



DE&S

Contract Number:
JSENS/00137

Description:
Provision of Independent Test and Reference Services

TABLE OF CONTENTS

1.	SCHEDULE OF REQUIREMENTS	1
1.1	Schedule of Requirements	1
1.2	Options	2
2.	GENERAL CONDITIONS	3
DEFCON 501 (Edn.11/17)	– Definitions and Interpretations	3
DEFCON 503 (Edn.12/14)	– Formal Amendments to Contract	3
DEFCON 515 (Edn.02/17)	– Bankruptcy and Insolvency	3
DEFCON 516 (Edn.04/12)	– Equality	3
DEFCON 518 (Edn.02.17)	– Transfer	3
DEFCON 520 (Edn.02/17)	– Corrupt Gifts and Payments of Commission	3
DEFCON 526 (Edn.08/02)	– Notices	3
DEFCON 527 (Edn.09/97)	– Waiver	3
DEFCON 528 (Edn.07/17)	– Import and Export Licences	3
DEFCON 529 (Edn.09/97)	– Law (English)	3
DEFCON 530 (Edn.12/14)	– Dispute Resolution (English Law)	3
DEFCON 531 (Edn.11/14)	– Disclosure of Information	3
DEFCON 532A (Edn.06/10)	– Protection of Personal Data (Where Personal Data is not being processed on behalf of the Authority)	3
DEFCON 537 (Edn.06/02)	– Rights of Third Parties	3
DEFCON 538 (Edn.06/02)	– Severability	3
DEFCON 539 (Edn.08/13)	– Transparency	3
DEFCON 550 (Edn.02/14)	– Child Labour and Employment Law	3
DEFCON 566 (Edn.10/16)	– Change of Control of Contractor	3
DEFCON 620 (Edn.05/17)	– Contract Change Control Procedure	3
DEFCON 656B (Edn.08/16)	– Termination for Convenience - £5M and Over	3
DEFCON 658 (Edn.10/17)	– Cyber	3
DEFCON 659A (Edn.02/17)	– Security Measures	3
DEFCON 660 (Edn.12/15)	– Official-Sensitive Security Requirements	3
2.1	Definitions	3
2.2	Period of Contract	4
2.3	Entire Agreement	4
2.4	Responsibility of the Contractor	4
2.5	Precedence	5
2.6	Sub-Contracts	5
2.7	Contractor's Personnel	6
2.8	Security Vetting of Contractor's Personnel and Places of Work	6
2.9	Publicity	6
2.10	Future Work	6
2.11	Continuing Obligations	6
2.12	Safety	7
2.13	Export Licences	7
2.14	Disclosure of Information	7
2.15	Confidentiality	7
2.16	Controlled Information	7
2.17	Transfer of Undertakings (Protection of Employment) Exit Clause	9
2.18	Contract Review / Option to Break	9
3.	SPECIFICATIONS, PLANS, ETC	10
DEFCON 129J (Edn.18/11/16)	– The Use of the Electronic Business Delivery Form	10
DEFCON 502 (Edn.05/17)	– Specification Changes	10
DEFCON 601 (Edn.04/14)	– Redundant Materiel	10
DEFCON 602A (Edn.12/17)	– Quality Assurance (with Deliverable Quality Plan)	10
DEFCON 608 (Edn.10/14)	– Access and Facilities to be Provided by the Contractor	10
DEFCON 627 (Edn.12/10)	– Requirement for a Certificate of Conformity	10
DEFCON 637 (Edn.05/17)	– Defect Investigation and Liability	10
3.1	Commercial Risk	10
3.2	Access to the Contractor's Premises and Technical Information	10
3.3	Quality Assurance	11
4.	PRICE	12

DEFCON 619A (Edn.09/97)	–	Customs Duty Drawback	12
DEFCON 654 (Edn.10/98)	–	Government Reciprocal Audit Arrangements	12
DEFCON 800 (Edn.12/14)	–	Qualifying Defence Contract (QDC)	12
DEFCON 801 (Edn.12/14)	–	Amendments to Qualifying Defence Contracts (Consolidated Versions)	12
DEFCON 802 (Edn.12/14)	–	QDC: Open Book on sub-contracts that are not Qualifying sub Contracts	12
DEFCON 804 (Edn.03/15)	–	QDC: Confidentiality of Single Source Contract Regulations Information	12
4.1		Prices Payable	12
4.2		Options	12
4.3		Import Duty	13
5.		INTELLECTUAL PROPERTY RIGHTS	14
DEFCON 126 (Edn.11/06)	–	International Collaboration	14
DEFCON 632 (Edn.08/12)	–	Third Party Intellectual Property – Rights and Restrictions	14
DEFCON 703 (Edn.08/13)	–	Intellectual Property Rights – Vesting in the Authority	14
5.1		Copyright	14
6.		LOANS	16
DEFCON 23 (Edn.08/09)	–	Special Jigs, Tooling and Test Equipment	16
DEFCON 76 (Edn.12/06)	–	Contractor's Personnel at Government Establishments	16
DEFCON 611 (Edn.02/16)	–	Issued Property	16
DEFCON 694 (Edn.03/16)	–	Accounting for Property of the Authority	16
6.1		Government Furnished Assets (GFA)	16
7.		DELIVERY	17
DEFCON 5J (Edn.18/11/16)	–	Unique Identifiers	17
DEFCON 507 (Edn.10/98)	–	Delivery	17
DEFCON 514 (Edn.08/15)	–	Material Breach	17
DEFCON 524 (Edn.10/98)	–	Rejection	17
DEFCON 525 (Edn.10/98)	–	Acceptance	17
DEFCON 621A (Edn.06/97)	–	Transport (If the Authority is Responsible for Transport)	17
7.1		Document Deliverables	17
8.		PAYMENTS/RECEIPTS	18
DEFCON 513 (Edn.11/16)	–	Value Added Tax	18
DEFCON 522 (Edn.11/17)	–	Payment and Recovery of Sums Due	18
DEFCON 534 (Edn.06/17)	–	Subcontracting and Prompt Payment	18
DEFCON 649 (Edn.12/16)	–	Vesting	18
DEFCON 670 (Edn.02/17)	–	Tax Compliance	18
8.1		Payment	18
8.2		Key Performance Indicators	18
8.3		Milestone Payments	19
8.4		Travel and Subsistence for Ad Hoc Tasks	20
9.		CONTRACT ADMINISTRATION	21
DEFCON 604 (Edn.06/14)	–	Progress Reports	21
DEFCON 609 (Edn.06/14)	–	Contractor's Records	21
DEFCON 625 (Edn.10/98)	–	Co-Operation on Expiry of Contract	21
DEFCON 642 (Edn.06/14)	–	Progress Meetings	21
DEFCON 647 (Edn.09/13)	–	Financial Management Information	21

List of Annexes / Appendices to JSENS/00137

Appendix to Ts&Cs	–	DEFFORM 111 – Addresses and other Information	22
Annex A	–	Statement of Requirement (SoR)	23
Appendix 1 to Annex A	–	Data Item Descriptions (DIDs)	24
Annex B	–	Security Aspects Letter (SAL)	25
Annex C	–	Quarterly Service Charge for SOR Line Item 1	30
Annex D	–	Milestone Payment Plan for SOR Line Item 2	33
Annex E	–	Government Furnished Assets	34
Annex F	–	Tasking Procedure	37

