Contract are reflected in all subcontracts at whatever level to the extent necessary to enable the Contractor to fully meet their obligations to the Authority under the Contract.

2.8.4 Notwithstanding any official approval of, or expression of satisfaction with any drawings, specifications, schedules or any other relevant technical, administrative or other documents or data by the Authority, the Contractor shall be wholly responsible for the efficient and accurate functioning as required by the Contract of all Contractor Deliverables supplied under it, and for ensuring that any design is wholly complete, accurate and meets the specifications of the Contract, such that Contractor Deliverables manufactured to such design shall similarly meet the technical specifications and other requirements of the Contract.

2.8.5 Key Personnel, as identified within Schedule 2 – Statement of Work (SOW), shall have the appropriate qualifications and competences for this Contract.

2.8.6 The Contractor shall take all reasonable steps to avoid changes of Key Personnel assigned for work under the Contract. Except whenever changes are unavoidable or of a temporary nature caused by sickness or other reasonable circumstances, the Contractor shall give at least one month's notice, in writing, to the Authority and the provisions of this Condition shall apply to the replacement personnel. The Authority shall have the right, in its sole discretion, to reject any replacement personnel proposed by the Contractor.

2.8.7 Where a change in Key Personnel is deemed unavoidable and subject to the provisions of clause 2.8.6 above the Contractor shall ensure a that handover period of not less than 2 calendar weeks is undertaken between the out-going and incoming incumbents.

## 2.9 SECURITY AND NON-DISCLOSURE (USA)

2.9.1 The term "**classified information**" in this Condition 2.9 (Security and Non-Disclosure (USA)) means documents, material and information on Defence matters which is subject to a security classification as defined in Sub-Clause 2.9.2.3 below. This definition is independent of the means of transmission of the matter, e.g. whether it is transmitted in writing, orally, electronically or by the handing over of material.

2.9.2 In relation to information handled in the United States of America (USA), the following provisions shall apply:

2.9.2.1 The Authority shall notify the Contractor of any classified aspects of this Contract by means of a Security Aspects Letter. Where no direction exists such information, as provided under the Contract, shall be classified as "Official".

2.9.2.2 Irrespective of security classification, the Contractor shall comply with the requirements of DEFCON 531 (Edn.11/14) (Disclosure of Information) and the conditions of this Contract.

2.9.2.3 The Authority shall assign a security classification to each of the aspects of classified information which is furnished, or which is to be developed, under this Contract. If classified information is disclosed orally pursuant to a visit to the Contractor by or on behalf of the Authority, the Contractor shall be informed of such security classification. Each classified aspect of this Contract shall be safeguarded by the Contractor as US classified information of an equivalent security classification category.

2.9.2.4 UK classified information furnished or developed in the performance of this Contract shall not be used for any other purpose without the express written authorisation of the UK agency responsible for the UK classified information.

2.9.2.5 To the extent that aspects of this Contract have been or may be assigned a security classification, the Contractor shall safeguard all classified aspects of this Contract and shall provide and maintain a system of security controls within their own organisation in accordance with the requirements of:

- 1) The US Department of Defence Security Agreement (DD Form 441) between the Contractor and the Government of the United States, including the US Department of Defence Industrial Security Manual for Safeguarding Classified Information as in effect on the date of this Contract.
- 2) Any amendments to said Manual made after the date of this Contract, notice of which has been furnished to the Contractor by the Cognizant Security Office of the Government of the USA.

2.9.2.6 Representatives of the Cognizant Security Office of the Government of the USA shall be authorised to inspect at reasonable intervals the procedures, methods, and facilities utilised by the Contractor in complying with the security requirements under this Contract at locations within the US. Should the Government of the USA determine that the Contractor is not complying with the security requirement of this Contract, the Contractor shall be informed in writing through the Cognizant Security Office of the Government of the USA of the proper action to be taken in order to effect compliance with such requirements. When UK classified material is, or is likely to be, at risk Directorate of Business Resilience- Defence Security (DBR-Def Sy) shall be advised accordingly by the Contractor.

2.9.2.7 Notwithstanding the provisions of DEFCON 659A (Edn.02/17) (Security Measures) the Contractor agrees to insert security provisions which conform to this Condition 2.9 (Security and Non-Disclosure (USA)), in all sub-contracts awarded to US sub-contractors hereunder

which involve access to classified information. In the event the Contractor proposes to award a sub-contract, prior permission, in writing, must be obtained from the Authority, which, if it approves of such a sub-contract, shall provide an appropriate security requirements clause.

2.9.2.8 The Contractor also agrees that he shall determine that any sub-contractor proposed by him for the furnishing of contractor deliverables which shall involve access to UK classified information in the Contractor's custody has:

- a. If located in the USA, a current USA Department of Defence facility security clearance at the appropriate level and the ability to safeguard classified information properly prior to being afforded access to such classified information; or
- b. If located in any other country, been approved in writing by the Authority to have access to its classified information prior to being afforded such access.

2.9.2.9 Classified information and material furnished or generated pursuant to this Contract shall be transferred through government to government channels or other channels specified in writing by the Government of the USA and the Authority and only to persons who have an appropriate security clearance and an official need for access to the information order to perform on the Contract.

2.9.2.10 All cases in which it is known, or there is reason to believe, that classified information or material furnished or generated pursuant to this Contract has been lost or disclosed to unauthorised persons, shall be reported promptly and fully investigated by the relevant party to its Government's security authorities.

2.9.2.11 Without prejudice to residual claims the Contractor shall deliver, after expiry or early termination of the Contract, all classified documents and material to the Authority's Project Manager within one (1) calendar month.

2.9.2.12 The Authority shall have the right to terminate this Contract in accordance with DEFCON 514 (Edn.08/15) (Material Breach) in the event that the Contractor has not complied with the security provisions of this Contract.

2.9.2.13 Classified information matters shall be transmitted between the USA and the Authority in accordance with the instructions of the Authority's Directorate of Business Resilience-Defence Security (DBR-Def Sy) and the Contractor's National Security Authority equivalent.

2.9.3 In relation to information handled in the UK, the following provisions shall apply:-

2.9.3.2 The Authority shall notify the Contractor separately of any classified aspects of this Contract by means of a Security Aspects Letter.

2.9.3.3 The Contractor agrees to insert security provisions which conform to this Condition 2.9 (Security and Non-Disclosure (USA)), in all sub-contracts awarded to UK sub-contractors hereunder which involve access to classified information. In the event the Contractor proposes to award a sub-contract to other than a UK sub-contractor, prior permission must be obtained from the Authority, which, if it approves of such a sub-contract, shall provide an appropriate security requirements clause.

## **2.10 CONTRACT CHANGE PROCEDURE**

2.10.1 This Condition describes the procedure to be used for implementing changes to the Contract.

2.10.2 Changes to the Contract shall be in accordance with DEFCON 620 (Edn.05/17) (Contract Change Control Procedure) and shall be subject to the Single Source Contract Regulations 2014 (SSCR).

2.10.3 Proposed changes, be they by the Authority or the Contractor, shall use the relevant change proposal form provided at Schedule 23, 24 and 25 of the Contract. Each change proposal form initiated shall be identified by a unique serial number which shall be allocated by the Authority. Obsolescence taskings under £100k shall be processed using the Obsolescence Tasking Form at Schedule 24 (Obsolescence TAF). PDS taskings over £100k shall be processed using the ECP Tasking Form at Schedule 23 (Engineering Change Proposal TAF).

2.10.4 Where a change is identified as being urgent, then the Parties shall meet and agree suitable alternative time periods to those detailed in DEFCON 620 (Edn.05/17) (Contract Change Control Procedure) for the execution of the change processes required to meet the change need. For the purpose of this condition, urgent shall mean where a change is required to be undertaken in a period shorter than the standard timings detailed in DEFCON 620 (Edn.05/17) (Contract Change Control Procedure).

2.10.5 Should the Contractor have insufficient information about the impact of the proposed change they may propose that the Authority allocate funds in order that the Contractor can undertake a study to investigate the potential impact of the proposed change.

2.10.6 Where a study is required, the Contractor shall not proceed until authority to proceed with the study has been provided in writing by the Authority's Commercial Manager or authorised representative as detailed in the DEFFORM 111 at Schedule 13 to the Contract.

2.10.7 Where it is not possible to adequately define the requirement in the timescales required, then a request for a Limit of Liability may be requested by the Contractor for consideration by the Authority. Any such request by the Contractor must identify why a Limit of Liability is better value for money and/or why a Firm Price cannot be provided.

2.10.8 During the course of work under any agreed change and authorised to be undertaken under a Limit of Liability, the Contractor shall inform the Authority in writing at the point where 80% of the Limit has been spent. The Contractor shall also immediately inform the Authority in writing if it is believed, at any stage, that the work shall not be completed within the total Limit of Liability and shall not, in any circumstances continue with the work to a point where the approved Limit of Liability is exceeded.

2.10.9 Prior to submission of final invoices against a Limit of Liability, the Contractor shall submit a certified financial report of activities carried out and the associated actual costs which shall be in accordance with the Single Source Contract Regulations 2014 (SSCR).

2.10.10 Formal Engineering Change Proposals (ECPs) or Task Approval Forms (TAFs) will be prepared at the Authority's expense. Proposal preparation costs will be bid as a separate line item within the Contractor's proposal for ECPs or TAFs. For informal budgetary proposals or Rough Order of Magnitude (ROM) costs, there will be no cost to the Authority. The Contractor shall include their reasonable costs incurred for preparation of the change request, if deemed necessary by the Contractor, in strict accordance with the Single Source Contract Regulations 2014 (SSCR). No Contract change proposal preparation cost shall be allowable for a Contractor originated change proposal. Should the Authority decide not to proceed with the change, the Contractor's fair and reasonable costs for the preparation of the quotation, where they apply, shall be paid by the Authority. If the piece of work is to be revisited later with no change to the scope, then there will be no cost to the Authority to reinvigorate the proposal by the Contractor.

## **2.11 DISPUTE RESOLUTION**

2.11.1 Any dispute or difference or question arising out of or in relation to this Contract between the Contractor and the Authority shall be resolved in accordance with this Condition 2.11 and DEFCON 530 (Edn.12/14) (Dispute Resolution (English Law)) shall be deemed to be amended to the extent it is inconsistent with this Condition 2.11.

2.11.2 Any dispute, difference or question shall be referred firstly to the Training and Simulation Programme (TSSP) Senior Commercial Manager and the Senior Commercial Manager (or equivalent) of the Contractor or such other persons as the Parties may respectively designate by notice to the other.

2.11.3 If within 30 (thirty) business days the Parties have failed to reach agreement then the dispute, difference or question shall be referred to the decision of the Authority's Platform (TSSP) Team Leader and the Programme Manager of the Contractor or such other persons as the Parties may respectively designate by notice to the other.

2.11.4 For the purposes of DEFCON 530 (Edn.12/14) (Dispute Resolution (English Law)), any arbitration shall take place under the rules of the London Court of International Arbitration (the LCIA Rules) in London in English.

2.11.5 Neither Party shall be entitled to suspend performance of the Contract merely by reason of the reference of any dispute to the procedures set out in this Condition or to arbitration.

2.11.6 Clause 2.11.5 above shall be without prejudice to Clause 8.3.3 (Milestone (Interim) Payments) and shall be subject to the right for the Authority to withhold payment of the whole or any part of the Contract price where the Authority, in good faith, disputes that the Contractor has satisfactorily completed any part of the Contract provided that the Authority shall only be entitled to withhold that part of the Contract price which relates to the disputed performance.

## **2.12 SUSTAINABLE PROCUREMENT – LEGISLATIVE REQUIREMENTS**

2.12.1 The Contractor shall take all reasonable steps to procure the observance of the economic, social and environmental legislation related to the subject matter of the execution of the Contract by any servants, employees or agents of the Contractor and any sub-contractors engaged in the performance of the Contract.

2.12.2 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/or any sub-contractors engaged in the performance of the Contract, the Contractor shall immediately notify the Authority at the address specified in the Contract.

2.12.3 Any convictions during the period of the Contract for criminal breaches of the economic, social and environmental legislation related to the subject matter or the execution of the Contract by the Contractor or any of the Contractor's directors/partners or senior management who have powers of representation, decision or control, shall be regarded as a material breach of this Contract. In such cases the Authority shall have the right to terminate the Contract in accordance with the provisions of DEFCON 514 (Edn.08/15) (Material Breach).

2.12.4 The Contractor shall take all reasonable steps to ensure that all activities under this Contract shall comply with certified environmental management standard. As such ISO14001:2015, or any such updated version or equivalent, accreditation must be maintained by the Contractor for the duration of the Contract.

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

### **3.1 DEFCONS**

DEFCON 129 (Edn. 07/19) – Packaging (For Articles other than Munitions)  
DEFCON 129J (Edn. 18/11/16) – The Use of The Electronic Business Delivery Form  
DEFCON 502 (Edn. 05/17) – Specifications Changes  
DEFCON 524A (Edn 02/20) – Counterfeit Materiel  
DEFCON 602B (Edn.12/06) – Quality Assurance (Without Deliverable Quality Plan)  
DEFCON 606 (Edn. 06/14) – Change and Configuration Control Procedure  
DEFCON 608 (Edn. 10/14) – Access and Facilities to be Provided by the Contractor  
DEFCON 624 (Edn. 11/13) – Use of Asbestos  
DEFCON 627 (Edn. 12/10) – Quality Assurance – Requirement for a Certificate of Conformity  
DEFCON 637 (Edn. 05/17) – Defect Investigation and Liability

### **3.2 PERFORMANCE OF WORK**

3.2.1 The Contractor shall execute and complete all Deliverables in the ScOR in accordance with the terms and conditions of this Contract. For the entire duration of the Contract, all work to execute and complete all ScOR deliverables shall be carried out in accordance with the Statement of Work detailed under Schedule 2 the Contract.

3.2.2 The Authority requirements under this Contract include any work which is necessary to satisfy the ScOR detailed under Schedule 1 and all work which is necessary for the completion of the Contract.

3.2.3 The Contractor shall, whenever required by the Authority's Project Manager, submit details of the arrangements and methods which the Contractor proposes to adopt for the execution of the work including whether the same differs from the Statement of Work at Schedule 2. The Contractor shall not make any alteration to the Schedule 2 (Statement of Work) unless agreed in writing with the Authority's Project Manager and confirmed by a Contract amendment.

3.2.4 Except as expressly provided in and without prejudice to the Authority's obligations under Condition 6.4 (Supply of Government Furnished Assets (GFX)) the Contractor shall be responsible for obtaining all information and data necessary for the carrying out of its obligations under the Contract.

3.2.5 Unless otherwise expressly specified in the Statement of Work at Schedule 2, the Contractor shall not, unless agreed in writing by the Authority, specify or use any materials or equipment which do not conform to British Standards or Codes of Practice where such exist or such other equivalent standards or requirements applicable at the relevant time.

### **3.3 QUALITY ASSURANCE**

3.3.1 All work under the Contract shall be carried out in accordance with the provisions in Condition 3.3 below.

3.3.2 The Contractor is responsible for ensuring:

- a) The quality of the deliverable supplied conforms to the Contract;
- b) The quality planning and management activities conform to the Contract;

- c) Sub-contractor controls conform to the Contract including providing reasonable access to the sub-contract premises for the Authority's Quality Assurance Representative (QAR).

3.3.3 The Contractor shall maintain an ISO 9001:2015 Quality Management System. The scope of the certificate shall cover all activities to be undertaken by the Contractor in relation to the Contract. The Contractor shall notify the Authority with immediate effect if any changes to this certification occur. Acceptable QMS Certification is one that has been issued by a Certification Body, who are accredited by a National Accreditation Body which is a signatory to the International Accreditation Forum (IAF).

3.3.5 The following quality standards and requirements shall apply and the Contractor's Quality Management System shall deliver compliance with these standards and requirements:

- a) AQAP 2210 Edition A Version 2 entitled "NATO Supplementary Software Quality Assurance Requirements"
- b) AQAP 2110 Edition D Version 1 entitled "NATO Quality Assurance Requirement for Design, Development and Production"
- c) Defence Standard 05-057 issue 7 entitled "Configuration Management of Defence Materiel"
- d) Concessions shall be managed in accordance with Defence Standard 05-061 Part 1, Issue 6 entitled "Quality Assurance Procedural Requirements - Concessions" Any contractor working parties shall be provided in accordance with Defence Standard 05-061 Part 4, Issue 3 entitled "Quality Assurance Procedural Requirements – Contractor Working Parties"
- e) The engineering of software and systems and associated testing will be carried out in accordance with ISO 25051: 2014 Software Engineering – Software Product Quality Requirements and Evaluation (SQuaRE) – Requirements for quality of COTS software product and instructions for testing.
- f) Defence Standard 05-135 issue 2 entitled "Avoidance of Counterfeit Materiel"

3.3.6 For the purpose of the Contract, the Quality Assurance Representative (QAR) shall be the Authority's Project Manager or their authorised representative, as notified by the Authority in writing.

3.3.7 Where the sub-contractor is not based in the UK, the Contractor shall include in any relevant sub-contract the following condition: "This sub-contract may be subjected to Quality Assurance Surveillance at your facility on behalf of the UK Government. You shall provide any assistance needed by the QAR, in the execution of their responsibilities in respect of this sub-contract."