OFFICIAL – SENSITIVE COMMERCIAL

Appendix 1 to Annex F	–	Task Authorisation Form	38
Appendix 2 to Annex F	–	Firm Rates and Travel & Subsistence Rates for Ad Hoc	
Tasking			41
Appendix 3 to Annex F	–	List of Approved Tasks for SOR Line Item 3	42
Annex G	–	Key Performance Indicators (KPIs)	43
Annex H	–	Transfer of Undertaking (Protection of Employment) Exit	
Clause			47
Appendix 1 to Annex H	–	TUPE – Employee Transfer Arrangements on Entry	52
Appendix 2 to Annex H	–	TUPE – Exit Clause	53
Annex I	–	DEFFORM 539A Tenderer's Commercially Sensitive	
Information Form			55

1. SCHEDULE OF REQUIREMENTS

Name and Address of Contractor QinetiQ Ltd	MINISTRY OF DEFENCE	Contract No JSENS/00137
	Schedule of Requirements for Provision of Independent Test and Reference Services	
Issued With DEFFORM 47	On 11 May 2018	Previous Contract No N/A

1.1 Schedule of Requirements

Item Number	Description	Notes to Supplier	Price All £ (ex-VAT)
1	Contract and Project Management Activities in accordance with Work Package 1 of Annex A to this Contract, for the period 11 May 2018 to 31 March 2023	Firm Price	3,744,332.46
2	Delivery of Services for GBAD in accordance with Work Package 2 of Annex A to this Contract, for the period 11 May 2018 to 31 March 2023	Firm Price	2,605,497.49
3	Provision of an Independent Test and Reference Facility Service in accordance with Work Package 3 of Annex A on a task by task basis	Tasks to be priced in accordance with Tasking Procedure at Annex F	

1.2 Options

Item Number	Description	Notes to Supplier	Price All £ (ex-VAT)
1	Contract and Project Management Activities in accordance with Work Package 1 of Annex A to this Contract, for the period 1 April 2023 to 31 March 2024	Firm Price Option valid until 09/01/2023 in accordance with Condition 4.3	359,341
2	Contract and Project Management Activities in accordance with Work Package 1 of Annex A to this Contract, for the period 1 April 2024 to 31 March 2025	Firm Price Option valid until 08/01/2024 in accordance with Condition 4.3	367,740

2. GENERAL CONDITIONS

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

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

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

DEFCON 516 (Edn.04/12) – Equality

DEFCON 518 (Edn.02/17) – Transfer

DEFCON 520 (Edn.02/17) – Corrupt Gifts and Payments of Commission

DEFCON 526 (Edn.08/02) – Notices

DEFCON 527 (Edn.09/97) – Waiver

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

NOTE: The Contractor's attention is drawn to Clause 16 of DEFCON 528. The period of notice for both Parties shall be 20 business days.

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

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

DEFCON 538 (Edn.06/02) – Severability

DEFCON 539 (Edn.08/13) – Transparency

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

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

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

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

NOTE: For the purposes of this DEFCON, the period of notice shall be at least 20 business days

DEFCON 658 (Edn.10/17) – Cyber

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

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

2.1 Definitions

2.1.1 In addition to those definitions detailed in DEFCON 501 (Edn.11/17) and other DEFCONs as applicable, for the purposes of this Contract:

“Authority's Commercial Branch” means the organisation in which the point of contact detailed in box 1 of DEFFORM 111 is managed.

“Authority’s Personnel” means any officer, agent, contractor or employee of the Authority or member of the armed forces acting in the course of his office, contract or employment (as applicable) but excluding in each case the Contractor and any Contractor Personnel.

“Clause” means any individual term within this Contract.

“Condition” means any individual / group of clauses within this Contract.

“Contract” means this document JSSENS/00137 and the associated Annexes.

“Contract Amendment” means a formal change to the Contract, in accordance with DEFCON 503 (Edn.12/14).

“Contractor’s Personnel” shall include all employees of the Contractor and Sub-Contractors to the Contractor who are directly or indirectly involved in the delivery of the Contract, or support thereof.

“Government Furnished Assets” or “GFA” means any item in the GFA list at Annex E provided by the Authority to the Contractor in support of this Contract, including Government Furnished Equipment/Resources/Facilities/Information (GFE/GFR/GFF/GFI).

“Option” means anything outside of the initial scope, but detailed within this Contract at Condition 1.2, which may or may not be added to the Contract scope.

“Parties” means both the Authority and the Contractor in relation to this Contract.

“Party” means either the Authority or the Contractor.

“Quality Assurance Representative” refers to the Authority specified in Box 7 of DEFFORM 111.

“Sub-Contract” means a contract or arrangement between the Contractor and any other organisation or person for the provision of goods and/or services to the Contractor solely for the purposes of fulfilling the Contractor’s obligations under this Contract.

“Sub-Contractor” means any organisation or person party to a Sub-Contract, as defined above, with the Contractor.

“Third Party” means any individual or group of individuals who is/are not a party to the Contract.

2.2 Period of Contract

- 2.2.1 All work under this Contract shall commence 11 May 2018 and, unless otherwise terminated in accordance with the provision of this Contract or otherwise lawfully terminated, be completed by 31 March 2023.
- 2.2.2 Where a task is authorised in accordance with Condition 4.1 and Annex F during the period of Contract but completion of the task will be outside this period, then the task will be fulfilled in accordance with the terms and conditions and procedures of this Contract and by the date specified in the tasking form.

2.3 Entire Agreement

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

2.4 Responsibility of the Contractor

- 2.4.1 Subject to Condition 6.1 on this Contract, the Contractor shall be entirely responsible for undertaking the work detailed in Condition 1.1 of this Contract – SOR.

- 2.4.2 The Contractor's responsibilities under this Contract shall in respect of Clause 2.4.1 include, but not be limited to:
- 2.4.2.1 carrying out all activities and producing the deliverables, as described in the SoR at Annex A to this Contract, and/or as defined by an approved task, to meet the Authority's requirement, in accordance with the Conditions of this Contract;
 - 2.4.2.2 the placing, administration, control and management of all Sub-Contracts, required to meet the requirements of this Contract;
 - 2.4.2.3 planning, programming and progressing of the work, including preparation and delivery of appropriate documentation;
 - 2.4.2.4 financial management of the work, including financial control and monitoring of all Sub-Contracts;
 - 2.4.2.5 providing the Authority with the information reasonably required to satisfy the Representative on a continuing basis that the work is proceeding to time, cost and performance. This is without prejudice to the specific Contract reporting requirements outlined in this Contract.

2.5 Precedence

- 2.5.1 If there is any inconsistency between the provisions of the main body of this Contract and the Annexes, or between any of the Annexes, the conflict shall be resolved according to the following descending order of priority:
- 2.5.1.1 Contract Schedule of Requirements (SOR) – Contract Condition 1;
 - 2.5.1.2 Contract Narrative Conditions;
 - 2.5.2.3 Contract DEFCONs;
 - 2.5.2.4 Annex A – Statement of Requirement (SoR);
 - 2.5.2.5 Annex D – Milestone Payment Plan;
 - 2.5.2.6 All other Contract Annexes.
- 2.5.2 If either Party becomes aware of inconsistency between the provisions of the main body of this Contract and the Annexes, or between any of the Annexes such Party shall notify the other Party forthwith and the Parties shall resolve the conflict caused by that inconsistency on the basis of the order of precedence set out in Clause 2.5.1. Where the Parties fail to reach agreement, and if either Party considers the inconsistency to be material to its rights and obligations under the Contract, then the matter shall be referred to dispute resolution in accordance with DEFCON530.

2.6 Sub-Contracts

- 2.6.1 The Contractor shall ensure that the Authority's Commercial Branch is notified at the earliest opportunity of all potential Sub-Contracts to be placed by the Contractor in the execution of this Contract.
- 2.6.2 The Contractor shall include in any Sub-Contract the same conditions as are included in the Contract, modified if necessary so as to apply to the Sub-Contractor.
- 2.6.3 The Contractor shall provide the Authority's Commercial Branch with a copy of any Sub-Contract, if so requested.
- 2.6.4 The Contractor shall be responsible for the award, administration and performance of all Sub-Contracts in such a manner to ensure that the delivery and performance requirements of the Contract are met. The Authority shall not be responsible for any inconsistencies, incompatibilities or omissions in the Contractor's agreements with its Sub-Contractors.

2.7 Contractor's Personnel

2.7.1 The Contractor shall procure that:

- 2.7.1.1 sufficient staff (including all relevant grades of supervisory staff) with the requisite level of skill and experience to this Contract. This obligation shall include ensuring that there are sufficient staff to cover periods of holiday, sickness, other absences and anticipated and actual peaks in demand throughout the duration of this Contract; and
- 2.7.1.2 all Contractor Personnel receive such training and supervision as is necessary to ensure the proper performance of this Contract in accordance with the provisions herein.

2.8 Security Vetting of Contractor's Personnel and Places of Work

- 2.8.1 Where it is a statutory requirement that any Contractor's Personnel be of a required clearance level before undertaking particular work as specified in the SAL(s) at Annex B to this Contract, the Contractor will need to ensure the validity of the clearance throughout the term of employment.
- 2.8.2 The Contractor shall ensure that all personnel are made aware of and comply with all the appropriate security measures, as directed by the Contract and the security policy, and with the security regulations pertaining to all work and documents relating to the project and the environments where the Contractor's activities may be undertaken.
- 2.8.3 The facilities in which the Contractor shall store/handle classified material in relation to this Contract shall be, and shall remain for the duration of the Contract, suitable for handling the information in accordance with the security requirements as defined in the SoR at Annex A and in the SAL(s) at Annex B to this Contract. The Contractor shall include in any relevant Sub-Contracts the provision, that should the Sub-Contractor intend to store/handle classified material in relation to the Contract, its facilities shall also be and remain for the duration of the Contract, suitable for handling the information in accordance with the security requirements as defined in the SoR at Annex A and in the SAL(s) at Annex B to this Contract.

2.9 Publicity

- 2.9.1 The Contractor shall note that no publicity or communication with representatives of press, television, radio or other media, unless otherwise agreed in writing by the Authority's Commercial Branch, shall be permitted on any aspects of this Contract. The Contractor shall not release any information publicly relating it, any employees, or Sub-Contractors to this Contract without the prior written approval of the Authority's Commercial Branch.
- 2.9.2 This Condition is to be flowed down to all Sub-Contractors.
- 2.9.3 Any failure to comply with the obligations under this Condition 2.9 shall be treated as a breach of contract potentially leading to termination or deductions equivalent to the damage resulting from any disclosure.

2.10 Future Work

- 2.10.1 Nothing in this Contract shall be interpreted as an undertaking by the Authority to place any other contract with the Contractor or to authorise the Contractor to carry out any further work in connection with the work carried out under this Contract.

2.11 Continuing Obligations

- 2.11.1 Save as otherwise expressly provided in this Contract or as already taken into account in the calculation of any payment on termination pursuant to this Contract, termination/expiry of this Contract shall be without prejudice to any accrued rights or obligations under this Contract prior to termination/expiry; and
- 2.11.2 termination/expiry of this Contract shall not affect the continuing rights and obligations of the Contractor and the Authority under:
 - 2.11.2.1 Condition 2.8, Security Vetting of Contractor's Personnel and Places of Work;

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

2.11.2.3 Condition 5, Intellectual Property Rights;

2.11.2.4 Condition 2.15, Confidentiality;

2.11.2.5 Condition 2.16, Controlled Information;

2.11.2.6 DEFCON 530 (Edn.12/14), Dispute Resolution;

and/or under any other provision of this Contract which is expressed to survive termination/expiry or which is required to give effect to such termination or the consequences of such termination.

2.12 Safety

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

2.13 Export Licences

2.13.1 The Contractor shall be solely responsible for securing all necessary export licences in a timely manner to ensure that the Contractor shall meet the delivery dates in accordance with Annex A, including Appendix 1 to Annex A, and Annex C to the Contract. This includes but is not limited to any export licence required in relation to:

2.13.1.1 Any equipment that is to be manufactured outside of the United Kingdom;

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

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

2.14 Disclosure of Information

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

2.15 Confidentiality

2.15.1 In addition to the Contractor's obligations under DEFCON 531 (Edn.11/14), the Contractor shall procure the execution and delivery to the Authority on or before the date of this Contract and as a Condition of this Contract a signed copy of DEFFORM 94 (Confidentiality Agreement).

2.15.2 The Contractor may be required to sign Confidentiality / Non-Disclosure Agreements with other Organisations to enable work against this Contract to progress to completion. The Contractor may be required to supply copies of any Confidentiality / Non-Disclosure Agreements to the Authority, which will be provided immediately upon request.

2.16 Controlled Information

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

- 2.16.2 For the avoidance of doubt all third party proprietary information providing performance of its proprietary product(s), shall be considered to bear the legend "Controlled Information".
- 2.16.3 For the purposes of this Condition "Controlled Information" shall mean any confidential information in any written or tangible form which is disclosed to the Contractor by or on behalf of the Authority under or in connection with the Contract, and which is identified by the legend "Controlled Information" or other approved legend notified to the Contractor. Controlled Information shall exclude information provided by oral communication.
- 2.16.4 The Contractor shall:
- 2.16.4.1 hold the Controlled Information and not use it other than for the purpose of discharging its obligations under the Contract;
 - 2.16.4.2 not copy the Controlled Information except as strictly necessary for the purpose of discharging its obligations under the Contract;
 - 2.16.4.3 not disclose the Controlled Information to any Third Party unless so authorised in writing beforehand by the Authority;
 - 2.16.4.4 Protect the Controlled Information diligently against unauthorised access and against loss; and
 - 2.16.4.5 Act diligently to ensure that:
 - i. Controlled Information is disclosed to its employees only to the extent necessary for the purpose of discharging its obligations under the Contract;
 - ii. employees to whom Controlled Information is disclosed are made aware of and required to comply with the terms of this Condition 2.16.
- 2.16.5 Where Controlled Information is provided to the Contractor, it shall:
- 2.16.5.1 compile a register of that Controlled Information, which shall include explicit description of the Controlled Information, a record of the number of copies made and a record of all access to the Controlled Information including access to any copies of the Controlled Information.
 - 2.16.5.2 maintain this register for the duration of the Contract and for two years following completion of the Contract;
 - 2.16.5.3 make the register of access available to the Authority upon reasonable notice for inspection and audit for so long as it is required to be maintained under this Condition; and
 - 2.16.5.4 at the completion of the Contract, return to the Authority all original and duplicate copies of the Controlled Information, or else at the Authority's option destroy these copies and provide a certificate of destruction to the Authority.
- 2.16.6 This Condition shall not diminish or extinguish any right of the Contractor to copy, use or disclose any other information to the extent that it can show:
- 2.16.6.1 that the information concerned was or has become published or publicly available for use without breach of any provision of the Contract or any other agreement between the parties.
 - 2.16.6.2 that the information was already known to it (without restrictions on disclosure or use) prior to receiving it under or in connection with the Contract;
 - 2.16.6.3 that the information concerned was lawfully provided by a Third Party without restriction on use or further disclosure; or
 - 2.16.6.4 from its records, that the information was derived independently of the Controlled Information;

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

2.17 Transfer of Undertakings (Protection of Employment) Exit Clause

2.17.1 The Contractor shall meet all the obligations in respect of Transfer of Undertakings (Protection of Employment) as detailed at Annex H of the Contract.