3.3.8 Every Article delivered to the Authority shall be accompanied by a Certificate of Conformity, the approval of which by the Contractor's authorised representative confirms conformance to Contract requirements or lists significant (agreed) deviations. Where equipment is initially delivered to an interim build standard the Contractor shall maintain a log of build standard changes up to an including the final acceptance build standard. Thereafter, equipment's previously delivered to an interim build standard shall be upgraded within the Contract Price, at a time to be agreed but not later than 6 (six) months from confirmation of the final build standard / design acceptance. The Certificate of Conformity shall be provided in accordance with DEFCON 627 - (Edn. 12/10) – Quality Assurance – Requirement for a Certificate of Conformity.

3.3.9 In Condition 3.5 (Safety and Environmental Case) reference to any related document means the edition and all amendments current at the Contract Commencement Date unless a specific issue is identified.

3.3.10 The standards to which work shall be completed may not necessarily be referred to in this Condition. They will, however, be referred to in the appropriate Condition elsewhere in the Contract.

3.3.11 Every effort has been taken to ensure that the specifications listed in this Contract are current and to the latest issue at the Contract Commencement Date. Where drawings call for obsolete materials or process specifications the Contractor shall determine the up-to date equivalent specification and submit to the Authority's Project Manager in writing for agreement before the related work commences.

3.3.12 For guidance on the application and interpretation of AQAPs refer to the appropriate AQAP Standards Related Document.

3.3.13 Where GQA is performed against this Contract it will be in accordance with AQAP 2070 Edition B Version 3.

3.3.14 The engineering of software and systems and associated testing will be carried out in accordance with ISO 25051: 2014 Software Engineering – Software Product Quality Requirements and Evaluation (SQuaRE) – Requirements for quality of COTS software product and instructions for testing.

### **3.4 SAFETY AND ENVIRONMENTAL CASE**

3.4.1. Notwithstanding the provisions of DEFCON 76 (Edn.12/06) (Contractor's Personnel at Government Establishments), the Parties shall execute all activities required by this Contract in accordance with statutory requirements in relation to Health and Safety.

3.4.2. As a minimum the Contractor shall conform to UK Safety Regulations.

3.4.3. The Contractor's safety and environmental manager shall have full responsibility and accountability for their Safety and Environmental requirements for the CATT programme and carry out Safety and Environmental requirements as defined in the Safety and Environmental Plan.

3.4.4. The Contractor shall maintain the Safety and Environmental requirements in accordance with Schedule 1 (Statement of Requirement).

### **3.5 OBSOLESCENCE**

3.5.1 The Contractor shall be responsible for ensuring the continued supply and maintainability of Articles required under or in support of this Contract whether they are of the Contractor's own design or those of any of their Sub-Contractors.

3.5.2 The Contractor shall be responsible throughout the duration of the Contract for the management of obsolescence in accordance with the Obsolescence Management Plan, within the Statement of Work at Schedule 2 of the Contract.

3.5.3 The Contractor shall be responsible for identifying any Article or part of an Article which it believes may become obsolete and shall notify the Authority's Project Manager, in writing, in accordance with paragraph 12.16.e to Schedule 1 (Statement of Requirement) such pending obsolescence as soon as reasonably practicable together with its proposed course of action to alleviate such obsolescence. The Contractor shall be responsible, at its own expense, for recommending and implementing its proposed course of action and in doing so it shall take full account of the principles of obsolescence management set out in the Obsolescence Management Plan within the Statement of Work at Schedule 2.

3.5.4 Should the Contractor propose an alternative component of a similar design or a modification to an Article as a solution to non-availability due to obsolescence or otherwise, he shall submit a change proposal form to the Authority in accordance with Condition 2.10 (Contract Change Procedure) and obtain the Authority's approval to proceed with the implementation of their proposed solution in accordance with DEFCON 606 (Edn.06/14) (Configuration Control). Such approval shall not be unreasonably withheld or delayed.

### **3.6 RISK MANAGEMENT PROCESS**

3.6.1 The Contractor shall produce and manage the risk reports and processes in accordance with the Statement of Work at Schedule 2 to the Contract. A Risk Management Plan shall be implemented and followed which conforms to Association of Project Management standards (or equivalent). The Risk Management Plan shall be shared with the Authority for information when requested by the Authority.

3.6.2 A Risk Register shall be maintained by the Contractor for the duration of the Contract; and shall include all risks in the supply chain including those of their sub-contractors. The Risk Register shall be ISO 31000:2018 compliant. The Contractor shall maintain joint Risk Register using the appropriate risk management tool and shall make the Risk Register available to the Authority electronically.

3.6.3 The Contractor shall conduct monthly internal reviews of all risks, issues and opportunities. The Contractor shall also provide the Authority with an update of the top 10 (ten) risks to the project at Biannual and annual Project Review Meetings.

## **4 PRICE**

### **4.1 DEFCONS**

DEFCON 654 (Edn.10/98) – Government Reciprocal Audit Arrangement

DEFCON 800 (Edn. 12/14) – Qualifying Defence Contract

DEFCON 801 (Edn. 12/14) – Amendments to Qualifying Defence Contracts – Consolidated Versions

DEFCON 802 (Edn. 12/14) – QDC: Open Book on sub-contracts that are not Qualifying Sub-contracts

DEFCON 804 (Edn. 03/15) – QDC: Confidentiality of Single Source Contract Regulations Information

## **4.2 PRICING – SCHEDULE OF REQUIREMENTS (ITEM 1)**

4.2.1 All work carried out under Schedule of Requirements (ScOR) (Item 1) shall be Firm Priced from the outset and paid, subject to the application of Key Performance Indicators, monthly in arrears as defined under Schedule 3 - Payment Mechanism.

## **4.3 PRICING – SCHEDULE OF REQUIREMENTS (ITEMS 2 TO 5)**

All work carried out under ScOR (Items 2 to 5) shall be Firm Priced from the outset in accordance with Schedule 3 – Payment Mechanism and shall, unless otherwise agreed in writing by the Authority, be paid upon completion of all work to the satisfaction of the Authority's Project Manager.

## **4.4 OPTION PERIOD**

4.4.1 In addition to the deliverables provided under ScOR (Items 1 to 5) the Contractor hereby grants to the Authority irrevocable options to extend the duration, as defined under Condition 2.5 (Commencement and Duration), of this Contract by a forty-eight (48) months, split into four (4) individual twelve (12) month blocks, it being agreed that the Authority has no obligation to exercise such options.

4.4.2 The Firm Price for such extension options shall be as detailed under Schedule 3 – Payment Mechanism which shall be subject to terms and conditions pertaining to this Contract at such point that the options are implemented and shall be implemented through formal Contract Amendment in accordance with DEFCON 503 (Edn. 12/14) – Formal Amendments to Contract.

4.4.3 The Authority shall have the right to exercise the above options in either individual twelve (12) month blocks, in multiple twelve (12) month blocks or in totality, against the ScOR ( Table 2 – Option Years, Items 1 to 20) during the period up to the 1st December prior to the Contract Expiry date, such period being 3 (three) calendar months prior to Contract Expiry date.

4.4.4 The price for Contract Years 1-3 as detailed in Table 1 of the Schedule of Requirements is Firm Price and shall not be subject to any variation. This price shall be subject to the rules and regulations of the Single Source Contract Regulations (2014).

4.4.5 The options for Contract Years 4-7, detailed in Table 2 of the Schedule of Requirements, shall be Fixed Price and, if invoked by the Authority, shall be subject to indexation in accordance with Condition 4.5 (Variation of Price) of this Contract. Other than this indexation the price shall not be subject to variation. This price shall be subject to the rules and regulations of the Single Source Contract Regulations (2014).

## **4.5 VARIATION OF PRICE**

**REDACTED**

## **4.6 GAINSHARE**

4.6.1 The Authority and the Contractor shall during the period of the Contract identify all possible areas for savings which provide mutual benefit. Such savings opportunities (referred to as "Gainshare") are to be listed within the progress review meeting.

4.6.2 All Gainshare benefits shall be shared on a 50:50 basis between both Parties, subject to the non-recurring costs of any agreed Gainshare incurred during its investigation and implementation being offset against the agreed benefit.

4.6.3 A different benefit sharing basis may be allowed for any Gainshare with the agreement of the Contractor and the Authority. Where the Contractor believes a different basis is appropriate for

any Gainshare they shall provide the proposal in writing to the Authority Project Manager, together with sufficient and reasonable information to justify a different basis.

4.6.4 The Authority agrees to review all such proposals and where the Authority and the Contractor agree, a different benefit sharing basis shall be allowed. Where the Authority and Contractor do not agree a different sharing benefit basis the Authority shall provide reasonable justification to the Contractor for not agreeing to the different benefit sharing basis.

4.6.5 Any change to the benefit sharing shall apply only to the Gainshare opportunity in question and any subsequent change from the 50:50 benefit sharing basis shall be agreed by this method for each Gainshare.

4.6.6 The non-recurring costs incurred by the Contractor during the investigation of a proposed Gainshare which has been approved by the Authority, but where it is later decided by mutual agreement not to proceed with the Gainshare shall be provided by the Contractor in writing to the Authority Project Manager within thirty (30) calendar days for review. Following agreement by the Authority in writing of the non-recurring costs detailed by the Contractor then those costs shall be shared between both Parties on a 50:50 basis.

## 5 INTELLECTUAL PROPERTY RIGHTS AND INFORMATION

For the purposes of Condition 5 (Intellectual Property Rights and Information), only DEFFORM 701, Schedule 16 – Head Agreement for Licence Terms for Commercial Software shall apply to the Sub-Contractor Intellectual Property listed at a-d below;

- a. SAGE - Scalable Advanced Graphics Engine, versions 1 - 4.21
- b. SIMI – SIMulated Intelligence, versions 1-6
- c. S-GUSS– Simulated - Generic UAV Supervisory Segment, versions 1 -4
- d. EPIC – Enhance Perception Integrated Control, versions 1

### 5.1 RECORDS

5.1.1 For the purpose of this Condition (Records) the following definitions apply:

- a) **'Contract Data Requirement'** means a data requirement referred to in the Statement of Requirements the format and content of which is set out or referenced in Schedule 7 – DEFFORM 315 (Contract Data Requirements List).
- b) **'Information'** means technical data relating to articles, processes or materials whether in human readable form or in machine readable form, or in any other form (but excluding software subject to Clause 5.4 (Intellectual Property Rights in Software) or for which the Authority is otherwise licensed).
- c) **'Intellectual Property'** includes patents, registered designs, design rights, topography rights, copyright, database rights and any other rights in Information.

#### Maintenance of Control Copy

5.1.2 During the period of the Contract and thereafter for not less than two (2) years, or such other period as may be specified in the Contract:

- a) the Contractor shall maintain at least one (1) copy (hereinafter called the 'Control Copy') of all deliverable Information to which this Condition 5.1 (Records) applies;
- b) the Control Copy shall be maintained in media and formats agreed to by the Authority, and it shall not be altered by the Contractor in any way which changes the build standard except as authorised in writing by the Authority. The Control Copy shall be deemed to be the property of the Authority, and the Authority may take possession of it notwithstanding any administration, receivership, winding-up or liquidation of the Contractor or any transfer of its assets to any third party; and
- c) copies of Information held on the Control Copy shall be supplied as required from time to time by the Authority at the Authority's expense.

5.1.3 If the Contractor enters into another contract with the Authority regarding maintenance of the Control Copy, the Contractor's obligation under Clause 5.1.2. shall be governed by that contract at the end of the period referred to in Clause 5.1.2. Otherwise he may destroy or amend the Control Copy as he sees fit, but before destroying the Control Copy he shall offer to supply it to the Authority and give the Authority sixty (60) days to request such supply.

#### Intellectual Property

5.1.4 Nothing in this Condition 5.1 (Records) shall affect the ownership of, or user rights in, any Intellectual Property.

## **5.2 INTERNATIONAL COLLABORATION**

5.2.1 For the purpose of this Condition 5.2 (International Collaboration) the expression 'International Collaboration Agreement' shall mean any agreement or arrangement made or proposed to be made between the United Kingdom Government and the government of another country or any government-sponsored international body for collaboration in a joint programme of research, development, production, supply or operations utilising any results produced under this Contract, and for the allocation of responsibility for work under such programme between the Parties to such agreement or arrangement.

5.2.2 Subject to the rights of third parties arising otherwise than from work performed under the Contract and to the provisions of this Condition 5.2 (International Collaboration), the Authority shall have the right under this Condition 5.2 (International Collaboration) to copy any copyright work furnished by the Contractor under this Contract, the copyright in which belongs to the Contractor, and to issue for information only such work or copy for the purpose of promoting the establishment of an International Collaboration Agreement and for the purpose of technical oversight of an International Collaboration Agreement made. Subject as aforesaid, the Contractor shall, if requested by the Authority within thirty (30) days or as otherwise agreed, provide or procure the provision to the Authority with such assistance and further information as the Authority may reasonably require for such promotion and technical oversight. A reasonable charge for this service, based on the cost of providing it, will be borne by the Authority.

5.2.3 If, under an International Collaboration Agreement made, the Authority agrees that any results produced under this Contract shall be utilised in work undertaken or shared by or on behalf of another party to such International Collaboration Agreement then, to the extent of their right to do so and on fair and reasonable terms approved by the Authority, the Contractor shall, if requested by the Authority within thirty (30) days or as otherwise agreed, make available or procure the making available under licence to that other party or their nominee, for use for the purpose provided in such an International Collaboration Agreement only, any information which the Authority is entitled to

receive under this Contract, together with any technical assistance and background information necessary for the effective application of such information.

5.2.4 If disclosure by the Authority under Clause 5.2.2 of any copyright work would affect any rights of the Contractor or third parties arising otherwise than from work performed for the purposes of this Contract, the Contractor shall have the right to place on such copyright work a notice stating that it is supplied under contract to the Authority and may not be issued outside United Kingdom Government Departments except in accordance with the conditions of this Contract. Before exercising their rights under Clause 5.2.2 in respect of any work bearing such notice the Authority shall give to the Contractor prior written notice of fifteen (15) days (or such other period as may be agreed) of their intention to do so and have regard to any representations made by the Contractor at any time before issue takes place as to the protection of any separately identifiable trade secrets, know-how, or similar proprietary information arising otherwise than from work performed under this Contract. The Contractor shall be free under the terms of this Condition 5.2 (International Collaboration) to make any proposals for the protection of the information referred to herein. In particular, the Authority shall give full consideration to any proposals the Contractor may make for the preparation of a special International Collaboration Report, for the release of information in stages, or for restrictions on the circulation of the information to be released. The Authority shall be entitled to make issue contrary to such representations and proposals fifteen (15) days after notifying the Contractor in writing that he considers it in the national interest to do so.

5.2.5 The Authority shall not have the right and the Contractor shall not be obliged under this Condition 5.2 (International Collaboration) to disclose or procure the disclosure to a third party directly or indirectly manufacturing or design information with respect to units, subunits or components not developed or designed under the Contract. Provided that if the Contractor has not granted and does not wish to grant a licence to a manufacturer in the country of the other party and if so there is no reasonable substitute article available in the other country the Contractor shall in that event be obliged to make or procure the making of the disclosure and grant a licence direct to at least one manufacturer in the country of the other party to be approved by the Contractor. The Contractor shall on request supply the identification and shape, size and function of such units, sub-units and components.

5.2.6 The Contractor shall on request insofar as he may be able to do so supply or procure the supply of such of the units, sub-units and components referred to in Clause 5.2.5 as may be required to such other party within a reasonable timescale and on reasonable commercial, non-discriminatory terms.

5.2.7 If the Authority makes issue of information contrary to the Contractor's representations under Clause 5.2.4 of this Condition as to the protection of trade secrets, know-how and similar proprietary information, the Contractor shall be entitled to such compensation, if any, as is fair and reasonable in the circumstances.

5.2.8 If the Contractor is party to a licence or other agreement relating to the use of inventions, designs or technical information which restricts their freedom to supply or authorise the disclosure or use of information for the purposes of this Condition 5.2 (International Collaboration), the Contractor shall, when tendering, quoting a price for this Contract, or offering to perform it (or, if at these times the restriction is not apparent, as soon thereafter as it is), notify the Authority and at the Authority's request use all reasonable efforts with the assistance and at the expense of the Authority to abate the restrictions to the extent required. Without the prior consent in writing of the Authority, the Contractor shall not wittingly make use in the performance of the Contract of inventions, designs or technical information which are the subject of any agreement made after the date of the Contract or make any grant of rights in the results of work under the Contract which he knows would restrict their freedom as aforesaid.

5.2.9 Unless in respect of any particular sub-contract the Authority agrees otherwise, the Contractor shall include and shall procure the inclusion by any Sub-Contractor of the provisions of this Condition 5.2 (International Collaboration) mutatis mutandis in any sub-contract placed by him or the relevant Sub-Contractor for the performance of any work of research, study, or development for the purposes of this Contract.

5.2.10 The Authority undertakes that he will consult with the Contractor as early, as frequently and as fully as is reasonably practicable in the consideration of any International Collaboration Agreement into which he may wish to enter and will pay due regard to any representations of the Contractor

### **5.3 INTELLECTUAL PROPERTY RIGHTS (OTHER THAN SOFTWARE)**

#### **5.3.1 Definitions**

For the purposes of this Condition 5.3 (Intellectual Property (Other Than Software)):

**“Contract Data Requirements List”** means the list forming part of the contract and specifying the content and format of Information to be delivered under the Contract.

**“Co-operative Logistic Support Arrangement”** means any agreement or arrangement made between the United Kingdom Government (or any part thereof) and the government (or part thereof) of another country or any government sponsored international body for the support (including supply of spare parts) of items.

**“Data Pack”** means details of the design of Items, processes and materials, together with any additional information necessary to enable a competent Third Party to maintain, support, modify and manufacture UK CATT and all components thereof.