2.18 Contract Review / Option to Break

2.18.1 The Authority reserves the right and at its own discretion to undertake a review of this Contract after three years of contract award, or when GBAD-FI has achieved Initial Operating Capability (IOC), to review the non-funded projects (i.e. BMD) at this point of the Contract. The Authority shall notify the Contractor of any decision made.

2.18.2 The Authority and the Contractor recognise the importance of the service continuing to provide value for money. Work Package 3 of the SOR at Annex A to this Contract is dependent on fully funded projects and it is recognised by both Parties that at Contract Award these projects were still unknown.

2.18.3 Considering the uncertainty, the Authority may conduct a review of possible upcoming future work, and may choose at its own discretion to either:

2.18.3.1 exit the Contract under the provision of DEFCON 656B. For the purposes of this Condition 2.18, and in accordance with Clause 1 of DEFCON 656B, the Authority shall give the Contractor at least one calendar months' notice of its decision to unilaterally break the Contract; or

2.18.3.2 engage with the Contractor in negotiations to seek agreement of a revised scope of this Contract, of which the Authority would seek to engage with the Contractor at its earliest convenience.

3. SPECIFICATIONS, PLANS ETC

DEFCON 129J (Edn.18/11/16) – The Use of the Electronic Business Delivery Form

DEFCON 502 (Edn.05/17) – Specification Changes

DEFCON 601 (Edn.04/14) – Redundant Materiel

DEFCON 602A (Edn.12/17) – Quality Assurance (with Deliverable Quality Plan)

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

DEFCON 627 (Edn.12/10) – Requirement for a Certificate of Conformity

DEFCON 637 (Edn.05/17) – Defect Investigation and Liability

3.1 Commercial Risk

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

3.1.1.1 particular risks and their impact; or

3.1.1.2 risk reduction measures, contingency plans and remedial actions

shall not in any way limit or exclude the Contractor's obligations under this Contract and shall be entirely without prejudice to the Authority's rights, privileges and powers under this Contract. The risks identified as a result of any risk assessment questionnaire and risk assessment process generally remain the risks of the Contractor and are not assumed by the Authority except to the extent that the Authority expressly and unequivocally accepts those risks under the Contract. Any risk assessment questionnaire released was or will be issued by the Authority solely on this basis.

3.2 Access to the Contractor's Premises and Technical Information

3.2.1 In addition to the rights afforded to the Authority under DEFCON 608 (Edn.10/14) the Contractor shall allow authorised personnel of the Authority access to the premises of the Contractor to enable the Authority to observe all work being carried out under the Contract and to examine any drawings, specifications or other documents, computer generated and maintained data or software programs utilised by the Contractor under the Contract. The Contractor shall provide all reasonable facilities as necessary for the execution of the Authority's rights reserved herein.

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

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

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

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

- 3.2.6 If the Contractor or any of your Sub-Contractors consider that actions or requests made by such personnel are not covered by the scope of this Condition, the Contractor shall notify the Authority of its concerns. The Authority shall use reasonable endeavours to resolve the issue.
- 3.2.7 Such Third Party personnel shall enjoy the same rights as the Authority's own personnel and shall be subject to the same obligations as the Authority's Personnel in similar circumstances.
- 3.2.8 Whenever access is granted to any of the bodies or personnel mentioned above, including Authority's staff, such access shall be restricted to the specific purpose for which that access was granted.
- 3.2.9 No-one granted access on the Authority's behalf by the Contractor shall impede the progress of any work. They shall not give, and the Contractor shall not accept, any instruction or re-direction to the Contractor or to any of the Contractor's Sub-Contractors.
- 3.2.10 The Authority shall give the Contractor reasonable notice when access to the premises of the Contractor or of any Sub-Contractors is required.
- 3.2.11 The Authority shall ensure that all representatives requiring access to the premises of the Contractor or of any Sub-Contractors have the appropriate security clearance.

3.3 Quality Assurance

- 3.3.1 In addition to those standards and regulations provided for elsewhere in this Contract the Contractor shall comply with the following quality standards in the performance of its obligations under this Contract.
- 3.3.2 The Contractor shall hold and maintain an appropriate Third Party certification as awarded by a UK accredited certification body or equivalent. The resultant quality management system shall have appropriate scope for the work being undertaken; Quality assurance shall be conducted in accordance with AQAP 2110 Edition 3 and AQAP 2210 Edition A Version 2. A quality plan shall be generated to meet the requirements of AQAP 2105 Edition 2 and AQAP 2110 Edition 3.
- 3.3.3 For the purposes of this Contract the following Defence Standards shall apply:
 - 3.3.3.1 Def Stan 05-57 Issue 6 dated 07/03/2014 Configuration Management of Defence Material - plus Annex H;
 - 3.3.3.2 Def Stan 05-135 Issue No.1 dated 10/07/2014 Avoidance of Counterfeit;
 - 3.3.3.3 Def Stan 05-61 Pt1 Issue No.6 dated 31/03/2016 Quality Assurance Procedural Requirements – Concessions;
 - 3.3.3.4 Def Stan 05-61 Pt4 Quality Assurance Procedural Requirements – Contractor Working Parties;
 - 3.3.3.5 Def Stan 05-61 Pt9 Quality Assurance Procedural Requirements – Independent Inspection Requirement for Safety Critical Items.
- 3.3.4 For the purposes of this contract the product quality requirements and evaluation of COTS software shall be in accordance with ISO 25001: 2007 entitled "Software Engineering – Software Product Quality Requirements and Evaluation (SQuaRE) – Planning and Management".

4. PRICE

DEFCON 619A (Edn.09/97) – Customs Duty Drawback

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

NOTE: DEFCON 654 (Edn.10/98) is included to assist with pricing of any overseas Sub-Contracts placed as a result of amendment of this Contract with companies in countries with whom the Authority has appropriate reciprocal audit arrangements.

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

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

4.1 Prices Payable

- 4.1.1 The Firm Price quarterly Service Charge applicable to Item 1 of the SOR Condition 1.1 is the price for delivery of Support in accordance with Work Package 1 of Annex A and subject to deductions in accordance with Clause 8.2 and Annex G to this Contract.
- 4.1.2 The price stated for Item 2 on the SOR Condition 1.1 is the Firm Price for delivery of known GBAD activities in accordance with Work Package 2 of Annex A, and not subject to variation or escalations and shall be:
 - 4.1.2.1 inclusive of all appropriate taxes (but not UK VAT), royalties, licence fees and the cost of complying with all Contract Conditions; and
 - 4.1.2.2 inclusive of all costs associated with importing any equipment/software/data into the UK from overseas.
- 4.1.2 Firm Prices shall be agreed in advance, unless agreed otherwise for any tasks to be carried out under Item 3 of the SOR Condition 1.1. Prices shall be calculated using the firm labour rates at Appendix 2 to Annex F. All work to be undertaken under Item 3 of the SOR shall be tasked in accordance with the procedures detailed at Annex F. The Authority shall not be liable for any costs associated with work undertaken under Item 3 which has not been tasked in accordance with Annex F.

4.2 Options

- 4.2.1 In addition to and in consideration of the items identified in SOR Condition 1.1 the Contractor hereby grants to the Authority the irrevocable option to purchase the items set out in SOR Condition 1.2, jointly or individually in accordance with the Conditions set out in this clause. In the event that the Authority chooses to invoke these option(s) they shall be incorporated into the Contract by formal Contract Amendment in accordance with DEFCON 503 (Edn.12/14).
- 4.2.2 The Authority shall have the right to exercise the Options detailed herein by the dates specified or within such further period as corresponds to the aggregation of any period(s) for the duration of which the Authority is prevented from exercising any such Option by reason of any breach of the Contract by the Contractor.
- 4.2.3 Option 1 shall be valid until 09/01/2023 The Authority shall notify the Contractor no later than 60 Business Days prior to the take up of the Option.
- 4.2.4 Option 2 shall be valid until 08/01/2024. The Authority shall notify the Contractor no later than 60 Business Days prior to the take up of the Option.
- 4.2.5 The Options will not be covered under the Contract unless taken up in accordance with Clause 4.2.2, above. There will be no obligation on the Authority to take up any of the Options.

4.3 Import Duty

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

5. INTELLECTUAL PROPERTY RIGHTS

DEFCON 126 (Edn.11/06) – International Collaboration

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

DEFCON 703 (Edn.08/13) – Intellectual Property Rights – Vesting in the Authority

NOTE: For the purposes of Clause 1 of DEFCON 703, the “Results” generated under the SoR at Annex A to this Contract shall exclude software but shall include, but not be limited to:

- i. All Performance Assessment, vulnerability assessment outputs and reports;
- ii. DDS NMS standard and related information, data, changes, analysis and reports;
- iii. Information and reports produced for and as a result of all Test Readiness Reviews;
- iv. All Specialist Independent Assessment outputs and reports;
- v. All test schedules, plans, scenarios, cases, scripts, outputs and reports;
- vi. All Verification and Validation outputs and reports;
- vii. All Trials reports; and
- viii. All recorded data.

5.1 Copyright

- 5.1.1 This Condition shall apply to all copyright works generated under the Contract, or delivered to the Authority under the provisions of the Contract with the exception of Results as defined under Clause 1 of DEFCON 703 and associated notes in this Contract.
- 5.1.2 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.
- 5.1.3 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.
- 5.1.4 The Authority shall have, in respect of any copyright work to which this Condition applies, a free licence:
 - 5.1.4.1 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 5.1.4.2, 5.1.4.3, 5.1.4.4 or 5.1.4.5 of this clause, be made available to any third party;
 - 5.1.4.2 to issue the work or any part of the work or any copy of the work or any part thereof to any contractor for the purpose of use only in connection with a contract for the United Kingdom Government for the study, management, evaluation, assessment and/or validation of the work, provided that any such contractor shall be placed under an obligation which restricts disclosure and use of such work to the said purpose;
 - 5.1.4.3 to issue the work or any part of the work or any copy of the work or any part thereof to any third party whose products the Contractor has assessed under this Contract for the internal purposes of the third party in the evaluation, assessment and/or validation of their product, provided that any such contractor shall be placed under an obligation which restricts disclosure and use of such work to the said purpose;
 - 5.1.4.4 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;
 - 5.1.4.5 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 the nation(s) prescribed in the Contract, for information only, 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, sub-clauses d and e 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 the Contract. Sub-clauses 5.1.4.4 and 5.1.4.5 shall apply to all works or part thereof unless otherwise marked by the Contractor in accordance with clause 5.1.5 below.

- 5.1.5 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.
- 5.1.6 The Contractor may mark or include in any copyright work to which this Condition applies a copyright notice provided that such copyright notice acknowledges the Authority's rights under this Condition. 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.
- 5.1.7 This Condition shall constitute an "agreement to the contrary" for the purposes of Section 48 of the Copyright, Design and Patents Act 1988.
- 5.1.8 In this Condition "copyright work" shall be understood to include any works, data or other materials in which a database right subsists.

6. LOANS

DEFCON 23 (Edn.08/09) – Special Jigs, Tooling and Test Equipment

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

DEFCON 76 Limitation Redacted – Commercially Sensitive Information

DEFCON 611 (Edn.02/16) – Issued Property

DEFCON 694 (Edn.03/16) – Accounting for Property of the Authority

6.1 Government Furnished Assets (GFA)

- 6.1.1 All GFA issued by the Authority to the Contractor for the purpose of carrying out the work under SOR Items 1 & 2 is listed at Annex E to this Contract. All GFA will be provided on the terms and conditions stated therein, and are subject to the provisions of DEFCON 611 (Edn.02/16).
- 6.1.2 Save for the applicability of DEFCON 632 (Edn.08/12), any information of a technical nature that has been provided to the Contractor by the Authority under the Contract is provided, subject to Clause 6.1.3, without any potential liability to the Authority; the Contractor is responsible for and remains completely liable for any use it may make of such information in the execution of the Contract, and for assuring itself that the information is fit for purpose and accurate.
- 6.1.3 All changes to the GFA list shall be undertaken by a formal Contract Amendment in accordance with DEFCON 503 (Edn.12/14) and the process in DEFCON 620 (Edn.05/17).
- 6.1.4 In the event that the Authority fails to make an item of GFA available by the agreed date, and as a direct result, the Contractor is unable to achieve the delivery date as stipulated in the Milestone Payment Plan at Annex D, then the contractor shall be entitled to apply for an extension of time to the delivery date.
- 6.1.5 The Contractor must as soon as practicable, and in any event within five (5) Business Days, of the Authority having failed to provide the GFA at the agreed time notify the Authority's Commercial Branch of its claim for an extension in time to the delivery date. As part of that claim, the Contractor must demonstrate to the reasonable satisfaction of the Authority's Commercial Branch that it has used all reasonable endeavours to mitigate and recover any delay.
- 6.1.6 If the Contractor has complied with its obligations under Clause 6.1.5 the Authority shall postpone the delivery date by such time as shall be reasonable for the Authority's failure to provide the GFA by the agreed date, taking into account the likely effect of the delay.
- 6.1.7 The Contractor shall take any steps as may be reasonably necessary to ensure that it has brought to the notice of all Sub-Contractors and any other persons dealing with any GFA that the Authority is the owner, the handling requirements associated and that obligations to flow down Conditions of this Contract are met. The Contractor shall notify the Authority immediately of any attempts by a Third Party to secure a lien or rights of a similar kind on any GFA. At the same time the Contractor shall notify the Third Party that the Authority is the owner of the GFA. This shall not relieve the Contractor of his obligations under DEFCON 611 (Edn.02/16).

7. DELIVERY

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

NOTE: Where used in conjunction with contracts for services, Clause 4 of DEFCON 5J (Edn.18/11/16) shall not apply.

DEFCON 507 (Edn.10/98) – Delivery

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

DEFCON 524 (Edn.10/98) – Rejection

NOTE: For the purposes of this DEFCON, Condition 7.1 shall apply

DEFCON 525 (Edn.10/98) – Acceptance

NOTE: For the purposes of this DEFCON, Condition 7.1 shall apply

DEFCON 621A (Edn.06/97) – Transport (If the Authority is Responsible for Transport)

7.1 Document Deliverables

- 7.1.1 For the purposes of DEFCON525 (Edn.10/98), Acceptance and DEFCON524 (Edn.10/98), Rejection, document deliverables shall be accepted once the Authority has reviewed the document and the Authority's Project Manager is satisfied that the deliverable meets the requisite quality. The Authority shall review the document and provide any comments to the Contractor within twenty Business Days of confirming receipt of the document. The Contractor shall then incorporate those comments within a revised document (subject to any further agreement that may be required) which shall be issued to the Authority within ten Business Days of receiving the Authority's comments. If the Authority does not provide comments within twenty Business Days of confirmation of receipt of the original document this shall constitute acceptance of that document by the Authority.
- 7.1.2 Following receipt of the revised document the Authority shall notify the Contractor of any errors or omissions within ten Business Days. The Contractor shall correct these errors and/or omissions and submit the corrected document to the Authority within five Business Days. If no errors or omissions are identified acceptance shall be deemed to have taken place once the ten Business Days have elapsed.
- 7.1.3 Document deliverables that address or arise from Safety or Security requirements are not subject to an automatic acceptance. The Contractor shall give the Authority notice of at least twenty Business Days prior to the submission of such deliverable documents.
- 7.1.4 The Parties shall adopt the following receipting process for document deliverables. If the Party issuing the document or providing comments does not receive confirmation of the receipt of such document or comments from the other Party within two Business Days of having issued such document or comments, the issuing Party shall be responsible for contacting the other Party to establish the whereabouts of such documents or comments.