**“Information”** means technical data relating to Items, processes of materials, whether in human readable form, e.g., handbooks, drawings and other documentation or in electronic form or other form.

**“Intellectual Property Rights”** includes rights in patents, registered designs, unregistered designs, trademarks, topography rights, copyright, rights in confidential information and other statutory and common law rights in Information.

**“Item”** means part or the whole of any Article or any other Article to the same design or any modification thereof.

**“Maintenance and Repair”** means activity to maintain Items owned or in use by the Authority in an operable condition, including:

- maintenance of records of defects and reliability;
- the identification of replacements for Items that become obsolete;
- procedures and arrangements (including safety procedures) for removing Items from and reinstalling them in an operational system, and for handling, storing, transporting, packaging and labelling Items;
- inspection and testing of Items to check calibration and performance, and to detect and identify faults;
- dismantling Items for repair or for modification;

- preparation and application or repair schemes;
- reassembling Items after repair or incorporation of modifications, including the incorporation of replacement or new parts;
- testing and calibrating of Items prior to, during, or after, reassembly, and after reinstallation in an operational system;
- reworking, reconditioning or overhaul of Items

but excludes redesign or manufacture of any replacement or new parts, or design of any Modification.

**“Modification”** means a change to the build standard of an Item, and includes the design of any Item to substitute within the Article for an Item, and the expressions **“to modify”** and **“Modified”** shall be interpreted accordingly.

**“Services of the United Kingdom Government”** means under the authority of, or to the order of, a Minister of the Crown in pursuance of authority vested in the Minister by Parliament, and shall include supply of goods or services to a foreign government under a Co-operative Logistic Support Arrangement.

### Scope

5.3.2 This Condition 5.3 (Intellectual Property Rights (Other Than Software)) applies to all Information delivered under the Contract and identified in Schedule 7 (Contract Data Requirements List), including that used and generated for any Lockheed Martin Contract with the Government of the United States of America, as being subject to this Condition 5.3 (Intellectual Property (Other Than Software)), except for “Software” covered by Condition 5.4 (Intellectual Property Rights in Software). However, Information shall not be considered Software merely because it is presented in machine-readable form.

5.3.3 Words and expressions used in this Condition 5.3 (Intellectual Property Rights (Other Than Software)) with initial capital have the meanings given to them in this Condition 5.3 (Intellectual Property Rights (Other Than Software)) or Condition 2.1 of this Contract (Definitions).

### Ownership

5.3.4 All Intellectual Property Rights in the design of Items, processes and materials covered by the Contract, and all Information relating to those Items, processes and materials shall, subject to any pre-existing rights of the Crown or any third party and to the terms of this Condition 5.3 (Intellectual Property (Other Than Software)), belong to the Contractor. As a minimum the Contractor shall secure sufficient rights in design of the Items, and for relating processes and materials covered by this Contract, to enable the Authority to exercise the rights granted under this Contract.

### Rights of Use

5.3.5 Subject to the provisions of this Condition 5.3 (Intellectual Property (Other Than Software)), the Authority and any other UK Government Department shall have during the period of the Contract

and at all times thereafter, the right, for the defence purposes of the UK Government, to copy in whole or in part, and use any Information to which this Condition 5.3 (Intellectual Property (Other Than Software)) applies to:

- a) **Monitoring and Evaluation**  
monitor work under the contract and inspect, test and evaluate the delivered Information and Items;
- b) **In Service Support**  
carry out Maintenance and Repair of equipment, owned or in use by the Authority;
- c) **Interfacing/Matching and Associated Equipment**  
define the relevant interfaces to enable Articles to interface or co-operate with other equipment, and using the resultant interfaces for the purposes of designing, developing and manufacturing such equipment;
- d) **Jigs, Tools and Test Equipment**  
design, develop and produce special jigs, tools and test equipment relating to Articles;
- e) **Competitive Procurement**  
manufacture Items (including Items to designs modified under Sub-Clause 5.3.5.g., or using any process, or producing or material was specifically required in the execution of the Contract;
- f) **Disposal of Items**  
dismantle, scrap or otherwise destroy any Items which are unserviceable or surplus to requirements;
- g) **Modification**  
modify the design of Items, including the carrying out of design investigations and production of design, manufacturing, user and other documentation, relating to the modification or the modified design.

### Sales

5.3.6 The Authority shall also have the right, subject to United States of America Government approval and conditions, to sell, hire, lease, or otherwise dispose of, any Items or materials manufactured in exercise of the rights granted under Sub-Clauses 5.3.5.b, 5.3.5.e and 5.3.5.g, which are either outworn or surplus stock. The Authority may also supply handbooks and other user/maintainer information, and updates thereto, to the recipient of Items from the Authority, and permit the recipient to copy and use such information for operation and maintenance of only the Items so received.

### Conditions of Use

5.3.7 The rights granted to the Authority, and to any other UK Government Department under Clauses 5.3.5 and 5.3.6 are additional to any rights under law, or any other contract, and shall include the right to copy and issue any necessary Information to prospective tenderers for the purposes of establishing their interest in tendering and of preparing tenders.

5.3.8 The rights set out in Clauses 5.3.4 and 5.3.5 may be exercised by the Authority itself, any other UK Government Department, or any agent acting on behalf of, or a contractor, in pursuance of a contract with the Authority or any such Department.

5.3.9 Except as provided in the Contract, no royalty or other payment to the Contractor, or sub-contractors, shall be required in respect of the rights granted under Clauses 5.3.4, 5.3.5, 5.3.6 or 5.3.7, notwithstanding the existence of any patent, registered design or other statutory right owned by the Contractor, or sub-contractor, and covering the items deliverable under the Contract, or any design, process or material described in Information deliverable under the Contract.

#### Third Party Rights

5.3.10 In addition to the requirements of Condition 5.6 (Third Party IPR), as soon as the Contractor becomes aware of any third party rights which would be infringed by the exercise of the rights granted under this Contract, the Contractor shall, if requested to do so by the Authority, endeavour to secure for the Authority those rights referred to in Clauses 5.3.4 and 5.3.5, and elsewhere in this Contract, in any third party rights notifiable to the Authority in accordance with this Condition, on terms and conditions to be agreed with, or approved by, the Authority.

#### Sub-Contracts

5.3.11 The Contractor shall not place any sub-contract of the design or development work under this Contract where the Intellectual Property Rights in the results of the work will not be vested in the Contractor, without the consent in writing of the Authority (not to be unreasonably withheld), which will normally be conditional on the sub-contractor concluding a direct agreement with the Authority in the terms of Schedule 8 (Design Rights and Patents – Sub-contractors Agreement). Regardless of whether the Authority requires such a direct agreement the Contractor shall nevertheless include conditions in the sub-contract to give effect to the provisions of Clauses 5.3.4, 5.3.5, 5.3.6 or 5.3.7.

#### Liability

5.3.12 In the event that Information, to which this Condition 5.3 (Intellectual Property (Other Than Software)) applies, is used by or for the Authority otherwise than for the purpose for which the Information was supplied, the Contractor shall have no liability whatsoever for any direct or indirect consequences, including losses, damages or injuries caused to the Authority or any third party, arising from its use. If an Item or Information is Modified by, or on behalf of the Authority, and such Modification is not carried out under the direction and control of the Contractor, then the Contractor shall only be liable in respect of the Item, or Information, to the same extent that he would have been liable if the Item, or Information, had not been modified.

#### Release of Information and Confidentiality

5.3.13 The Authority shall ensure that the extent of the Information released by itself, or any other UK Government Department, to any third party, in accordance with this Condition 5.3 (Intellectual Property (Other Than Software)), shall be limited to that necessary for the task on which the third party is engaged.

5.3.14 All information disclosed to the Authority, subject to this Condition 5.3 (Intellectual Property (Other Than Software)), is disclosed in confidence, and shall only be copied, disclosed and used, in accordance with the provisions of this Condition 5.3 (Intellectual Property (Other Than Software)). The Authority shall ensure that all disclosures of information to any third party shall be under express conditions of confidentiality between the Authority and the third party, and, at the request of the Contractor, shall allow the Contractor a period of forty-five (45) Business Days to agree with the recipient a direct confidentiality agreement in the form of DEFFORM 94.

#### Clarification of Data Packs

5.3.15 At the request of the Authority, or any other UK Government Department, at any time during the period for which the Contractor is required by this or any subsequent Contract to retain records relating to the Articles, the Contractor shall, subject to availability of resources, provide assistance to the Authority, the other UK Government Department, or its agents or contractors and the Government of the United States of America, in exercising the rights granted under this Condition 5.3 (Intellectual Property (Other Than Software)). Such assistance shall be limited to that required for a third party, of similar skill to the Contractor, to interpret any information supplied under the terms of this Contract. The Contractor shall be entitled to payment, on fair and reasonable terms, for any such assistance provided.

#### Marking

5.3.16 If any part of the Information delivered subject to this Condition 5.3 (Intellectual Property (Other Than Software)), is subject to any limitation notified to the Authority, it shall be marked by the Contractor in a manner which identifies the limitation upon the rights of the Authority. The Contractor may mark any Information supplied subject to this Condition 5.3 (Intellectual Property (Other Than Software)) with a copyright or other restrictive legend, provided that the legend acknowledges the Authority's rights under this Condition 5.3 (Intellectual Property (Other Than Software)). Any such marking shall be perpetuated in any copies of the Information made by the Authority, or any other United Government Department, or its agents or contractors.

#### Interpretation

5.3.17 The paragraph headings in this Condition 5.3 (Intellectual Property (Other Than Software)) are for convenience only and shall not affect the interpretation of the Condition 5.3 (Intellectual Property (Other Than Software)).

5.3.18 This Condition 5.3 (Intellectual Property (Other Than Software)) shall constitute an agreement to the contrary for the purposes of Section 48(5), and an assignment to the Contractor of future design right for the purposes of Section 223 of the Copyright, Designs and Patent Act 1988.

#### Improvements

5.3.19 For a period ending five (5) years after completion of the Contract, the Contractor shall inform the Authority of any modifications it makes to the design of Items covered by the Contract otherwise than at the request and expense of the Authority, and shall, if appropriate, offer the Authority a licence, on fair and reasonable terms, to extend the rights granted under Clauses 5.3.4, 5.3.5, 5.3.6 or 5.3.7 to those modifications.

#### Delivery of Data Pack

5.3.20 At any time during the period defined at Clause 5.3.19 above, the Authority has the right, on payment of a fair and reasonable sum, to require the Contractor to provide a full copy of the Data Pack, current at the time, for the purposes described in Clause 5.3.5.

### **5.4 INTELLECTUAL PROPERTY RIGHTS IN SOFTWARE**

#### 5.4.1 Definition and Interpretation

For the purposes of this Condition 5.4 (Intellectual Property Rights in Software):

“**Software**” shall mean all or any part of any

- a. Object Code (as defined below);

- b. Source Material (as defined below);
- c. Associated user documentation;
- d. Anything further specified as Software in the Statement of Requirements.

**“Deliverable Software”** shall mean the Software delivered, or to be delivered, or which forms an integral part of any article delivered, or to be delivered, by the Contractor to the Authority, in accordance with the requirements of the Contract.

**“Object Code”** shall mean machine code executable by a data processing system.

**“Source Material”** shall mean that material, taken individually or in any combination thereof, which is:

- a) Source Code, that is to say a representation of Object Code in or readily translatable into, a form suitable for human understanding and transformable into the Object Code;
- b) a representation, or identification of the data processing system configuration, computer programs, procedures, rules and associated documentation, generated by, or for, the Contractor under the Contract;
- c) a representation, or identification of the data processing system configuration, computer programs, procedures, rules and associated documentation, used to generate the Object Code but not generated by, or for the Contractor under the Contract, when in sufficient detail and suitable form, subject to Clause 5.4.5, to permit replication of such data processing system configuration, computer programs, procedures, rules and associated documentation, independently of the Contractor;
- d) subject to Clause 5.4.5, and to the extent necessary to enable modification and testing of the Object Code independently of the Contractor, documentation on the specification, design rules, design, testing, analysis, function, usage and capabilities of the Object Code, and of the material at limbs i, ii and iii of the definition of “Source Material”.

**“to modify”** shall mean to change, or alter whether by means of adaptation, translation, extension, reduction by means of merging with other material, or by any other means, and the works **“modified”** and **“modification”** shall be construed accordingly;

**“the Relevant Period”** shall mean the currency of the Contract plus a period of five (5) years from the completion of the Contract. Completion of the Contract shall be deemed to occur on the date when all work under the Contract is completed; the Contractor shall endeavour to ensure that the relevant period in any sub-contract shall expire on the same date as that applicable under the definition of “Relevant Period” above to this Condition 5.4 (Intellectual Property Rights in Software) but shall consult the Authority if that is not achievable;

**“IPR”** means Intellectual Property Rights;

**“Non risk contract”** shall mean a contract placed on a cost reimbursement basis (whether with a fixed fee element or a percentage profit) which insulates the Contractor against loss;

**“Risk contract”** shall mean all contracts with a pricing arrangement which does not insulate the Contractor against loss.

5.4.2 The paragraph headings contained in this Condition 5.4 (Intellectual Property Rights in Software) shall not affect the interpretation thereof.

#### Ownership

5.4.3 The Contractor shall use all reasonable endeavours to ensure that all IPR in any Software generated under the Contract shall be the property of, and vest in the Contractor, subject to any pre-existing rights of the Crown, or of third parties. As a minimum the Contractor shall secure sufficient rights in any Software generated under this Contract to enable the Authority to exercise the rights granted under this Contract.

#### User Rights and Related Payments

5.4.4 The Contractor grants to the Authority, and all other United Kingdom Government Departments, during the period of this Contract and at all times thereafter, to the extent that he has the right to do so, the right, exercisable without payment to the Contractor:

- a) to copy, modify, use, support and maintain any Deliverable Software for the defence purposes of the United Kingdom Government, whether by themselves, their agents or their contractors;
- b) to issue any Deliverable Software, or copies of any Deliverable Software, to any contractor or potential contractor, to the United Kingdom Government, for the purpose of use only in connection with a contract, or the tendering for a proposed contract, for a United Kingdom Government Defence purpose.

5.4.5 The Contractor shall notify the Authority as soon as he becomes aware of any limitations as to the use of any Deliverable Software, the IPR in which are owned by the Contractor or a third party. The Contractor shall also give to the Authority full details of the provisions of such limitations, and any associated cost, as soon as he becomes aware of them.

5.4.6 Except as provided for by Sub-Clause 5.4.10.b, the Authority shall have a right to exercise any of the rights referred to in Clause 5.4.4 in respect of Deliverable Software notified to the Authority in accordance with Clause 5.4.5, the IPR in which are owned by the Contractor, and was not used under any CCTT Contract with the Government of the United States of America, subject to fair and reasonable terms. The exercising of any such right shall not be conditional upon prior agreement on the amount of or the making of any payment therefor.

5.4.7 The Authority shall have the free right to exercise any of the rights referred to in Clause 5.4.4 in respect of Deliverable Software notified to the Authority in accordance with Clause 5.4.5, the IPR in which are owned by the Contractor, and which were used by the Contractor for any CCTT Contract with the Government of the United States of America.

5.4.8 The Contractor shall, if requested to do so by the Authority, endeavour to secure for the Authority those rights listed at Clause 5.4.4, and elsewhere in this Contract, in Deliverable Software notifiable to the Authority in accordance with Clause 5.4.5, the IPR in which are owned by a third party on terms and conditions to be agreed with, or approved by the Authority.

5.4.9 Subject to the provisions of Clause 5.4.5, but notwithstanding the provisions of Clause 5.4.16 and provided that such actions do not violate U.S. export laws, the Contractor grants to the Authority the right to issue the Deliverable Software, in whole or in part or a copy thereof, only to the government(s) of the nation(s) of information exchange arrangements for defence purposes, provided that the recipient government is placed under an obligation not to use Deliverable Software

so released for other than information purposes, or to disclose it to a third party. Provided that, where the supply of Source Code is contemplated, and subject to any pre-existing rights of the Authority, this Clause shall only apply to the work, or any part of the work, or any copy of the work, or any part thereof, if such work, or part thereof, is generated under the Contract.

#### Other Software Generated under the Contract

5.4.10 Should, during the Relevant Period, the Authority require the Contractor to deliver any Software generated under the Contract but which is not Deliverable Software:

- a) where the Contract has yet to be priced, or has been, or is to be priced on a non risk basis, then such Software as is required by the Authority shall be delivered by the Contractor to the Authority within a reasonable period, as a minimum as it exists at the date on which the Authority makes its requirement known in writing to the Contractor, and from that date such Software shall be deemed to be Deliverable Software;
- b) where the Contract has been priced on a risk basis, whether by negotiation or under competition, then such Software as is required by the Authority shall be delivered by the Contractor to the Authority within a reasonable period, and on fair and reasonable terms, as a minimum as it exists at the date on which the Authority makes its requirement known in writing to the Contractor, and from that date such Software shall be deemed to be Deliverable Software (except for the purposes of Clause 5.4.5). provided always that the Authority shall not be liable to pay more than once for the supply of Software required by the Authority. Delivery to the Authority shall not be conditional upon prior agreement on the need for the amount of, or the making of any payment therefor.

5.4.11 Notwithstanding anything to the contrary herein, other than in respect of any actual or alleged infringement of Copyright, breach of confidence, or IPR-related breach of contract, the Contractor shall have no liability whatsoever in respect of any consequence arising from the possession or use by, or on behalf of, the Authority, of any such Software which is deemed to be Deliverable Software pursuant to Clause 5.4.10.