8. PAYMENTS/RECEIPTS

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

8.1 Payment

- 8.1.1 SOR Item 1 – Payment shall be made quarterly in arrears and shall be subject to any deductions in accordance with Clause 8.2 below and Annex G to this Contract. The Quarterly Service Charge is at Annex C to the Contract.
- 8.1.2 SOR Item 2 – Payment shall be made in accordance with Clause 8.3 below and the Milestone Payment Plan at Annex D to this Contract, subject to satisfactory completion of each milestone.
- 8.1.3 SOR Item 3 – Payment shall be on successful completion of each task and subject to any additional agreed acceptance criteria specified in the TAF.

8.2 Key Performance Indicators

- 8.2.1 The Contractor's performance shall be measured quarterly in accordance with the Quarterly Programme Meeting (QPM) schedule, using the Key Performance Indicators (KPIs) contained within Annex G of this Contract and are applicable to Line Item 1 of the Schedule of Requirements. Performance shall be measured for each quarterly payment period.
- 8.2.1 The performance against each KPI shall be assessed as Satisfactory (GREEN), Cause for Concern (AMBER) or Unsatisfactory (RED) in accordance with the Performance Criteria at Annex G to this Contract.
- 8.2.3 Where the performance review has established that satisfactory performance levels (GREEN) have been provided by the Contractor in every area of review, the Authority shall authorise full claims for payment of the applicable reporting period under Line Item 1 of the Schedule of Requirements and in accordance with Condition 8.1 above.
- 8.2.4 In the event the performance of the Contractor against one or more KPIs does not meet the Required Performance (AMBER or RED), the relevant deduction in accordance with Annex G of this Contract will be made to the payment for support for the applicable reporting period in which the performance failure occurred. The payment deduction will be a percentage of the agreed payment for that quarter's period.
- 8.2.5 For the avoidance of doubt, the total permanent deductions under Line Item 1 of the Schedule of Requirements for the corresponding quarter shall be the cumulative total of any deductions against the KPIs set out in Annex G of this Contract. Any deductions applied to the Quarterly Service Payment are permanent and not subject to any further review or reimbursement.
- 8.2.6 In the event the Contractor's performance is Unsatisfactory (RED) in three or more KPIs for three consecutive months, this shall be considered a Critical Service Failure. In this instance a Rectification Plan shall be provided within 10 Business Days, and at no extra cost to the Authority, detailing how the unsatisfactory performance shall be remedied and expected service levels re-established. If satisfactory performance has not been achieved in the quarter following completion of the Rectification Plan, the Authority reserves its right to terminate the Contract in accordance with DEFCON 514.
- 8.2.7 The Contractor shall, within ten business days after the end of each quarterly period, provide and issue to the Authority's Representative (Commercial) a Performance Report which shall include details of:

- 8.2.7.1 The Contractor's actual performance against the KPIs over the preceding quarterly period;
- 8.2.7.2 Any failure to perform against the KPIs arising or persisting in the preceding quarterly period;
- 8.2.7.3 Any failure to perform against the KPIs that remain outstanding and the Contractor's progress in rectifying them;
- 8.2.7.4 The data relevant to the calculation of any KPI deduction that have occurred during the preceding quarterly period in the form of a spreadsheet, such that it reflects the KPI deductions applicable to the quarterly invoice.
- 8.2.8 Where the Parties agree the content of the quarterly Performance Report is an accurate reflection of the Contractor's performance in the preceding quarter, within 10 business days of the Quarterly Progress Meeting, the Contractor may submit an invoice for the previous quarterly period in accordance with Condition 8.1 of this Contract, minus any applicable deductions.
- 8.2.9 Where the Parties do not agree that the content of the quarterly performance Report is an accurate reflection of the Contractor's performance in the preceding quarter, an ad hoc meeting shall be held within ten business days at no extra cost to the Authority. Only once an agreement has been reached between both Parties may the Contractor submit an invoice for payment for the preceding quarter. If the Parties still do not agree that the content of the Performance Report is an accurate reflection of the Contractor's performance in the preceding quarter, then DEFCON 530 shall apply.
- 8.2.10 The Quarterly Progress Meeting will be the forum for the Contractor and the Authority to review and agree progress towards rectifying any failures of performance.
- 8.2.11 Whilst the Contractor is responsible for monitoring its own performance against the KPIs and producing the Quarterly Progress Reports, the Authority shall conduct its independent monitoring and measuring of the performance of the Contractor in order to evaluate the accuracy of the data presented in the Performance Reports. The Authority may also elect to periodically (no more than six monthly) audit the Contractor's performance monitoring systems to verify that the Contractor is accurately capturing and presenting its performance against the Contract in the Performance Reports. The Contractor shall assist the Authority in any such exercise and shall grant the Authority access to any part of any of its systems, procedures and processes necessary to verify the contents of the Performance Reports.

8.3 Milestone Payments

- 8.3.1 The Authority shall, subject to the terms and conditions of this Contract, make to the Contractor payments against SOR Item 2 in accordance with the Milestone Payment Plan set out at Annex D to this Contract.
- 8.3.2 The Contractor shall be entitled to milestone payments, to be claimed in accordance with Condition 8.1 for each milestone under the Milestone Payment Plan. The Contractor shall have completed or performed the part of the Contract to which the milestone relates when:
 - 8.3.2.1 the Contractor has completed all work comprised in the milestone for which the payment is sought and the Authority shall have certified completion of that milestone in accordance with the Contract;
 - 8.3.2.2 the milestones have been completed sequentially unless otherwise agreed between the Parties;
 - 8.3.2.3 the Contractor shall have complied with all its contractual obligations which enable the Authority to monitor the Contractor's contractual performance, including but not limited to those obligations related to the provision of information to the Authority.
- 8.3.3 Notwithstanding Clause 8.3.2, above, the Authority shall not be obliged to make a payment to the Contractor if the Authority has reasonable cause to believe that the Contractor will be unlikely to render complete performance of his obligations in respect of Item 2 of SOR Condition 1.1.