#### Subsequent Deliveries of Software

5.4.12 During the Relevant Period, the Contractor shall, at the request, and to the requirements of, the Authority, and to the extent he is able to do so in relation to third party software:

- 1) deliver further copies of the Deliverable Software to the Authority at a reasonable charge based on the cost of providing such copies;
- 2) where the Contractor is unable or unwilling to support, maintain or modify the Deliverable Software, deliver all Software, including such records as are specified in Clause 5.4.11, necessary for the Authority, its contractors, or agents to independently support, maintain or modify the Deliverable Software for the services of the United Kingdom Government. All such Software shall be supplied on fair and reasonable terms but delivery shall not be conditional upon prior agreement on the need for, the amount of, or the making of any payment therefore.

5.4.13 The Contractor shall retain for the Relevant Period a copy of such Software as is required for the performance of their obligations under Clause 5.4.12.

5.4.14 If the Software generated under the Contract is subsequently modified by, or on behalf of, the Contractor for the Authority, the Software to be retained under Clause 5.4.13, shall be the latest

modified version and any other version that may be specified by the Authority no later than the time of delivery of the succeeding modified version. The Contractor shall additionally maintain sufficient records to enable the changes introduced by each modification to be identified so as to provide traceability back to the version originally accepted by, or for, the Authority.

#### Confidentiality

5.4.15 The Authority undertakes to:

- a) receive and hold in confidence all Deliverable Software;
- b) enforce all reasonable regulations and precautions upon the officers, agents, contractors and employees of the Authority, and of all other United Kingdom Government Departments, in order to preserve the confidential nature of the Deliverable Software;
- c) not disclose the Deliverable Software outside United Kingdom Government Departments and Establishments, except as expressly permitted by any other provision of this Condition 5.4 (Intellectual Property Rights in Software) or, otherwise expressly agreed in writing by the Contractor.

5.4.16 The Authority shall, subject to Clauses 5.4.17 and 5.4.18, and to the provisions of Condition 5.2 (International Collaboration), before disclosing any Deliverable Software outside United Kingdom Government Departments and Establishments, make it a pre-requisite of the disclosure, unless otherwise agreed in writing by the Contractor, that the recipient shall enter into a confidentiality agreement with the Contractor whereby the recipient's use of the Deliverable Software is limited to use for the services of the United Kingdom Government. A confidentiality agreement shall be concluded within thirty (30) days, or whatever other period as may be mutually agreed by the Authority and the Contractor, of the Authority giving written notice to the Contractor of their intention to make the disclosure. If a confidentiality agreement is not concluded within that period then, notwithstanding the absence of a confidentiality agreement, the Authority shall have the right to make the disclosure on condition that in making the disclosure the Authority shall place upon the recipient an obligation of confidence and a limitation of use as aforesaid. In these circumstances the Authority shall;

5.4.16.1 consult with the Contractor on the measure(s) to be employed to protect any trade secrets, know how or other information in the Deliverable Software;

5.4.16.2 have regard to any representation made by the Contractor at any time before disclosure takes place as to the protection of any trade secrets, know how or other information in the Deliverable Software;

5.4.16.3 give consideration to any proposals the Contractor may make for:

- a) the preparation of a special version of the Deliverable Software;
- b) the disclosure of the Deliverable Software in parts of stages;
- c) restrictions on the circulation, copying, or use of the Deliverable Software to be disclosed.

5.4.17 The obligations imposed by Clauses 5.4.15 and 5.4.16 shall not apply to such of the Deliverable Software that:

- a) is, or becomes, rightfully in the possession of the Authority without relevant restrictions;
- b) is in, or enters, the public domain without breach of the contract, and is available for unrestricted use;
- c) is received by the Authority from a third party who himself has the right to disclose without relevant restrictions;
- d) is, or was, independently developed by the Authority;
- e) is approved by the Contractor, in writing, for unrestricted release by the Authority.

5.4.18 Notwithstanding the provisions of this Condition 5.4 (Intellectual Property Rights in Software) relating to the disclosure of the Deliverable Software, the Authority shall be entitled to disclose the Deliverable Software after notification in writing to the Contractor, by the Authority's CVS Commercial Manager or their representative, that he considers it to be in the National Interest to do so. Save where the Authority considers that immediate disclosure is in the National Interest, the Authority will endeavour to give the Contractor a reasonable opportunity to make representations about such disclosure. However, the Authority's decision shall be final and conclusive. In making the disclosure in this circumstance the Authority shall place upon the recipient an obligation of confidence and a limitation of use as set out in Clauses 5.4.15 and 5.4.16.

#### Output

5.4.19 Subject to the rights of the Contractor and third parties, the Authority shall have the right, free of charge, to use in any manner, and for any purpose, anything which has been produced by, or for, the Authority with the aid of any Deliverable Software, PROVIDED THAT, if the result so produced reproduces or discloses the whole, or a significant part, of any of the Software used or generated in the performance of this Contract, then such shall be deemed to be Deliverable Software and subject to the provisions of the Contract. If, however, the material produced contains other information, the IPR in which are owned by the Contractor or a third party, and in which the Authority has no user rights, then the conditions under which that information has been made available to the Authority shall prevail in respect of such other information.

5.4.20 If Deliverable Software is required by the Authority under the Contract for the purpose of producing an output for incorporation in a data processing system then, notwithstanding Clause 5.4.19, or any other provision of the Contract, the Authority shall have the right to use, or have used, free of charge, such output for the services of the United Kingdom Government.

#### Marking

5.4.21 The Contractor may mark or include in any Deliverable Software to which this Condition 5.4 (Intellectual Property Rights in Software) applies, a copyright notice, provided that such copyright notice acknowledges the Authority's rights under this Condition 5.4 (Intellectual Property Rights in Software). Any such notice shall be perpetuated in any copies of the Deliverable Software made by the Authority, or any other United Kingdom Government Department, or its agents, or contractors.

#### Commercial Exploitation Levy (see also Condition 5.9 (Commercial Exploitation))

5.4.22 The terms and conditions relating to the Commercial Exploitation of IPR developed under the Contract are detailed in Schedule 6 (Commercial Exploitation). The Contractor shall agree with the Authority the sum, or sums (if any), which shall be paid to the Authority in respect of Software

generated under the Contract, having regard to the amounts paid, or payable to the Contractor, by the Authority, under the Contract before:

5.4.22.1 assigning, selling, or otherwise disposing of, any IPR subsisting in such Software;

5.4.22.2 disclosing, licensing, or selling, any material reproducing such Software;

5.4.22.3 using any such Software for the purpose of generating any Software for disclosure, licensing, or sale, to a third party.

#### Modified Software

5.4.23 Should Software generated under the Contract be modified at any time, then each party shall enjoy the same rights, and be bound by the same obligations provided by this Condition, in respect of any of those parts of the modified Software which were present in the Software prior to modification.

#### Liability and Indemnities

5.4.24 The Contractor shall at all times indemnify and keep indemnified the Authority, or any other United Kingdom Government Department, in respect of all costs, claims, demands, damages, liabilities and expenses made against, or incurred by, the Authority, or any other United Kingdom Government Department:

5.4.24.1 arising directly from any actual, or alleged infringement or copyright, or breach of confidence, or IPR – related breach of Contract;

5.4.24.2 arising indirectly from any actual, or alleged infringement or copyright, or breach of confidence, or IPR – related breach of Contract;

by the Contractor, as a result of the copying, modification, use or possession of the Deliverable Software by, or on behalf of the Authority, or any other United Kingdom Government Department or their respective agents or contractors.

5.4.25 In the event that any claim is made against the Authority in respect of which the Authority is entitled to be indemnified in accordance with the provisions of Clause 5.4.24 above then:

5.4.25.1 the Authority shall promptly notify the Contractor in writing of such costs, claims, demands, damages, liabilities and expenses, of which it shall have notice and shall provide the Contractor with such information regarding the claim as the Contractor shall reasonably require, PROVIDED THAT, the Authority shall not be obliged to disclose any information, the disclosure of which, would prejudice any right or interest of the Crown;

5.4.25.2 unless there is a statutory obligation to do so, the Authority shall not make any statement which may be prejudicial to the settlement, or defence, of such claim, without the prior written consent of the Contractor;

5.4.25.3 when requested by the Contractor the Authority shall allow the Contractor, at the Contractor's expense, to conduct all negotiations, and litigation, and shall give the Contractor all reasonable assistance in connection therewith, PROVIDED THAT:

- 1) the Contractor shall have first given to the Authority an unconditional written admission of their liability to indemnify the Authority in accordance with the provisions of Clause 5.4.24 above;

- 2) at the request of the Authority the Contractor shall keep the Authority fully informed about the conduct, and progress, of such negotiations and proceedings;
- 3) the Authority shall have the right to intervene, or assume responsibility for the conduct of such proceedings, or any consequent settlement thereof, at any time, PROVIDED THAT, the Contractor shall not be liable to indemnify the Authority under this Condition against any liability, or any part of the damages, costs or expenses, to the extent that such liability, or part, is incurred by the Authority by reason of any breach by the Authority of Sub-Clause 5.4.25.2, or by the Authority acting unreasonably, either in the conduct of any negotiations or legal proceedings, or on making of any settlement in relation to any claim or demand.

5.4.26 If at any time an allegation of infringement of copyright or breach of confidence, or breach of contract, is made as a result of the copying, modification, use, or possession of, the Deliverable Software, or any part thereof, the Contractor may, with the agreement of the Authority, and at the Contractor's own expense, modify the Deliverable Software, or any part thereof, or replace the same with an item of equivalent functionality and performance, so as to avoid infringement or breach.

5.4.27 Except as may be otherwise agreed, the foregoing provisions shall not apply in so far as any costs, claims, demands, damages, liabilities and expenses are in respect of:

- a) any use of Deliverable Software not reasonably to be inferred from the specification requirements of the Authority;
- b) the refusal by the Authority, or such other United Kingdom Government Department, to use, or have used, a modified or replacement item supplied pursuant to Clause 5.4.26;
- c) the use of any Deliverable Software made after, and in contravention of, a judicial decision relating to such Deliverable Software.

5.4.28 The Contractor shall have no liability in respect of any Deliverable Software modified by, or on behalf of, the Authority, other than Deliverable Software modified under the direction, and control, of the Contractor himself, PROVIDED THAT, the exclusion of liability contained in this Clause shall not apply in circumstances where the Contractor would be liable under the terms of the Contract whether or not the Deliverable Software has been modified.

5.4.29 Where the Contractor is not liable under the provisions of Clause 5.4.28, then the Authority shall indemnify, and keep indemnified, the Contractor in respect of all costs, claims, demands, damages, liabilities and expenses made against, or incurred by, the Contractor:

- a) arising directly from any actual, or alleged infringement or copyright, or breach of confidence, or IPR – related breach of Contract;
- b) arising indirectly from any actual, or alleged infringement or copyright, or breach of confidence, or IPR – related breach of Contract;

as a result of the copying, modification, use or possession, of any modified Deliverable Software by, or on behalf of, the Authority, or any other United Kingdom Government Department, or their respective agents or contractors, or by any government which received it in accordance with the provisions of Clause 5.4.29.a.

5.4.30 Where the Authority supplies, or causes to be supplied, Software to the Contractor for use, or instructs the Contractor to use Software, in the performance of the Contract, and that Software

was not previously supplied to the Authority by the Contractor, then the Authority shall indemnify, and keep indemnified, the Contractor in respect of all costs, claims, demands, damages, liabilities and expenses made against or incurred by the Contractor:

- a) arising directly from any actual or alleged infringement of copyright, or breach of confidence, or IPR-related breach of contract;
- b) arising indirectly from any actual or alleged infringement of copyright, or breach of confidence, or IPR-related breach of contract;

as a result of the copying, modification, use or possession of such Software by the Contractor, solely for the performance of the Contract.

5.4.31 In the event that any claim is made against the Contractor in respect of which the Contractor is entitled to be indemnified in accordance with the provisions of Clauses 5.4.29 and 5.4.30 above then:

- a) the Contractor shall promptly notify the Authority, in writing, of such costs, claims, demands, damages, liabilities and expenses, of which he himself shall have notice and shall provide the Authority with such information regarding the claim as the Authority shall reasonably require;
- b) the Contractor shall not make any statement which may be prejudicial to the settlement, or defence, of such claim without the prior written consent of the Authority;
- c) when requested by the Authority, the Contractor shall allow the Authority, at the Authority's expense, to conduct all negotiations and litigation, and shall give the Authority all reasonable assistance in connection therewith, PROVIDED THAT:
  - 1) the Authority shall have first given to the Contractor an unconditional written admission of its liability, to indemnify the Contractor in accordance with the provisions of Clauses 5.4.29 and 5.4.30;
  - 2) at the request of the Contractor, the Authority shall keep the Contractor fully informed about the conduct and progress of such negotiations and proceedings.

5.4.32 The foregoing states the entire liability of the Authority and the Contractor with respect to any actual, or alleged infringement of copyright, or breach of confidence or IPR-related breach of contract, arising from the copying, modification, use or possession of:

- a) the Deliverable Software by, or on behalf of, the Authority or any other United Kingdom Government Department;
- b) the Software referred to in Clause 5.4.30 by the Contractor.

5.4.33 This Condition 5.4 (Intellectual Property Rights in Software) shall constitute an "agreement to the contrary" for the purposes of Section 48 of the Copyright, Design and Patents Act 1988.

#### Commercial Off-the-Shelf Software Licences

5.4.34 Unless otherwise agreed by the Authority, where the Contractor secures a licence in respect of third party software, such licence shall either:-

- 5.4.34.1 be in the name of the Authority with a right for the Authority to sub-licence it; or

5.4.34.2 be freely novatable to the Authority or its appointed contractor on termination or expiry of this Contract.

The term of such licence shall, as a minimum, extend for one (1) year beyond the term of this Contract.

## **5.5 INVENTIONS AND DESIGNS**

### Crown Rights and Ownership of Patents and Registered Designs

5.5.1 The provisions of either of Part I and II hereof or of Part II only as applicable to the security classification of the Contract shall apply in relation to any invention or design made in the course of or resulting from work carried out by the Contractor under the Contract (hereinafter respectively referred to as "the invention" and the "design").

5.5.2 Where any invention or design to which the provisions of this Condition 5.5 (Inventions and Designs) apply is made outside the UK and where local laws so require any application may, notwithstanding the provisions of Clause 5.5.5, be made under conditions of secrecy at the local patent office of the territory where the invention or design was made. Where local laws so require the supply of a copy of the application under Clause 5.5.5 shall be subject to any necessary approval of the local patent office, but the application number and date of filing shall be notified to the Authority in all cases.

### PART I - CONTRACTS FOR WORK CLASSIFIED AS "OFFICIAL SENSITIVE" OR HIGHER

5.5.3 The Contractor shall ensure that he and any Patent Agent or Attorney engaged by him shall treat the invention or design as bearing a Security Classification at least as high as the work to which it relates pending formal determination of its appropriate classification.

5.5.4 The preparation and filing of applications to which Clauses 5.5.3, 5.5.4, and 5.5.5 relate shall be handled by the Contractor's own Patent Department under the conditions of security applicable under the Contract. If the Contractor does not have their own Patent Department he shall, before initiating the preparation of any application, secure the written agreement of the Authority as to the Patent Agent or Attorney that he proposes to employ for the preparation and filing of such an application.

For the purpose of this Clause 5.5.4 the address of the Authority shall be:

Defence Equipment and Support (DE&S),  
DIPR-LS  
Poplar 2, #2214  
Ministry of Defence,  
MoD Abbey Wood  
Bristol BS34 8JH

5.5.5 Every application to which Clauses 5.5.3, 5.5.4 and 5.5.5 relate, whether filed by the Contractor or by a Patent Agent or Attorney engaged by him, shall be filed direct with the Security Section of the UK Patent Office, who shall be notified at the time of filing that the invention or design forming the subject of the application is related to classified Government work. The notification shall also quote the number of the Contract and the name and address of the Authority.

### PART II - ALL CONTRACTS

5.5.6 The Contractor shall ensure, to the extent he is legally able to do so, that any invention to which this Condition 5.5 (Inventions and Designs) relates and made by an employee of the Contractor in the course of duties as defined in Section 39(1) of the Patents Act 1977 and any design to which this Condition 5.5 (Inventions and Designs) relates and made by an employee of the Contractor shall vest in the Contractor.

5.5.7 The Contractor shall within sixty (60) days of filing a first patent application or any subsequent patent application claiming priority from a first patent application and directed towards obtaining protection in the UK (including a European Patent Application or an International Patent Application designating the UK) for the invention or any application for registration of the design provide the Authority with a copy of that application together with the number of the Contract.

5.5.8 The Contractor shall promptly notify the Authority if he becomes aware of any application as aforesaid by any person who is, or has been an employee or agent of the Contractor or a sub-contractor and provide the Authority with relevant particulars insofar as he can obtain them and has the right to provide them.

5.5.9 If an employee of the Crown is a joint inventor of the invention or part author of the design to which any application as is referred to in Clauses 5.5.3, 5.5.4 and 5.5.5 above relates and the portion of or share in the invention or design made by that employee belongs to the Crown and neither the Crown nor that employee is the person, or one of the persons, making the application, the Contractor shall, if so requested by the Authority, take all such steps and do all such things as are in their power and as may be necessary to ensure either that the Authority or the employee concerned joins in the application or, at the option of the Contractor, and if the application is one for a patent, that it is either withdrawn or amended by the deletion from the application of any reference to that part of the invention made by the employee of the Crown, or, if the application is one for a Registered Design, that it is withdrawn.

5.5.10 If an employee of the Crown is a party to any such application as is mentioned in Clauses 5.5.3, 5.5.4, 5.5.5 and 5.5.9 above and the Authority so requests, the Contractor shall at the expense of the Authority take such reasonable steps as are in their power and may from time to time be necessary to ensure that the Authority is substituted for the employee of the Crown as co-applicant and shall give all such consents and do all such things as may from time to time be necessary to enable:

- a) the employee of the Crown to assign to the Authority their interest in the application and in any Patent or Registered Design granted pursuant thereto, and the Authority to assign its own interest therein to the National Research Development Corporation;
- b) Provided that the Contractor is not required by this Condition 5.5 (Inventions and Designs) to consent to any assignment other than that specifically referred to herein.

Subject to the provisions of Clauses 5.5.9 and 5.5.10 above and to the rights of the Authority as set out in Clause 5.5.11 below the invention or design shall belong to the Contractor.

5.5.11 Any Government Department and any person authorised by a Government Department may in any part of the world do in relation to the invention any act as defined in Section 55(1) (a) to (e) of the Patents Act 1977 or use the design for the services of the Government of the United Kingdom.

5.5.12 Subject to Clause 5.5.19 the Contractor shall not be entitled to any payment whatsoever in respect of anything done in accordance with Clause 5.5.11 above (whether by the Authority, a Government Department or any person whomsoever) and if any directions relating to the invention are given under Section 22(1) or 22(2) of the Patents Act 1977 the Contractor shall not have any claim for any such compensation as is mentioned in Section 22(7)(b).

5.5.13 If any question under this Condition 5.5 (Inventions and Designs) shall arise between the Contractor and the Authority as to whether an employee of the Crown is a joint inventor of the invention or a part author of the design or as to whether the invention or design was made in the course of or resulted from work carried out by the Contractor under the Contract, that question shall be referred for decision to such person as may be agreed upon between the Contractor and the Authority or in default of such agreement as may be appointed by the President for the time being of the Chartered Institute of Patent Agents, and the decision of any such person on that question shall be final and conclusive.

5.5.14 The Contractor shall at the request and expense of the Authority take all such reasonable steps as are within their power and may from time to time be necessary to enable the Authority to register in the UK Patent Office or elsewhere its interest in the invention or design.

5.5.15 The rights conferred by this Condition 5.5 (Inventions and Designs) shall be in addition to and not in derogation of the rights exercisable by virtue of Sections 55 to 59 of the Patents Act 1977 and Section 12 of the Registered Designs Act 1949.

5.5.16 In this Condition 5.5 (Inventions and Designs) references to a Government Department are references to a Department of Her Majesty's Government in the United Kingdom.

5.5.17 The foregoing provisions of this Condition 5.5 (Inventions and Designs) shall have effect both during the period the Contractor is carrying out the other provisions of the Contract and at all times thereafter.

5.5.18 The Contractor shall include, in any sub-contract which he may enter into for the purpose of the Contract, provisions as in this Condition 5.5 (Inventions and Designs), but with the substitution therein of references to the sub-contractor for references to the Contractor, and of references to the sub-contract for references to the Contract, and the Contractor shall at all times use all reasonable endeavours to secure the full and effectual observance by the sub-contractor of those provisions and that the Authority and all Government Departments obtain the benefit thereof, and to advise the Authority if he becomes aware of any breach of the provisions. Provided that this Clause shall only apply to any sub-contract for the carrying out of any work for research, design or development under the Contract.

5.5.19 Nothing herein shall prejudice the rights of either party arising otherwise than by virtue of this Condition 5.5 (Inventions and Designs).

5.5.20 If an extra copy of the Patent Application or the application for registration of the design has been provided to the Patent Office for onward transmission to the Authority then that copy will be regarded as having been provided for the purpose of this Condition 5.5 (Inventions and Designs) and no separate copy need be sent to the Authority direct provided that the Contractor indicates on the copy sent to the Patent Office for onward transmission to the Authority the number of the Contract.

5.5.21 Any communication from the Authority to the Contractor on the subject of this Condition is to be addressed to the Contractor's address for service for the application.

## **5.6 THIRD PARTY IPR**

### **Commercial and Non-Commercial Articles and Services - Notifications**

5.6.1 As he becomes aware, the Contractor shall immediately notify the Authority of:

- a) any invention or design the subject of Patent or Registered Design rights (or application therefor) owned by a third party which appears to be relevant to the performance of the Contract or to use by the Authority of anything required to be done or delivered under the Contract;
- b) any restriction as to disclosure or use or obligation to make payments in respect of any other intellectual property (including technical information) required for the purposes of the Contract or subsequent use by the Authority of anything delivered under the Contract and, where appropriate, the notification shall include such information as is required by Section 2 of the Defence Contracts Act 1958;
- c) any allegation of infringement of intellectual property rights made against the Contractor and which pertains to the performance of the Contract or subsequent use by the Authority of anything required to be done or delivered under the Contract.

This Clause 5.6.as does not apply in respect of Articles or Services normally available from the Contractor as a Commercial Off the Shelf (COTS) item or service.

5.6.2 If the information required under this Condition 5.6 (Third Party IPR) has been notified previously, the Contractor may meet their obligations by giving details of the previous notification.

#### Patents and Registered Designs in the UK – COTS Articles or Services

5.6.3 In respect of any question arising (by way of an allegation made to the Authority or Contractor, or otherwise) that the manufacture or supply under the Contract of any Article or Service normally available from the Contractor as a COTS item or service is an infringement of a United Kingdom Patent or Registered Design not owned or controlled by the Contractor or the Authority, the Contractor shall, subject to the agreement of the third party owning such Patent or Registered Design, be given exclusive conduct of any and all negotiations for the settlement of any claim or the conduct of any litigation arising out of such question. The Contractor shall indemnify the Authority, its officers, agents and employees against any liability and cost arising from such allegation. This Condition 5.6(Third Party IPR) will not apply if:

- a) the Authority has made or makes an admission of any sort relevant to such question;
- b) the Authority has entered or enters into any discussions on such question with any third party without the prior written agreement of the Contractor;
- c) the Authority has entered or enters into negotiations in respect of any relevant claim for compensation in respect of Crown Use under Section 55 of the Patents Act 1977 or Section 12 of the Registered Designs Act 1977;
- d) legal proceedings have been commenced against the Authority or the Contractor in respect of Crown Use, but only to the extent of such Crown Use that has been properly authorised.

5.6.4 The indemnity in Clause 5.6.3 does not extend to use by the Authority of anything supplied under the Contract where that use was not reasonably foreseeable at the time of the Contract.

5.6.5 In the event that the Authority has entered into negotiation in respect of a claim for compensation, or legal proceedings in respect of the Crown Use have commenced, the Authority shall forthwith authorise the Contractor for the purposes of performing the Contract (but not otherwise) to utilise a relevant invention or design in accordance with Sections 55 and 56 of the Patents Act 1977 or Section 12 of the Registered Designs Act 1949 and to use any model, document or information relating to any such invention or design which may be required for that purpose.

## Patents and Registered Designs in the UK - All Other Articles or Services

5.6.6 If a relevant invention or design has been notified to the Authority by the Contractor prior to the date of the Contract, then unless it has been otherwise agreed, under the provisions of Sections 55 and 56 of the Patents Act 1977 or Section 12 of the Registered Designs Act 1949, the Contractor is hereby authorised to utilise that invention or design, notwithstanding the fact that it is the subject of a United Kingdom Patent or United Kingdom Registered Design, for the purpose of performing the Contract.

5.6.7 If, under Clause 5.6.1, a relevant invention or design is notified to the Authority by the Contractor after the date of Contract, then:

- a) if the owner (or their exclusive licensee) takes or threatens in writing to take any relevant action against the Contractor, the Authority shall issue to the Contractor a written authorisation in accordance with the provisions of Sections 55 and 56 of the Patents Act 1977 or Section 12 of the Registered Designs Act 1949, and
- b) in any event, unless the Contractor and the Authority can agree an alternative course of action, the Authority shall not unreasonably delay the issue of a written authorisation in accordance with the provisions of Sections 55 and 56 of the Patents Act 1977 or Section 12 of the Registered Designs Act 1949.

## Patents, Utility Models and Registered Designs outside the UK

5.6.8 The Authority shall assume all liability and shall indemnify the Contractor, its officers, agents and employees against liability, including the Contractor's reasonably incurred costs, as a result of infringement by the Contractor or their suppliers of any Patent, Utility Model, Registered Design or like protection outside the United Kingdom in the performance of the Contract when such infringement arises from or is incurred by reason of the Contractor following any specification, statement of work or instruction in the Contract or using, keeping or disposing of any item given by the Authority for the purpose of the Contract in accordance with the Contract.

5.6.9 The Contractor shall assume all liability and shall indemnify the Authority, its officers, agents and employees against liability, including the Authority's costs, as a result of infringement by the Contractor or their suppliers of any Patent, Utility Model, Registered Design or like protection outside the United Kingdom in the performance of the Contract when such infringement arises from or is incurred otherwise than by reason of the Contractor following any specification, statement of work or instruction in the Contract or using, keeping or disposing of any item given by the Authority for the purpose of the Contract in accordance with the Contract.

## Royalties and other Licence Fees

5.6.10 The Contractor shall not be entitled to any reimbursement of any royalty, licence fee or similar expense incurred in respect of anything to be done under the Contract, where:

- a) a relevant discharge has been given under Section 2 of the Defence Contracts Act 1958, or relevant authorisation in accordance with Sections 55 or 57 of the Patents Act 1977, Section 12 of the Registered Designs Act 1949 or Section 240 of the Copyright, Designs and Patents Act 1988 in respect of any intellectual property, or
- b) any obligation to make payments for intellectual property has not been immediately notified to the Authority under Clause 5.6.1.

5.6.11 Where an authorisation is given by the Authority under Clause 5.6.5, Clause 5.6.6 or Clause 5.6.7, to the extent permitted by Section 57 of the Patents Act 1977, Section 12 of the Registered Designs Act 1949 or Section 240 of the Copyright, Designs and Patents Act 1988, the Contractor shall also be:

- a) released from payment whether by way of royalties, licence fees or similar expenses in respect of the Contractor's use of the relevant invention or design, or the use of any relevant model, document or information for the purpose of performing the Contract, and
- b) authorised to use any model, document or information relating to any such invention or design which may be required for that purpose.

#### Copyright, Design Rights etc.

5.6.12 The Contractor shall assume all liability and indemnify the Authority and its officers, agents and employees against liability, including costs as a result of:

- a) infringement or alleged infringement by the Contractor or their suppliers of any copyright, database right, design right or the like protection in any part of the world in respect of any item to be supplied under the Contract or otherwise in the performance of the Contract;
- b) misuse of any confidential information, trade secret or the like by the Contractor in performing the Contract;
- c) provision to the Authority of any information or material which the Contractor does not have the right to provide for the purpose of the Contract.

5.6.13 The Authority shall assume all liability and indemnify the Contractor, its officers, agents and employees against liability, including costs as a result of:

- a) infringement or alleged infringement by the Contractor or their suppliers of any copyright, database right, design right or the like protection in any part of the world in respect of any item provided by the Authority for the purpose of the Contract but only to the extent that the item is used for the purpose of the Contract;
- b) alleged misuse of any confidential information, trade secret or the like by the Contractor as a result of use of information provided by the Authority for the purposes of the Contract, but only to the extent that the Contractor's use of that information is for the purposes intended when it was disclosed by the Authority.

#### Authorisation and Indemnity – General

5.6.14 Liability under this Condition shall be unlimited.

5.6.14.1 The above represents the total liability of each party to the other under the Contract in respect of any infringement or alleged infringement of Patent or other Intellectual Property Right owned by a third party.

5.6.14.2 Neither party shall be liable, one to the other, for any consequential loss or damage arising as a result, directly or indirectly, of a claim for infringement or alleged infringement of any Patent or other Intellectual Property Right owned by a third party.

5.6.14.3 A party against whom a claim is made or action brought, shall immediately notify the other party in writing if such claim or action appears to relate to an infringement which is the subject of an indemnity or authorisation given under this Condition 5.6 (Third Party IPR) by such other party. The notification shall include particulars of the demands, damages and liabilities claimed or made of which the notifying party has notice.

5.6.14.4 The party benefiting from the indemnity or authorisation shall allow the other party, at its own expense, to conduct any negotiations for the settlement of the same, and any litigation that may arise there from and shall provide such information as the other party may reasonably require.

5.6.14.5 Following a notification under Clause 5.6.14.3, the party notified shall advise the other party in writing within thirty (30) days whether or not it is assuming conduct of the negotiations or litigation. In that case the party against whom a claim is made or action brought shall not make any statement that might be prejudicial to the settlement or defence of such a claim without the written consent of the other party.

5.6.14.6 The party conducting negotiations for the settlement of a claim or any related litigation shall, if requested, keep the other party fully informed of the conduct and progress of such negotiations.

#### 5.6.15

5.6.15.1 If at any time a claim or allegation of infringement arises in respect of copyright, database right, design right or breach of confidence as a result of the provision of any item by the Contractor to the Authority, the Contractor may at its own expense replace the item with an item of equivalent functionality and performance so as to avoid infringement or breach;

5.6.15.2 The parties will co-operate with one another to mitigate any claim or damage which may arise from use of third party intellectual property rights.

#### Sub-contracts

5.6.16 The Contractor shall secure from any sub-contractor, the prompt notification to the Authority of the information required by Clause 5.6.1. In addition the Contractor may pass the benefits and obligations of this Condition 5.6 (Third Party IPR) to any sub-contractors. In order to do so the Contractor may act as the agent of the Authority in entering, on behalf of the Authority, an agreement passing the benefits and indemnities given by the Authority under this Condition 5.6 (Third Party IPR). Any such benefits and indemnities will be subject always to Clauses 5.6.10, 5.6.11 and 5.6.14 as though the sub-contractor was the Contractor. If any claim or action relevant to such benefit or indemnity arises, it shall be promptly notified to the Authority. The Contractor is not authorised to enter into any substantive correspondence in such matter nor in any way to act on behalf of the Authority in such claim or action. Any arrangements between the Contractor and any sub-contractor to enable the Contractor to underwrite their indemnities to the Authority under this Condition 5.6 (Third Party IPR) are a matter between the Contractor and the relevant sub-contractor.

#### General

5.6.17 In this Condition 5.6 (Third Party IPR):

- a) **'design right'** has the meaning ascribed to it by Section 213 of the Copyright, Designs and Patents Act 1988;
- b) **'Crown Use'** in relation to a patent means the doing of anything by virtue of Sections 55 to 57 of the Patents Act 1977 which otherwise would be an infringement of the patent

and in relation to a Registered Design has the meaning given in paragraph 2A(6) of the First Schedule to the Registered Designs Act 1949.

5.6.18 Nothing in this Condition 5.6 (Third Party IPR) shall be taken as an authorisation or promise of an authorisation under Section 240 of the Copyright, Designs and Patents Act 1988.

5.6.19 The Contractor shall maintain an up-to-date list of all third-party software which is used within the CATT System and shall provide a copy of this list and/or of any licence included therein to the Authority on request.

## **5.7 COPYRIGHT**

5.7.1 This Condition 5.7 (Copyright) shall apply to all copyright works generated under the Contract, or delivered to the Authority under the provisions of the Contract, except that it shall not apply to copyright works covered by Condition 5.4 (Intellectual Property Rights in Software) or for which the Authority is otherwise licensed, or to any work deliverable under the Contract and subject to the terms of Condition 5.3 (Intellectual Property Rights (Other Than Software)) and/or Condition 5.1 (Records).

5.7.2 The Contractor shall use all reasonable endeavours to ensure that copyright in any work generated under the Contract shall be the property of and vest in the Contractor, subject to the rights of third parties in pre-existing works.

5.7.3 The Contractor agrees not to publish any copyright work generated under the Contract without the consent in writing of the Authority. The Authority will not normally raise objection to publication unless delay or limited publication only is considered necessary in the national interest. The Authority will review, upon request by the Contractor, any such restriction on publication.

5.7.4 The Authority shall have, in respect of any copyright work to which this Condition 5.7 (Copyright) applies, a free licence:

5.7.4.1 to copy the work and to circulate and use the work or any copy thereof within any United Kingdom Government Department (which term includes the United Kingdom Armed Forces) provided that no part of the work nor any copy thereof shall, except with the prior written permission of the Contractor or pursuant to Clauses 5.7.4.2 or 5.7.4.3, be made available to any third party:

5.7.4.2 to issue the work or any part of the work or any copy of the work or any part thereof to another supplier or potential supplier to the United Kingdom Government for the purpose of use only under a contract, or tendering for a proposed contract, for a United Kingdom Government purpose, provided that the supplier or potential supplier is placed under an obligation which restricts disclosure and use of such work to the said purposes:

5.7.4.3 to issue the work or any part of the work or any copy of the work or any part thereof to the government(s) of any nation(s) for information only (provided that such action shall not violate any United States export laws), in pursuance of information exchange arrangements for defence purposes, provided that the recipient government is placed under an obligation not to use such work for other than information purposes or disclose it to a third party:

provided that, subject to any pre-existing rights of the Authority, Clauses 5.7.4.2 and 5.7.4.3 above shall only apply to the work or any part of the work or any copy of the work or any part thereof if such work or part thereof is generated under this or any preceding Contract. Clauses 5.7.4.2 and 5.7.4.3 shall apply to all works or parts thereof unless otherwise marked by the Contractor in accordance with Clause 5.7.5 below.