- 8.3.4 Where the Authority intends to rely on Clause 8.3.3 above as the basis for rejecting any claim for interim payment which the Contractor may make, the Authority shall give to the Contractor notice in writing of his intention together with the Authority's reasons for the rejection.
- 8.3.5 The Authority shall without prejudice to any other right / remedy of either party, be entitled to recover in full all interim payments made under the Contract where:
- 8.3.5.1 the Contract, or the part of the Contract under which Items 1 and 2 of SOR Condition 1.1 is to be provided, is terminated otherwise than in accordance with DEFCON 656B (Edn.08/16) or expires by reason of passing of time; and
- 8.3.5.2 the Contractor has failed to complete performance of Items 1 and 2 of SOR Condition 1.1.
- 8.3.6 In the event of repayment to the Authority under the provisions of Clause 8.3.5 above then all that which vested in the Authority under the provisions of DEFCON 649 (Edn.12/16) and which related to Items 1 and 2 of SOR Condition 1.1 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 Condition 8.3 shall not, unless expressly stated to do so, constitute:
- 8.3.7.1 acceptance by the Authority of any contractual deliverable;
- 8.3.7.2 a representation by the Authority that the Contractor has complied with any contractual obligations; or
- 8.3.7.3 a waiver of the Authority's right to subsequently claim that the conditions for payment of that milestone payment were not satisfied.
- 8.3.8 The Parties acknowledge that the schedule of deliverables under WP2 of Annex A to this Contract are dependent on progress of the GBAD project schedule. In the event a key dependency fails to materialise as a result of GBAD programme performance, outside of the Contractor's influence, which has a significant impact of the Contractor's ability to complete a milestone deliverable (as defined by Annex D to this Contract) the Parties agree to review the applicable Milestone Payment to consider if the Contractor is reasonably prevented from claiming payment.
- 8.3.9 The onus shall be on the Contractor to provide evidence to the reasonable satisfaction of the Authority that it has completed all possible activity associated with the Milestone criteria, notwithstanding the failed dependency. The Authority shall then, acting reasonably, determine if any amendment to the applicable Milestone is required to include payment for such work so completed. The Parties shall negotiate any required amendment which shall be incorporated into the Contract in accordance with DEFCON 503 (Edn.12/14). If the Parties do not reach agreement within a reasonable period the dispute resolution process shall be followed in accordance with DEFCON 530 (Edn.12/14)
- 8.4 Travel & Subsistence for Ad Hoc Tasks**
- 8.4.4 The Contractor shall quote Firm prices for Travel and Subsistence at Part 2 of the Tasking Form at Annex F to the Contract, and undertakes to incur T&S costs, including profit, in line with Ministry of Defence T&S policy, where reasonably practicable.

9. CONTRACT ADMINISTRATION

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

NOTE: For the purposes of the Contract, the frequency of reports shall be in accordance with the requirements of the SoR at Annex A.

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

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

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

NOTE: For the purposes of Clause 1 the frequency of meetings shall be as defined in the SoR at Annex A to this Contract.

DEFCON 647 (Edn.09/13) – Financial Management Information

Appendix - Addresses and Other Information

1. Commercial Officer

Name: DES JSENS-Comrc1-2

Address: JSENS DT, McIntosh #0012, MOD Abbey Wood, Bristol, BS34 8JH

Email: clare.omara337@mod.gov.uk**2. Project Manager, Equipment Support Manager or PT Leader** (from whom technical information is available)

Name: DES JSENS-GBAD5

Address: JSENS DT, McIntosh #0012, Abbey Wood South, Bristol, BS34 8JH

Email: colin.bates118@mod.gov.uk**3. Packaging Design Authority**

(Where no address is shown please contact the Project Team in Box 2)

4. (a) Supply / Support Management Branch or Order Manager:

DES JSENS-ILS1

Tel No: 030 679 32007

(b) U.I.N. P2535A

5. Drawings/Specifications are available from
N/A**6. Intentionally Blank****7. Quality Assurance Representative:**

DES ISTAR-BMT-QM1

McIntosh 0 #0012, Abbey Wood South, Bristol, BS34 8JH

Email: martin.murphy946@mod.gov.uk

AQAPS and **DEF STANS** are available from UK Defence Standardization, for access to the documents and details of the helpdesk visit <http://dstan.uwh.diif.r.mil.uk/> [intranet] or <https://www.dstan.mod.uk/> [extranet, registration needed].

8. Public Accounting Authority

1. Returns under DEFCON 694 (or SC equivalent) should be sent to DBS Finance ADMT – Assets In Industry 1, Level 4 Piccadilly Gate, Store Street, Manchester, M1 2WD

☎ 44 (0) 161 233 5397

2. For all other enquiries contact DES Fin FA-AMET Policy, Level 4 Piccadilly Gate, Store Street, Manchester, M1 2WD

☎ 44 (0) 161 233 5394

9. Consignment Instructions

Document deliverables shall be delivered to the Project Manager as detailed at Box 2, or a nominated representative as notified by the Authority.

10. Transport. The appropriate Ministry of Defence Transport Offices are:

A. DSCOM, DE&S, DSCOM, MoD Abbey Wood, Cedar 3c, Mail Point 3351, BRISTOL BS34 8JH

Air Freight Centre

IMPORTS ☎ 030 679 81113 / 81114 Fax 0117 913 8943

EXPORTS ☎ 030 679 81113 / 81114 Fax 0117 913 8943

Surface Freight Centre

IMPORTS ☎ 030 679 81129 / 81133 / 81138 Fax 0117 913 8946

EXPORTS ☎ 030 679 81129 / 81133 / 81138 Fax 0117 913 8946

B. JSCS

JSCS Helpdesk No. 01869 256052 (select option 2, then option 3)

JSCS Fax No. 01869 256837

www.freightcollection.com**11. The Invoice Paying Authority (see Note 1)**

Ministry of Defence ☎ 0151-242-2000

DBS Finance

Walker House, Exchange Flags Fax: 0151-242-2809

Liverpool, L2 3YL

Website is:

<https://www.gov.uk/government/organisations/ministry-of-defence/about/procurement#invoice-processing>

12. Forms and Documentation are available through *:

Ministry of Defence, Forms and Pubs Commodity Management

PO Box 2, Building C16, C Site

Lower Arncliffe

Bicester, OX25 1LP (Tel. 01869 256197 Fax: 01869 256824)

Applications via fax or email: [DESLCSLS-](mailto:DESLCSLS-@mod.gov.uk)OpsFormsandPubs@mod.gov.uk**NOTE**

1. Many **DEFCONs** and **DEFFORMs** can be obtained from the MOD Internet Site:

<https://www.aof.mod.uk/aofcontent/tactical/toolkit/index.htm>

2. If the required forms or documentation are not available on the MOD Intranet site requests should be submitted through the Commercial Office named in Section 1.

Statement of Requirement (SoR)

Defence Equipment and Support Joint Sensor and Engagements Networks Delivery Team, Statement of Requirement for the JSSENS Test and Reference Service

Version 3.3 dated 17th April 2018

REDACTED IN FULL – MILITARY SENSITIVE TECHNICAL INFORMATION

Deliverable Item Descriptions (DIDs)

JSSENS Test and Reference Service

Version 0.1

REDACTED



Ministry
of Defence



QinetiQ Ltd
Bldg CB, Room E105
Malvern Technology Centre
St Andrews Road
Malvern, Worcestershire
WR14 3PS

Colin Bates
JSENS Project Manager

030 679 32414

colin.bates118@mod.gov.uk



Defence Equipment & Support
McIntosh 0, #0012
MOD Abbey Wood
Bristol BS34 8JH



**For the personal attention of:
Ian Nicholl**

26-Jul-18

Our Reference: JSENS/04/03/03(TLTD)/1

Dear Sirs,

**CONTRACT NO. JSENS/00137 – SECURITY ASPECTS LETTER FOR THE PROVISION OF
INDEPENDENT TEST AND REFERENCE SERVICES**

1. On behalf of the Secretary of State for Defence, I hereby give you notice that the following aspects are designated 'SECRET Matter' for the purpose of DEFCON 659A Security Clause included in the contract and, for DEFCON 660, aspects that are classified as OFFICIAL-SENSITIVE:

Ser	Detailed Aspects of Clarification	Classification
	REDACTED	

2. Will you please confirm that:
 - a. The above definition of the SECRET Matter of the above contract has been brought to the attention of the person directly responsible for the security of this contract.
 - b. The definition is understood.
 - c. You have access to the Security Policy Framework and other security requirements / measures provided on the DE&S PSyA restricted access website or alternative and that measures can, and will be taken to safeguard the SECRET Matter.
 - d. All employees of the company who will have access to classified information have either signed the OSA Declaration Form in duplicate and one copy is retained by the company Security Officer or they have otherwise been informed that the provisions of the OSA apply to all classified information associated with this contract.
3. If you have any difficulty in either interpreting the definition of the SECRET Matter or in safeguarding it, will you please let me know immediately, and send a copy of your letter to your DE&S PSyA Security Advisor.