5.7.5 As soon as he becomes aware that any copyright work or part thereof delivered or proposed to be delivered is a work subject to special conditions or any third party rights known to the Contractor, or is a work or part thereof not generated under the Contract, the Contractor shall inform the Authority and upon delivery shall appropriately mark such work or part thereof to identify the same and indicate the relevant conditions or rights.

5.7.6 The Contractor may mark or include in any copyright work to which this Condition 5.7 (Copyright) applies a copyright notice provided that such copyright notice acknowledges the Authority's rights under this Condition 5.7 (Copyright). Such notice shall be in the form

*"This document is the property of Lockheed Martin. It has been produced for the UK Secretary of State for Defence under Contract Number TSSP/124 and is subject to Condition 5.7 (Copyright) of that Contract. Any work subject to Clause 5.7.5 of that Contract is so marked in the text".*

Any such notice shall be perpetuated in any copies of such work made by the Authority or any other United Kingdom Government Department or its agents or contractors.

5.7.7 This Condition 5.7 (Copyright) shall constitute an 'agreement to the contrary' for the purposes of Section 48 of the Copyright, Design and Patents Act 1988.

5.7.8 In this Condition 5.7 (Copyright) 'copyright work' shall be understood to include any works, data or other materials in which a database right subsists.

## **5.8 RELEASE OF DATA TO THE UNITED STATES GOVERNMENT**

5.8.1 Subject to any the rights of any third party, the Authority shall have the free right to pass all information, including that delivered under Condition 5.7 (Copyright), and software generated under this Contract, to the Government of the United States of America.

5.8.2 The Government of the United States of America shall, subject to the rights of any third party, have the right, to use, modify, reproduce, release, perform, display, or disclose, all information and software which was created prior to the technical transfer of the CATT System, in whole or in part, for any purpose whatsoever and to have or authorise others to do so.

5.8.3 The Government of the United States of America shall, subject to the rights of any third party, have the right to use, modify, reproduce, release, perform, display, or disclose, all information and software arising from the implementing of any changes under this Contract for its defence purposes only.

## **5.9 COMMERCIAL EXPLOITATION**

5.9.1 Subject to Condition 5.8 (Release of Data to the United States Government) above, the terms and conditions relating to the Commercial Exploitation of Articles/IPR developed under the Contract are detailed in Schedule 6 (Commercial Exploitation) to the Contract.

5.9.2 The Contractor shall have the right, subject to security considerations, to use in pursuance of their business the results of work done under the Contract. Such use shall be free of payment except that before selling or licensing of material embodying any such results for other than HM or United States Governmental purposes, the Contractor shall first agree with the Authority the sum or sums, if any, which should reasonably be paid to the Authority by the Contractor having regard, amongst other things, to the amounts paid or payable to the Contractor by the Authority under the Contract.

- 5.9.3 The following base software programs shall be applied as per DEFFORM 701, Schedule 16;
- a. SAGE - Scalable Advanced Graphics Engine, versions 1 - 4.21
  - b. SIMI – SIMulated Intelligence, versions 1-6
  - c. S-GUSS– Simulated - Generic UAV Supervisory Segment, versions 1 -4
  - d. EPIC – Enhance Perception Integrated Control, versions 1

Where the Authority fund any modifications to these software programs during the Contract, then both Parties shall clearly delineate these modifications from the base software programs listed above and these modifications shall be subject to the condition 5.9 (Commercial Exploitation).

5.9.4 Correspondence on this subject should be addressed to the Commercial Manager as defined under Schedule 13 (DEFFORM 111).

## **5.10 PROCEDURE FOR MAKING DIRECT AGREEMENTS WITH SUB-CONTRACTORS**

5.10.1 The Contractor shall not place any Sub-Contract or order involving the design or development of equipment required under this Contract without the prior approval of the Authority.

5.10.2 The Contractor shall not enter into any commitment in relation to the equipment's specified at DEFFORM 177, as may be amended from time-to-time, until the Sub-Contractor has entered into an agreement with the Authority in the form set out at Schedule 8 – Design Rights and Patents – Sub Contractors Agreement (DEFFORM 177). Wherever possible the request for approval should be accompanied by two copies of the agreement signed by the Sub-Contractor. If, in any case the Contractor is unable to comply with this condition he shall report the matter to the Commercial Manager referenced under Schedule 13 - Addresses and other Information (DEFFORM 111) and await further instructions before placing the Sub-Contract or order.

## **5.11 AUTHORISATION BY THE CROWN FOR USE OF THIRD PARTY INTELLECTUAL PROPERTY RIGHTS**

5.11.1 Notwithstanding any other provisions of the Contract and for the avoidance of doubt, award of the Contract by the Authority and placement of any contract task under it does not constitute an authorisation by the Crown under Sections 55 and 56 of the Patents Act 1977 or Section 12 of the Registered Designs Act 1949. The Contractor acknowledges that any such authorisation by the Authority under its statutory powers must be expressly provided in writing, with reference to the acts authorised and the specific intellectual property involved.

# **6 LOANS**

## **6.1 DEFCONS**

DEFCON 23 (Edn.08/09) – Special Jigs, Tooling and Test Equipment  
DEFCON 76 (Edn. 12/06) – Contractor's Personnel at Government Establishments  
DEFCON 601 (Edn. 04/14) – Redundant Material  
DEFCON 611 (Edn. 02/16) – Issued Property  
DEFCON 694 (Edn. 07/18) – Accounting for Property of the Authority

## **6.2 CONTRACTORS PERSONNEL AT GOVERNMENT ESTABLISHMENTS**

### Site Issues

6.2.1 Subject to DEFCON 76 (Edn.12/06) (Contractor's Personnel at Government Establishments), the Authority grants to the Contractor and any sub-contractors a licence to enter upon either the Warminster or Germany Site for the sole purpose of, and only to the extent

necessary for, delivering the Services and or Articles required under the Contract. This licence shall not operate or be deemed to operate as a demise of the CATT Facilities.

6.2.2 The Contractor shall not, in exercising the rights granted in Clauses 6.2.1 above, cause any nuisance, damage, disturbance, annoyance, inconvenience or interference to the property of the Authority or to any occupiers of the property of the Authority or to any neighbouring or adjoining property or its owners or occupiers or allow anyone else to do so.

6.2.3 The Contractor shall make good forthwith to the Authority's satisfaction any damage caused to the property of the Authority in the exercise of the rights granted to the Contractor pursuant to Clause 6.2.1 at no cost to the Authority.

#### Liability in respect of damage to Government Property

6.2.4 For the purposes of DEFCON 76 (Edn.12/06) (Contractor's Personnel at Government Establishments), all references to 'Government Property' shall be deemed to include property of the Federal Republic of Germany.

6.2.5 For the purposes of Clause 4 of DEFCON 76 (Edn.12/06) (Contractor's Personnel at Government Establishments), the Contractor's total liability shall be **REDACTED**.

### **6.3 ASSETS**

6.3.1 The Contractor shall maintain all of the Assets which make up the CATT System, by the use of planned and reactive maintenance, in accordance with Good Industry Practice and in accordance with manufacturers' recommendations (where appropriate) in order to ensure both that the Services are provided in accordance with the Statement of Requirements (SOR), and that the CATT System meets the Availability requirements set out in the Schedule 1 (SOR).

6.3.2 In accordance with paragraph 10.3 of the Schedule 1 (SOR), where an item which forms part of the CATT System appears noticeably worn, torn or degraded and this has not occurred as a result of accidental, negligent or deliberate damage caused by an Authority Related Party, the Contractor shall (at their own cost) replace, repair or refurbish or procure the replacement, repair or refurbishment (at their own cost) of such item within twenty (20) business days or such longer time as the Parties shall agree.

6.3.3 Whether an Item is in satisfactory condition in accordance with Clause 6.3.1. shall be decided by the Parties. If agreement cannot be reached the local Site Quartermaster shall be asked to give their reasonable opinion which shall decide the matter. If the reasonable opinion of the local Site Quartermaster is not acceptable to either party, the matter shall be referred to the Dispute Resolution Procedure as defined under Condition 2.11.

6.3.4 Where accidental, negligent or deliberate damage to the CATT System has been caused by an Authority Related Party and this has been agreed in writing by such party, then the cost of any required repair, replacement or refurbishment shall be for the Authority's account and shall be calculated and paid in accordance with the procedure set out in Schedule 3 (Payment Mechanism), Annex 1, Part 3

### **6.4 SUPPLY OF GOVERNMENT FURNISHED ASSETS (GFX)**

6.4.1 Government Furnished Assets to be issued in aid of this Contract are categorised as:

#### 6.4.1.1 Government Furnished Equipment (GFE)

Contract Support Item (CSI) – is the issue of a material to the Contractor without charge for a specific period and purpose in support of the Contract. The CSI remains the property of the Authority throughout the loan period and should be returned unchanged except for fair wear and tear.

Contract Embodiment Item (CEI) – is material issued without charge to a Contractor for embodiment in an Article that is under manufacture, modification, conversion or under the Contract. The CEI may comprise fully developed/ production items or materiel that is itself the subject of a separate and parallel development to that of equipment which it supports.

Contract Work Item (CWI) – is an item of material being worked on in accordance with the Contract. It is an item of material temporarily issued to the Contractor, without charge and for a specified period, typically for the purpose of undergoing, repair, refurbishment, maintenance etc.

#### 6.4.1.2 Government Furnished Facilities (GFF)

GFF are those facilities which the Authority has agreed it will make available for the purpose of the Contract at no charge to the Contractor.

#### 6.4.1.3 Government Furnished Information (GFI)

GFI takes the form of either Authority owned information or third party owned information being provided to the Contractor, by the Authority, to facilitate performance of the Contract.

#### 6.4.1.4 Government Furnished Resources (GFR)

Locally employed civilians at the German site who are employed and managed by the Authority and are subject to the Authority's employment terms and procedures but who will be subject to the day-to-day direction of the Contractor in the provision of *Analyst Services*, including but not limited by the preparation for Training Exercises and the operation and management of the CATT system during Training Exercises.

6.4.2 The Authority shall make available to the Contractor free of charge, those items of GFX in aid of the work to be carried out under this Contract, with the exception of the GFR (which shall be as separately defined under clause 6.4.1.4 above), which are listed in Schedule 4 – Government Furnished Assets (GFX).

6.4.3 The Authority's point of contact for arranging access to or issue of the GFX as detailed in Schedule 4 – Government Furnished Assets (GFX) is:

Role	DES LE STSP-TSSP-PM21
Address	DE&S, TSSP, Cedar 2B #3260, Ministry of Defence Abbey Wood, Bristol BS34 8JH
Telephone No	030 679 39120
Email	DES LE STSP-TSSP- PM21@mod.gov.uk

6.4.4 All GF shall be held on the loan terms detailed in Conditions 6.4 (Supply of Government Furnished Assets (GFX)) of the Contract and the category of loan as per Schedule 4 – Government Furnished Assets (GFX), and shall be used solely in aid of the work to be carried out under this Contract. All such loans issued shall be recorded by the Contractor or, where appropriate, their sub-contractor accordingly. In the event of any dispute between the Contractor and the Authority on any definition of the GFX detailed or referenced within Schedule 4 – Government Furnished Assets (GFX) to the Contract, the Authority's decision shall be final.

6.4.5 The Contractor shall comply with DEFCON 611 (Edn.02/16) (Issued Property) and notify the Authority of any defects, deficiencies or discrepancies found in the GFE listed in Schedule 4 Government Furnished Assets (GFX).

6.4.6 The Authority shall endeavour to provide the Contractor with timely notification should any GFX in Schedule 4 – Government Furnished Assets (GFX) not be available. Should the Authority not be able to provide GFX as prescribed in Schedule 4 – Government Furnished Assets (GFX), then the Authority and the Contractor shall use their respective reasonable endeavours to minimise the impact of any non-availability noting that such non availability shall not negatively affect any of the KPIs as described in Schedule 3 - Payment Mechanism.

6.4.7 Full particulars, including the issue and return date, detailed description, build standards and quantity of GFX should be populated at or prior to the commencement date. The Authority shall accept no liability to provide the GFX until the full particulars have been agreed between the Authority and the Contractor and are fully populated in Schedule 4 – Government Furnished Assets (GFX) of the Contract.

6.4.8 The use of GFX shall not relieve the Contractor of any of their responsibilities for the proper performance of the Contract. It is the Contractor's responsibility to determine that the GFX is fit for the Contractor's purpose.

6.4.9 Should agreed dates for the provision of GFX be subsequently revised due to the Contractor's programme changes, the Authority will endeavour to supply GFX to meet the revised dates. The Authority will however not be under any obligation to provide GFX outside of the dates(s) agreed for that item in Schedule 4 – Government Furnished Assets unless a change has been agreed by the Authority Condition 2.10 (Contract Change Procedure).

#### Interface requirements for GFI

6.4.10 Where the Authority has issued the Contractor with Interface Control Documents (ICDs) for interfacing equipment. It shall be the responsibility of the Contractor to further develop the ICDs, with the appropriate ICD design authority. If required by an ICD design authority, the Contractor shall agree an appropriate confidentiality agreement with the ICD design authority to protect the information being provided.

6.4.11 The Contractor shall contract with the ICD design authorities for all mandatory installation setting-to-work and testing, and such optional testing or design work as the Contractor deems to be required.

6.4.12 Bowman and ComBAT and Information and Platform BISA (BCIP) is controlled under International Trade In Arms (ITAR) and the Contractor shall ensure that they have the appropriate commercial mechanisms in place between them and the BCIP Design Authority to facilitate access to technical assistance, sublicensing, ITAR and IPR controlled information.

6.4.13 It shall be the Contractor's responsibility to fund any support required from an ICD design authority.

#### Contract Embodiment Items

6.4.14 It is the responsibility of the Contractor to;

- a) Embody Articles loaned to him under CEI terms in Schedule 4 – Government Furnished Assets (GFX) of this Contract.

- b) Ensure that installation, setting-to-work, test and maintenance are properly performed and, hence, that guarantees given to the Authority by the CEI provider are not invalidated.
- c) Inform the Authority where the performance of the CEI limits the compliance of the CATT system against the requirements of Schedules 1 – Statement of Requirement (SOR) and 2 – Statement of Work.
- d) Coordinate and arrange all attendance by CEI providers representatives to execute or oversee work in connection with the unpacking, installation, setting-to-work, maintenance, or tests of the CEI provided.
- e) Place a sub-contract on the CEI provider, as appropriate, to
  - 1. Undertake such installation, setting-to-work, tests, trials and inspection work that the Contractor requires the CEI provider to perform;
  - 2. Attend and advise, as agreed between the Contractor and the CEI provider during installation, setting-to-work, tests, trials and inspections;
  - 3. Assist the preparation of quality assurance, safety or environmental documentation.

#### Additional GFX

6.4.15 The Authority is under no obligation to provide any GFX which is not included in Schedule 4 – Government Furnished Assets (GFX) to the Contract. In the event that the Contractor identifies GFX additional to that detailed at Schedule 4 – Government Furnished Assets that he requires to enable him to perform this Contract he may submit a written request to the Authority. Additional GFX may be supplied by the Authority on loan, providing that they are reasonable for the Authority to provide, are available during the requested periods of use, and that the Contractor can demonstrate that the GFX is relevant to the Contract and cannot be reasonably procured/supplied elsewhere by the Contractor.

6.4.16 The Contractor shall ensure that any maintenance on GFX does not invalidate any warranty provided by the equipment manufacturer.

6.4.17 The Contractor shall not modify any GFX without the written approval of the Authority's Commercial Manager (Box 1 of Schedule 13 – Addresses and Other Information (DEFFORM 111)).

6.4.18 For any GFX that requires calibration the Authority shall issue fully calibrated and certified. The Contractor shall be responsible for any further calibration required during the duration of the loan.

#### 6.4.19 Return of GFX

On completion of the agreed period of loan of any GFX, the Contractor shall seek return/ disposal instructions from the Authority's Commercial Manager (see Box 1 of Schedule 13 – Addresses and Other Information (DEFFORM 111)). Any request for disposal/return instructions for Authority owned equipment shall be accompanied by a copy of the loan equipment register as detailed under DEFCON 694 (Edn.07/18) (Accounting for Property of the Authority). At completion of the Contract, the GFX shall be in the same condition that it was issued, subject to fair wear and tear.

#### 6.4.20 Government Furnished Resources (GFR)

Subject to definition as provided for under clause 6.4.1.4 the Contractor is responsible for the output of GFR, and shall satisfy itself that each GFR possesses the necessary approvals and authorisations

required for the tasks they are to perform, and shall ensure those GFR are only employed on tasks falling within those approvals and authorisations.

6.4.21 The Contractor shall monitor the tasks performed by each GFR and shall report any concerns to the Authority without delay.

6.4.22 The Authority will nominate personnel for the provision Analyst Services, as defined under clause 6.4.1.4 and shall use reasonable endeavours, but cannot guarantee to provide the specified input at all times.

6.4.23 The availability of personnel is subject to the overriding MOD priority to provide support to operations at any time. The Authority will use reasonable endeavours to find a suitably skilled and experienced replacement where operational necessity results in the removal of any GFR.

6.4.24 Where the Authority is unable to provide a suitable replacement the Contractor is to identify the risks and possible risk management strategies. These are to be provided in writing to the Authority within 10 business days of the Authority's notification of intention to remove GFR. The document shall detail, but is not limited to: the impact upon the project in terms of performance, time and cost, possible mitigation strategies, associated risks and costs of each mitigation strategy.

## **7 DELIVERY**

### **7.1 DEFCONS**

DEFCON 5J (Edn. 18/11/16) – Unique Identifiers

- Where used in conjunction with contracts for Services, Clause 2 of the DEFCON shall not apply.

DEFCON 507 (Edn. 10/18) – Delivery

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

DEFCON 524 (Edn. 02/20) – Rejection

- 'Articles' referred to within the DEFCON are defined as all Contract Deliverables.

DEFCON 525 (Edn. 10/98) – Acceptance

- 'Articles' referred to within the DEFCON are defined as all Contract Deliverables.

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

DEFCON 681 (Edn. 06/02) – Decoupling Clause – Subcontracting with the Crown

### **7.2 ACCEPTANCE**

7.2.1. Acceptance of Contractor Deliverables provided for under the Schedule of Requirements shall be in accordance with the Terms and Conditions of this Contract.

### **7.3 DELIVERY**

7.3.1. All Articles or Services provided under this Contract shall be delivered in accordance with the Terms and Conditions of this Contract.

## **7.4 MEASURES IN A CRISIS**

7.4.1 Subject to the provision of Clause 7.5 (Force Majeure) and the remainder of this Clause 7.4 (Measures in a Crisis), the Contractor shall continue to provide or procure the provision of the Contractor Deliverables required in peacetime, during periods of tension, in transition to war and during hostilities.

7.4.2 If, at any time, the Authority believes, in its sole opinion, that there exist circumstances to which Clause 7.4.3 below applies, it may issue a notice in writing to the Contractor of such belief.

7.4.3 The circumstances referred to in Clause 7.4.2 above are where:

- a) the national interest (including but not limited to the interests of the UK), the requirements of national security (including but not limited to the security of the UK), or the occurrence of a state of transition to war, war or other emergency (whether or not involving hostilities); or
- b) a request to the Authority by a local authority, public body, or statutory corporation for assistance in relation to the occurrence or possible occurrence of a major accident, crisis or natural disaster;
- c) it is necessary or appropriate for the Authority to take all or any of the measures described in this Condition 7.4 (Measures in a Crisis).

7.4.4 The Authority may require the Contractor, within such period as specified by the Authority in its sole discretion, to provide such information in the possession knowledge or control of the Contractor, and any sub-contractors as the Authority may in its sole discretion require, including without limitation information relating to all or any of the following matters:

- a) the Contractor Deliverables (including all of the Services) currently being and to be carried out or procured by the Contractor for:
  - 1. the Authority; and
  - 2. any third parties;
- b) the Contractor's current deployment of its employees, sub-contractors or agents whether or not within the CATT Facilities;
- c) the number and respective capacity of each element of the Services and all supporting equipment and documentation currently held by the Contractor and the location of such items and equipment.

7.4.5 Upon providing the Authority with the information requested pursuant to Clause 7.4.4 above, or upon expiry of the period specified by the Authority for the supply of such information, the Contractor shall, upon being so requested by the Authority, discuss in good faith with the Authority any matters which the Authority, in its sole opinion, may consider relevant or appropriate to any proposals the Authority may have for the reallocation of priorities for, or for the reorganisation of, the provision of the Contractor Deliverables provided or to be provided or procured by the Contractor in relation to the CATT System. These will be in order to deal with the circumstances which gave rise to the issuing of a notice to Clause 7.4.2 above, including, without limitation, the following matters:

- a) the revision of the provision of the Contractor Deliverables to the Authority;
- b) the early completion, suspension, or permanent cessation of any Contractor Deliverables by the Contractor for third parties;

- c) the immediate implementation of new Contractor Deliverables;

and the Parties shall endeavour, as far as reasonably possible, to reach agreement as a matter of urgency on such matters.

7.4.6 Notwithstanding any provision to the contrary in this Contract, and notwithstanding that any of the measures described in Clauses 7.4.4 and 7.4.5 above may not have been taken, required to be taken, or have been completed, the Authority may, at any time and in its sole discretion, require the Contractor, and their sub-contractors, to comply fully with any written instructions issued by the Authority including, without limitation, instructions issued in relation to all or any of the following matters:

- a) to accelerate to early completion or to suspend any Contractor Deliverables provided or to be provided by the Contractor for third parties;
- b) to remove (permanently or temporarily) the property of third parties from the CATT Facilities and to procure that any such action is carried out on terms with such parties which result in the least possible loss or damage to the Contractor;
- c) to accelerate to early completion or to suspend any of the Contractor Deliverables carried out or to be carried out or procured by the Contractor in relation to this Contract;
- d) to carry out any changes whatsoever to the Contract required by the Authority without first requiring a Change in accordance with DEFCON 503 (Edn.12/14) (Formal Amendments to Contract) and DEFCON 620 (Edn.05/17) (Contract Change Control Procedure);
- e) to deploy its employees and all other assets or rights used in connection with the CATT System or to use, or make available for use by the Authority or as directed by the Authority, all such other assets or rights in accordance with the Authority's directions.

7.4.7 If the Contractor reasonably considers that any actions required by the Authority pursuant to clause 7.4.5 and/or clause 7.4.6 will have a material adverse effect on the health or safety of any of the employees or agents of the Contractor or any other individuals acting on behalf of the Contractor, the Contractor shall immediately notify the Authority in writing and the Parties shall consider in good faith how such instructions may be amended to avoid such effect.

7.4.8 The provisions of Clauses 7.4.4 – 7.4.6 shall cease to apply when the Authority issues a written notice to that effect to the Contractor and thereafter the Contractor shall continue to be bound by the provisions of this Contract.

7.4.8.1 Any action or measures which the Authority may, or is required to, take pursuant to the provision of this Condition 7.4 (Measures in a Crisis) may validly be taken by the Authority acting through the Authority's PT Leader or such other person or persons as the Authority may from time to time authorise for that purpose.

## **7.5 FORCE MAJEURE**

7.5.1 The Contractor shall not be in breach of this Contract, nor liable for late or non-performance of any of its obligations under this Contract, if such delay or failure result from a "Force Majeure Event". For the purposes of this Contract a Force Majeure Event is defined as one of the following:

1. extreme acts of nature;
2. war;
3. hostilities;
4. fire at any of the Contractor's premises or those of its suppliers except to the extent that the fire was caused by their own negligence.
5. Foreign Government Policy

7.5.2 The Contractor shall immediately notify the Authority in writing on the occurrence of a Force Majeure Event, including details of the Force Majeure Event, its effect on the Contractor's obligations under this Contract, and the actions proposed to mitigate its effect.

7.5.3 Subject to Clause 7.5.4 below, the Contractor shall be entitled to an appropriate extension of time for performing such obligations provided always that the Contractor has used, to the satisfaction of the Authority, all reasonable endeavours, both to mitigate the effects of the Force Majeure Event, and to facilitate the continued performance of its obligations under this Contract.

7.5.4 The maximum extension of time granted under this clause shall be limited to 15 calendar days after which time the Authority may, on giving written notice to the Contractor, terminate this Contract, without seeking compensation from the Contractor, with immediate effect.

## **8 PAYMENTS/RECEIPTS**

### **8.1 DEFCONS**

DEFCON 513 (Edn. 11/16) – Value Added Tax

DEFCON 522 (Edn. 11/17) – Payment and Recovery of Sums Due

DEFCON 534 (Edn. 06/17) – Subcontracting and Prompt Payment

DEFCON 649 (Edn. 12/16) – Vesting

DEFCON 670 (Edn. 02/17) – Tax Compliance

### **8.2 PAYMENT – SCHEDULE OF REQUIREMENTS**

8.2.1 All payments made under this Contract shall be made in strict accordance with Schedule 3 (Payment Mechanism) using the Contracting, Purchasing and Finance (CP&F) tool as implemented by the Authority.

8.2.2 The Contractor shall be solely responsible for ensuring that suitable measures are put in place to enable the mandated use of this mechanism.

### **8.3 MILESTONE (INTERIM) PAYMENTS**

8.3.1 In the event that the Authority, subject to the following provisions of this Condition, agrees to make to the Contractor interim payments against the price(s) payable for Contractor Deliverables delivered under Schedule of Requirements (Table 1 Initial Contract Duration - Items 2, 4 and 5 and, subject to subsequent Option years being taken, Table 2 Option Years – Items 2, 3, 5, 7, 9, 10, 12, 14, 15, 17, 19 and 20), such agreement and any subsequent milestone payment plan shall be detailed within the respective Task Approval Form or Contract Amendment. When agreed, the milestone payments will be detailed within Table 4 found at Annex 1 (Charges for Additional Hours, Obsolescence Management Tasks or Accidental, Negligent or Deliberate Damage by Authority Related Parties) of Schedule 3 (Payment Mechanism) to the Contract.

8.3.2 Upon agreement of the milestone payment plan, which shall be at the sole discretion of the Authority, the Contractor shall be entitled to payment to be claimed in accordance with Clause 8.3.1 for each milestone, when:

- a) the Contractor has completed all work, to the satisfaction of the Authority, attributed to the milestone for which an interim payment is being sought;
- b) all previous milestones have been completed, unless the Parties expressly agree otherwise in writing; and
- c) the Contractor shall have complied with all its contractual obligations which enable the Authority to monitor the Contractor's contractual performance, including but not limited to those obligations related to the provision of information to the Authority.

8.3.3 Notwithstanding the above, the Authority shall not be obliged to make a milestone payment to the Contractor if it has reasonable cause to believe that the Contractor will be unlikely to render complete performance of its obligations in respect of the complete requirement for which the milestone payment plan has been agreed.

8.3.4 Where the Authority intends to rely on clause 8.3.3 above as the basis for rejecting any claim for a milestone payment which the Contractor may make, the Authority shall give to the Contractor notice in writing of its intention together with the Authority's reasons for the rejection.

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

- a) the Task Approval Form or Contract Amendment under which items or services are to be provided, is terminated otherwise than in accordance with DEFCON 656B (Edn.08/16) (Termination for Convenience – Over £5M), or expires by reason of passing of time; and
- b) the Contractor has failed to complete performance of Items as contracted for under the respective Task Approval Form or Contract Amendment.

8.3.6 In the event of repayment to the Authority under the provisions of this clause then all that which vested in the Authority under the provisions of DEFCON 649 (Edn.12/16) (Vesting) and which is related to Items or Services procured under the respective Task Approval Form or Contract Amendment shall re-vest in and become the absolute property of the Contractor.

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

- a) acceptance by the Authority of any contractual deliverable;
- b) a representation by the Authority that the Contractor has complied with any contractual obligations; or
- c) a waiver of the Authority's right to subsequently claim that the conditions for payment of that interim payment were not satisfied.

#### **8.4 ADDITIONAL HOURS (OVERTIME)**

8.4.1 Where the Authority's Training Event requirements are such as to require the Contractor unavoidably to request that its staff work over and above their contracted hours ("Additional Hours"), the following rules shall apply:

"Standard Overtime" shall be defined as Additional Hours between the hours of 06:00 and 22:00 on a business day; and

“Night Work Overtime” shall be defined as Additional Hours between the hours of 22:00 and 06:00 or any time on a day which is not a Business Day.

8.4.2 All Additional Hours shall be authorised in advance in writing by the Authority’s Project Manager and shall be documented on the Overtime Approval Form at Schedule 10 (Overtime Approval Form) of the Contract. If the Additional Hours are carried out, this form shall also be signed by the Authority’s SO1 at the relevant Site to verify this. Copies of the completed form shall be submitted to the Authority along with the claim for payment pursuant to Section 8 (Payment) of the Contract Terms and Conditions. Invoices are to be submitted at 6 monthly intervals from Contract Commencement Date.

8.4.3 The payment of Additional Hours shall be in accordance with Annex 1 (Charges for Additional Hours, Obsolescence Management Tasks or Accidental, Negligent or Deliberate Damage by Authority Related Parties) of Schedule 3 (Payment Mechanism) to the Contract.

8.4.4 Charges for Additional Hours shall not exceed the individual Limits of Liability for specific categories, dates and events as listed in Table 2 found at Annex 1 (Charges for Additional Hours, Obsolescence Management Tasks or Accidental, Negligent or Deliberate Damage by Authority Related Parties) of Schedule 3 (Payment Mechanism) to the Contract and should be separately identified in claims for payment.

8.4.5 The Contractor shall ensure that no Additional Hours are worked by its staff once the respective Limit of Liability has been reached or duration, as referenced above, having expired, whichever is the sooner. Upon reaching 80% of the respective Limit of Liability, the Contractor shall notify the Authority in writing of the impact (if any) of reaching the Limit of Liability on the Authority’s future training events.

8.4.6 Where the Authority’s Training Exercise requires the Contractor to request its staff to work over and above their contracted hours, the Authority will provide 3 weeks notice of their requirement in writing. The Authority will provide 48 hours written notice of cancellation (2 business days) if the training exercise is no longer required. Should a planned Training Exercise (as applicable to Contractor maintainers and analysts) be cancelled with 48 hours of the planned start date, any personnel that were scheduled to work the planned event, and have been impacted with an out of pocket expense (such as child caring, other expenses can be reviewed on a case by case) can submit a claim within 30 days for those expenses, if deemed to be fair and reasonable by the Authority.

## **8.5 OBSOLESCENCE MANAGEMENT TASKS**

8.5.1 If the Authority requires the Contractor to carry out any obsolescence management tasks in accordance with paragraph 12.16 (Obsolescence Management (OM)) of the (SOR) which have a value of less than one hundred thousand pounds (£100,000) (excluding VAT) in accordance with paragraph 6.3 of the Statement of Requirements it shall request the carrying out of such tasks on the Obsolescence Management – Task Approval Form attached at Schedule 24 (Obsolescence Management TAF) to the Contract.

8.5.2 A copy of the completed form shall be submitted to the Authority along with the claim for payment pursuant to Section 8 (Payment) to the Contract. Taskings will be managed in accordance with Section 2.10 (Contract Change Procedure) to the Contract.

8.5.3 Obsolescence management tasks authorised in accordance with clause 8.5.1 above shall not exceed the Limits of Liability listed in Table 3 found at Annex 1 (Charges for Additional Hours, Obsolescence Management Tasks or Accidental, Negligent or Deliberate Damage by Authority Related Parties) of Schedule 3 (Payment Mechanism) to the Contract for the respective Contract

Year. The Contractor shall ensure that no further obsolescence shall be carried out once the Limit has been reached or duration expired. Upon reaching 80% of the respective Limit of Liability, the Contractor shall notify the Authority in writing of the impact (if any) of reaching the Limit of Liability on the Authority's future training events.

8.5.4 The payment of obsolescence management tasks shall be in accordance with Annex 1 (Charges for Additional Hours, Obsolescence Management Tasks or Accidental, Negligent or Deliberate Damage by Authority Related Parties) of Schedule 3 (Payment Mechanism) to the Contract.

## **8.6 ACCIDENTAL, NEGLIGENT OR DELIBERATE DAMAGE BY AUTHORITY RELATED PARTIES**

8.6.1 Where accidental, negligent or deliberate damage to the CATT System has been caused by an Authority Related Party pursuant to Clause 6.2.4 of the Contract, and the Authority wishes any such damage to be repaired or any damaged item to be replaced or refurbished by the Contractor, one of the following procedures shall apply depending on the value of the required repair, replacement or refurbishment, including any work required to ensure the continued availability of the CATT System (the "Required Work").

8.6.2 If the charges to be paid by the Authority in respect of the Required Work are below five hundred pounds (£500) (excluding VAT), the following procedure shall apply:

8.6.2.1 Subject to paragraph 5 below, the Contractor shall have the authority to carry out any Required Work without the Authority's prior consent and shall carry out the Required Work within a reasonable period of the damage occurring (having regard to the type of damage).

8.6.2.2 The charges to be paid by the Authority for the Required Work shall be no more than the actual costs incurred by the Contractor which shall be calculated in accordance with the SSCR. The Contractor shall submit a claim for such charges to be paid by the Authority in accordance with Section 8 (Payment), along with supporting documentation showing a detailed breakdown of the actual costs incurred by the Contractor.

8.6.2.3 All claims for payment made in accordance with this procedure shall be reviewed by the Sentencing Committee prior to approval of the claim by the Authority, and the Contractor shall provide any such further supporting documentation as the Authority shall reasonably request.

8.6.3 If the charges to be paid by the Authority in respect of the Required Work exceed five hundred pounds (£500) (excluding VAT), the process followed shall be in accordance with Section 2.10 (Contract Change Procedure) to the Contract and Schedule 25 (Generic TAF). In addition:

8.6.3.1 The Contractor shall submit to the Authority Project Manager a written quotation (including a full breakdown of the costs for the carrying out of the Required Work and any necessary materials), in accordance with the SSCR, prior to carrying out or committing to the carrying out of the Required Work.

8.6.3.2 The written quotation shall be considered by the Executive Steering Committee prior to approval of the Required Work by the Authority, and the Contractor shall provide any such further supporting documentation as the Authority shall reasonably request.

8.6.3.3 The parties shall seek to agree a Firm Price to be paid by the Authority in respect of the Required Work.

8.6.3.4 Once the Firm Price is agreed, the Contractor shall carry out the Required Work within the agreed timescale.

8.6.3.5 Once carried out and accepted by the Authority, the Contractor shall submit a claim for payment by the Authority of the Firm Price in accordance with Section 8 (Payment).

8.6.4 The Contractor shall maintain a list of all incidents of accidental, negligent or deliberate damage to the CATT System caused by Authority Related Parties and any Required Work resulting therefrom for audit purposes.

8.6.5 Charges for Required Work shall not be greater than five thousand pounds (£5,000) (excluding VAT) for the period from 1st March 2020 to 28 February 2023 and the Contractor shall ensure that no further Required Work is carried out once that limit (or duration end) has been reached. Upon reaching charges of four thousand pounds (£4,000) (excluding VAT) (80% of five thousand pounds (£5,000)), the Contractor shall notify the Authority in writing of the impact (if any) of reaching the limit on the Authority's future training events.

## **9 CONTRACT ADMINISTRATION**

### **9.1 DEFCONS**

DEFCON 528 (Edn. 07/17) – Import and Export Licences

DEFCON 604 (Edn. 06/14) – Progress Reports

DEFCON 605 (Edn. 06/14) – Financial Reports

DEFCON 609 (Edn. 08/18) – Contractor's Records

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

DEFCON 642 (Edn. 06/14) – Progress Meetings

DEFCON 647 (Edn. 04/19) – Financial Management Information

- The frequency of the Annex A and Annex B submission shall be monthly.

DEFCON 678 (Edn 09/19) – SME Spend Data Collection

### **9.2 PERFORMANCE MONITORING, MEETINGS AND REPORTS**

#### **9.2.1 Supplier and Customer Performance Measurement Process**

The Contractor and the Authority agree to monitor performance under this Contract in accordance with the Supplier and Customer Performance Measurement Process detailed under Schedule 15 (Performance Indicators) or any additional scheme which has been mutually agreed between the relevant Parties.

#### **9.2.2 Meetings**

9.2.2.1 For the purposes of DEFCON 642 (Edn.06/14) (Progress Meetings) the frequency of the progress meetings shall be bi-annual. Progress Meetings shall be undertaken in accordance with the SOR.

9.2.2.2 The Executive Steering Committee shall attend Executive Steering Committee Meetings in accordance with the SOR as required and shall ensure that other relevant personnel attend following agreement of the agenda. The Contractor shall, following consultation with the Authority Project Manager, produce and provide to the Authority Project Manager, an agenda five (5) business days prior to such meeting along with the subsequent capture of minutes/actions following each meeting. The minutes/actions shall be provided in writing within 10 business days of the meeting being held to the Authority Project Management, for review and acceptance. The Executive Steering Committee shall seek to reach agreement on any outstanding issues which have been discussed at a bi-annual Progress Meeting and in respect of which no resolution has been reached. Should no such agreement still be made then Condition 2.11 (Dispute Resolution) shall apply.

9.2.2.3 The Contractor shall, at no additional cost, attend such other ad hoc meetings relating to the provision of the Services as the Authority shall from time to time require. The location and nature of which shall be the subject of mutual agreement.

### 9.2.3 Contractor Investment

9.2.3.1 If the Contractor wishes to consider injecting investment at its own cost and risk over and above that required for the fulfilment of its obligations under this Contract with a view to increasing the potential for usage of the CATT System by third parties, it shall raise this issue at the bi-annual Progress Meeting. The Authority and the Contractor shall, acting reasonably, discuss the matter with a view to reaching a mutually acceptable resolution of issues including, but not limited to, the following:

- a) the proposed investment and changes;
- b) the proposed effect on the CATT System;
- c) any effect on the provision of the Services; and
- d) the proposed ratio for sharing any revenue achieved (Condition 4.6 (Gainshare) refers).

### 9.2.4 Progress Reports

For the purposes of DEFCON 604 (Edn.06/14) (Progress Reports) the frequency of Progress Reports shall be bi-annual. Progress Reports shall be delivered in accordance with the SOR.

### 9.2.5 Performance Reports

9.2.5.1 The Contractor will provide to the Authority a report on a monthly basis in accordance with Part 18 (Monthly Performance Report) of Schedule 21 (Contract Performance) to the Contract.

9.2.5.2 The Parties shall, in accordance with Part 18 of Schedule 21 (Contract Performance) to the Contract), seek to agree the Service Credits and Performance Deductions which are to be applied on the basis of the report provided.

9.2.5.3 If agreement cannot be reached having consulted as appropriate with their respective line managers, the matter shall be referred to the Executive Steering Committee for resolution, which shall resolve the matter as quickly as possible and inform the Contractor of its decision. If the Executive Steering Committee cannot reach agreement, the matter shall be referred to the Dispute Resolution Procedure under Condition 2.11.

9.2.5.4 The Service Credits shall be applied to the following month's monthly total amount by the Contractor in accordance with Schedule 3 (Payment Mechanism), or if the matter has been referred to the Executive Steering Committee or the Dispute Resolution Procedure under Condition 2.11, the Service Credits shall be applied to the first available monthly payment due which is post resolution of such matter.

### 9.2.6 Future Demand Levels – Training Utilisation Report

9.2.6.1 Notwithstanding the provisions of Schedule 1 - Statement of Requirement (SOR) of the Contract, the Authority shall, within 12 weeks from the Contract commencement date and each Contracted year thereafter, provide its anticipated training demand levels for that year along with that of following years where available. Such demand levels shall be issued as a formal

Contract Amendment updating Schedule 11 – Training Demand Levels, and for avoidance of doubt, the Authority shall not be bound by such anticipated demand levels.

9.2.6.2 Upon receipt of the anticipated demand levels the Contractor shall within thirty (30) calendar days submit an initial report in writing to the Authority Project Manager comparing the actual training utilisation of the previous year with that of the anticipated demand provided by the Authority. Subsequently, reports shall then be provided every six (6) months by the Contractor comparing the anticipated demand with actual training utilisation over the same period.

### **9.3 OVERSEAS EXPENDITURE AND IMPORT/EXPORT LICENCES**

9.3.1 The provisions of DEFCON 528 (Edn.07/17) (Import and Export Licences) shall apply.

9.3.2 In applying the provisions DEFCON 528 (Edn.07/17) (Import and Export Licences), clause 16 shall be applied as follows;

9.3.2.1 Where following receipt of materiel from a sub-contractor or any of its other suppliers restrictions are notified to the Contractor by that sub-contractor, supplier or other third party or are identified by the Contractor, the Contractor shall immediately inform the Authority by issuing an updated DEFFORM 528 (Import and Export Licences). Within **Five (5) business days** of such notification, the Contractor shall propose to the Authority actions to mitigate the impact of such restrictions. Such proposals may include, where appropriate, mutually supported attempts to obtain removal or modification to the restrictions or to obtain appropriate authorisations from the relevant foreign government. The Authority shall notify the contractor within **Ten (10) business days** of receipt of a proposal whether it is acceptable and where appropriate the Contract shall be modified in accordance with its terms to implement the proposal.

9.3.3 The Contractor shall inform the Authority at the earliest opportunity of the route by which he intends to obtain licence approval in order to satisfy delivery requirements under this Contract. In particular, where the Contractor necessarily requires approval from an overseas government (e.g. technical assistance agreement or manufacturing licence agreement), he shall promptly notify the Authority and shall not seek approval for the agreement from the government concerned without first agreeing its contents with the Authority.

9.3.4 The Contractor shall seek to keep to the minimum the extent to which the Contractor Deliverables are subject to United States of America (USA) International Traffic in Arms Regulations (ITAR).

9.3.5 Where USA nationals or USA sub-contractors are utilised by the Contractor, the Contractor shall ensure that Contractor Deliverables, information or designs not currently subject to USA ITAR control do not become subject to it.

9.3.6 The Contractor shall inform the Authority of any proposed change, where the change will add USA ITAR controlled content to the Contractor Deliverables, and shall not commit to that USA ITAR controlled content without the permission of the Authority. In informing the Authority of the proposed additional USA ITAR controlled content to its Contractor Deliverables the Contractor shall inform the Authority of any non USA ITAR alternatives, and the Contractor's view of the advantages and disadvantages of the solutions.

9.3.7 The Contractor shall report or shall procure the reporting to the Authority details of any direct overseas expenditure over £5,000.00 likely to be incurred in the execution of the Contract immediately the possibility is known if such details are not furnished at the time of tendering. The details to be provided are as follows:

- a) Contract No;
- b) Country in which sub-contract placed/to be placed;
- c) Name, Division and full postal address of sub-contractor;
- d) Value of sub-contract as applicable to main contract;
- e) Date placed/to be placed.

9.3.8 If no overseas orders are to be placed or are placed, the Contractor shall advise the Authority to this effect within ten (10) business days of the Contract Commencement date, with any change or update to such notification being immediately relayed to the Authority post this date.

#### **9.4 EXIT STRATEGY**

9.4.1 On termination or expiration of the Contract, in accordance with the Terms and Conditions, the Authority shall not be liable for additional charge(s) other than those that the Terms and Conditions apportion liability to the Authority in respect of the winding up of the Contract, for the handover by the Contractor to any successor Contractor of the Authority, and for the provision of all the data relevant to the performance of this work by that successor Contractor.

9.4.2 Both the Authority and Contractor shall adhere to the Exit Management Plan detailed at Schedule 14 (Exit Management Plan).

#### **9.5 CATT SYSTEM SURVEY**

9.5.1 Unless otherwise agreed between the Parties, six (6) months prior to the Contract Expiry Date or early termination date under DEFCON 514 (Edn.08/15) (Material Breach) or DEFCON 656B (Edn.08/16) (Termination for Convenience – Over £5M), the Parties shall jointly appoint an Independent Surveyor to carry out a condition survey of the CATT System to ascertain whether it is in a condition which meets the requirements of this Contract and the SOR and to indicate the likely cost of any remedial works which are required. Each party shall meet fifty per cent (50%) of the cost of this survey, which shall be subject to a change proposal being raised in line with clause 2.10 (Contract Change Procedure).

9.5.2 On receipt of the survey the Parties shall meet and seek to agree the cost of the required remedial works (if any). If agreement cannot be reached the matter shall be referred firstly to the Executive Steering Committee. If agreement cannot be reached at the Executive Steering Committee the matter shall be referred to the Dispute Resolution Procedure as per Clause 2.11 (Dispute Resolution). Once the cost of the remedial works is agreed or determined, the Authority shall set off such amount from any invoice received from the Contractor or may recover the same as a debt from the Contractor.

9.5.3 Following receipt of, and in accordance with, the appropriate approved change proposal form and subsequent contract amendment, the Contractor shall carry out or procure the carrying out of the remedial works prior to the Expiry Date. Once the remedial works are carried out, the Authority shall, as soon as reasonably practicable, inspect the remedial works.

9.5.4 If the Authority is satisfied with the remedial works, it shall within thirty (30) days pay the amount set off or recovered in accordance with Clause 9.5.2 above to the Contractor through a follow on change proposal raised against the Schedule of Requirements (Item 4). If the Authority is not satisfied with the remedial works, the Parties shall meet and seek to resolve the outstanding issues

with the remedial works. If the Authority and the Contractor are unable to agree, then the Independent Surveyor who carried out the survey referred to in Clause 9.5.3 above shall be asked to comment and their decision shall be binding unless either party refers the matter to the Dispute Resolution Procedure as per condition 2.11 (Dispute Resolution) within ten (10) business days of such decision.

9.5.5 If the Contractor fails to carry out or procure the carrying out of the remedial works prior to the Expiry Date then this shall be considered a material breach under DEFCON 514 (Edn.08/15) (Material Breach). The Authority shall be entitled to use the monies set off or recovered in accordance with Clause 9.5.4 above to carry out or procure the carrying out of the remedial works itself.

9.5.6 In the event that any monies set off in accordance clause 9.5.4 are not sufficient to carry out remedial work not undertaken by the Contract then the remedy available to the Authority under Clause 2 of DEFCON 514 (Edn.08/15) (Material Breach) shall apply, with any monies owed to the Authority being offset against any current or future payments related to Contracts between the Contractor and the Authority in accordance with DEFCON 522 (Edn.11/17) (Payment and Recovery of Sums Due).

## **9.6 SPARES ON EXPIRY OR TERMINATION**

9.6.1 The Contractor shall provide to the Authority, on the Expiry Date or within thirty (30) calendar days of early termination under DEFCON 514 (Edn.08/15) (Material Breach) or DEFCON 656B (Edn.08/16) (Termination for Convenience – Over £5M), the items on the Expiry Spares List in accordance with Schedule 9 – Expiry Spares List. The delivery location details shall be as detailed within such notification issued by the Authority.

9.6.2 The Contractor shall provide to the Authority, on the Expiry Date or within thirty (30) calendar days of early termination under DEFCON 514 (Edn.08/15) (Material Breach) or DEFCON 656B (Edn.08/16) (Termination for Convenience – Over £5M), the items on the Expiry Spares List in accordance with Schedule 9 – Expiry Spares List. The delivery location details shall be as detailed within such notification issued by the Authority.

9.6.3 For the purposes of spares, in the event of Contract expiry or termination for convenience under DEFCON 656B (Edn.08/16) (Termination for Convenience – Over £5M), any costs reasonably and properly incurred in accordance with the SSCR shall be borne by the Authority and shall be administered through a formal Contract Amendment to the Schedule of Requirements in accordance with the terms and conditions of the Contract.

## **9.7 PUBLICITY**

9.7. The Contractor shall not issue or otherwise publish any publicity or advertising material, or provide any information to journalists concerning this Contract without the Authority's express written consent.

## **9.8 SPECIFIED MANAGEMENT INFORMATION (MI)**

9.8.1 The Contractor shall deliver to the Authority the Specified MI, as described in Appendix 1 (Specified MI), in accordance with the requirements set out in Schedule 20 (Specified Management Information) Table 2 (Specified MI Delivery).

The provision of the Specified MI shall be measured in accordance with the provisions set out in Schedule 21 (Contract Performance).

## **Acceptance**

9.8.2 Subject to paragraph 9.8.1, the Authority shall review the Specified MI within ten (10) business days of receipt and inform the Contractor as to whether the Authority has accepted the submitted Specified MI.

Where the Authority does not accept the submitted Specified MI, it shall notify the Contractor in writing of:

- a) the reason for the Specified MI no being accepted;
- b) the amendments required; and
- c) the additional information required

The Contractor shall resubmit the specified MI, responding to the amendment(s) and / or additional information requirements within five (5) business days of being notified by the Authority.

In the event that the Authority has not informed the Contractor as to whether the Authority has accepted the submitted Specified MI within ten (10) business days of receipt, the submitted Specified MI shall be deemed to have been accepted.

### **Changes to the Specified MI**

9.8.3 Amendments to the format, structure or logic of the Specified MI may be proposed by either the Authority or the Contractor, including due to changes in the underlying assumptions or circumstances, accounting methodology, legislative changes or identification of errors or outdated information.

Where the Authority proposes an amendment to the format, structure or logic of the Specified MI, the Authority shall notify the Contractor in writing of:

- a) details of the precise amendment being proposed; and
- b) the rationale for the proposed amendment with supporting evidence and documentation.

The Contractor shall respond to the amendment(s) proposed by the Authority promptly, and in any event within five (5) business days, notifying the Authority, in writing, as to the expected impact of the proposed amendment on the Specified MI and any other MI and, where relevant, any impact on the Services.

The Contractor shall not pass on to the Authority any costs associated with the implementation of proposed amendments to the Specific MI.

The Authority will review the Contractor's assessment of the expected impact of the proposed amendment and will inform the Contractor whether the Contractor is to proceed with the amendment to the Specified MI.

Amendments to the format, structure or logic of the Specified MI proposed by the Contractor shall not be carried out without the express prior written agreement of the Authority's Commercial Officer. In relation to each such proposed amendment, the Contractor will provide the Authority in writing with:

- a) details of the precise amendment being proposed;

- b) the rationale for the proposed amendment with supporting evidence and documentation;  
and
- c) the expected impact of the proposed amendment on the Specified MI, any other MI and, where relevant, any impact on the Services.

The Authority may request any further information from the Contractor prior to deciding whether it accepts or rejects amendments to the Specified MI proposed by the Contractor and the Contractor shall provide such information as soon as reasonably practicable but by no later than ten (10) business days.

The Authority will consider the Contractor's proposed amendment and shall notify the Contractor as to whether it is agreed within a reasonable time. If the Authority does not consent to the proposed amendment, the Specified MI will not be amended.

In relation to all approved amendments to the Specified MI, the Contractor shall maintain full version control including, but not limited to:

- a) keeping a change control log that records:
  - 1) the version of the Specified MI before an amendment is made and the version of the Specified MI that contains the amendment;
  - 2) the nature and impact of each amendment at a level of detail sufficient to enable an adequately qualified individual to understand each amendment and replicate it to produce the same results;
  - 3) the rationale for the amendment with supporting evidence and documentation;
  - 4) the impact of the amendment including a detailed reconciliation and explanation by reference to inputs to or the logic or the presentation of the Specified MI that gives rise to a change in the outputs of the Specified MI;
  - 5) the identity of the persons who have made and authorised each amendment;
- b) updating the Specified MI Version Log; and
- c) updating any other Specified MI as applicable to ensure consistency.

### **Reference MI**

9.8.4 The Authority shall maintain a single reference version of the Specified MI. In case of any unexplained difference between the Specified MI provided by the Contractor and the reference version of the Specified MI held by the Authority, the Authority's reference version of the Specified MI shall be authoritative.

9.8.4.1 Subject to paragraph 9.8.4, when a revised version of an element of Specified MI has been delivered to the Authority and accepted in accordance with this paragraph 9.8.4.1, it shall become the reference version of the Specified MI held by the Authority and shall

supersede any previous versions of the Specified MI and shall constitute the definitive, binding version of the Specified MI.

**Supporting Information**

9.8.5 The Authority may at any time require the Contractor to submit information to support or substantiate any aspect of the Specified MI, including any other supporting documentation or information required under this Contract or reasonably required by the Authority.