4. Any access to information on MoD premises that may be needed will be in accordance with MoD security regulations under the direction of the MoD Project Officer.
5. Please find attached a copy of JSP 440 Annex N.

Yours faithfully,

Copy via email to:

[DES PSyA-SecurityAdviceCentre \(MULTIUSER\)](#)
[DSR-STInd \(MULTIUSER\)](#)
[ISS Des-DAIS-SRAAcc8-IA \(Collins, David C1\)\)](#)

Attachments: Appendix 1

Annex N: OFFICIAL and OFFICIAL- SENSITIVE Security Condition for UK Contracts

Definitions

1. The term "Authority" means a Ministry of Defence (MOD) official acting on behalf of the Secretary of State for Defence.

Security Grading

2. All aspects associated with this Contract are classified OFFICIAL. Some aspects are more sensitive and are classified as OFFICIAL-SENSITIVE. The Authority shall issue a Security Aspects Letter which shall define the OFFICIAL- SENSITIVE information that is furnished to the Contractor, or which is to be developed by it, under this Contract. The Contractor shall mark all OFFICIAL-SENSITIVE documents which it originates or copies during the Contract clearly with the OFFICIAL-SENSITIVE classification. However, the Contractor is not required to mark information/material related to the contract which is only OFFICIAL.

Official Secrets Acts

3. The Contractor's attention is drawn to the provisions of the Official Secrets Acts 1911-1989 in general, and to the provisions of Section 2 of the Official Secrets Act 1911 (as amended by the Act of 1989) in particular. The Contractor shall take all reasonable steps to make sure that all individuals employed on any work in connection with the Contract (including sub-contractors) have notice that these statutory provisions, or any others provided by the Authority, apply to them and shall continue so to apply after the completion or earlier termination of the Contract.

Protection of OFFICIAL and OFFICIAL- SENSITIVE Information

4. The Contractor shall protect OFFICIAL and OFFICIAL-SENSITIVE information provided to it or generated by it in accordance with the requirements detailed in this Security Condition and any other conditions that may be specified by the Authority. The Contractor shall take all reasonable steps to prevent the loss or compromise of the information or from deliberate or opportunist attack.

5. OFFICIAL and OFFICIAL-SENSITIVE information shall be protected in a manner to avoid unauthorised access. The Contractor shall take all reasonable steps to prevent the loss, compromise or inappropriate access of the information or from deliberate or opportunist attack.

6. All OFFICIAL and OFFICIAL-SENSITIVE material including documents, media and other material shall be physically secured to prevent unauthorised access. When not in use OFFICIAL and OFFICIAL- SENSITIVE documents/material shall be handled with care. As a minimum, when not in use, OFFICIAL-SENSITIVE material shall be stored under lock and key and in a lockable room, cabinets, drawers or safe and the keys/combinations are themselves to be subject to a level of physical security and control.

7. Disclosure of OFFICIAL and OFFICIAL-SENSITIVE information shall be strictly in accordance with the "need to know" principle. Except with the written consent of the Authority, the Contractor shall not disclose any of the classified aspects of the Contract detailed in the Security Aspects Letter other than to a person directly employed by the Contractor or sub-Contractor, or Service Provider.

8. Any samples, patterns, specifications, plans, drawings or any other documents issued by or on behalf of the Authority for the purposes of the Contract remain the property of the Authority and shall be returned on completion of the Contract or, if directed by the Authority, destroyed in accordance with paragraph 30.

Access

9. Access to OFFICIAL and OFFICIAL-SENSITIVE information shall be confined to those individuals who have a “need-to-know”, have been made aware of the requirement to protect the information and whose access is essential for the purpose of his or her duties.

10. The Contractor shall ensure that all individuals having access to OFFICIAL-SENSITIVE information have undergone basic recruitment checks. Contractors shall apply the requirements of HMG Baseline Personnel Security Standard (BPSS) for all individuals having access to OFFICIAL-SENSITIVE information. Further details and the full requirements of the BPSS can be found at the Gov.UK website at: <https://www.gov.uk/government/publications/government-baseline-personnel-security-standard>.

Hard Copy Distribution

11. OFFICIAL and OFFICIAL-SENSITIVE documents shall be distributed, both within and outside company premises in such a way as to make sure that no unauthorised person has access. It may be sent by ordinary post or Commercial Couriers in a single envelope. The words OFFICIAL or OFFICIAL-SENSITIVE shall not appear on the envelope. The envelope should bear a stamp or details that clearly indicates the full address of the office from which it was sent.

12. Advice on the distribution of OFFICIAL-SENSITIVE documents abroad or any other general advice including the distribution of OFFICIAL-SENSITIVE hardware shall be sought from the Authority.

Electronic Communication, Telephony and Facsimile Services

13. OFFICIAL information may be emailed unencrypted over the internet. OFFICIAL-SENSITIVE information shall normally only be transmitted over the internet encrypted using either a CESG Commercial Product Assurance (CPA) cryptographic product or a MOD approved cryptographic technique such as Transmission Layer Security (TLS). In the case of TLS both the sender and recipient organisations must have TLS enabled. Details of the CPA scheme are available at:

<http://www.cesg.gov.uk/servicecatalogue/Product-Assurance/Pages/Product-Assurance.aspx>.

Exceptionally, in urgent cases, OFFICIAL-SENSITIVE information may be emailed unencrypted over the internet where there is a strong business need to do so and only with the prior approval of the Authority.

14. OFFICIAL-SENSITIVE information shall only be sent when it is known that the recipient has been made aware of and can comply with the requirements of these Security Conditions and subject to any explicit limitations that the authority shall require. Such limitations, including any regarding publication, further circulation or other handling instructions shall be clearly identified in the email sent with the material.

15. UK OFFICIAL information may be discussed on fixed and mobile telephones with persons located both within the UK and overseas. OFFICIAL-SENSITIVE information may be discussed on fixed and mobile types of telephone within the UK, but not with (or within) earshot of unauthorised persons.

16. UK OFFICIAL information may be faxed to recipients located both within the UK and overseas, however OFFICIAL-SENSITIVE information may be faxed only to UK recipients.

Quarterly Service Charge for SOR Line Item 1 (Work Package 1)

Qtrly Period	Description	Date	Amount £
	REDACTED		

Option Year 6

Qtrly Period	Description	Date	Amount £
	REDACTED		

Option Year 7

Qtrly Period	Description	Date	Amount £
	REDACTED		

Milestone Payment Plan for SOR Line Item 2 (Work Package 2)

ID	Milestone Description	Acceptance Criteria	Date	Value (£)
	REDACTED			

Government Furnished Assets

REDACTED

Task Authorisation Procedure

1. Any work performed under Schedule of Requirements (SOR) Item 3 shall be in accordance with the procedures detailed below and the contract conditions.
2. Any work to be performed shall be authorised via the Tasking Form at Appendix 1 to this Annex.
3. Each Tasking form will be allocated a unique sequential tasking order number by the Authority commencing Task001.

1. Tasking Procedure

- 1.1 Tasks will be initiated by the Authority by completion of Part 1 of the Tasking Authorisation Form (TAF) at Appendix 1 to this Annex. The TAF will then be forwarded by the Authority's Commercial Officer to the Contractor for costing.
- 1.2 On receipt of the TAF, the Contractor shall within 3 Business Days acknowledge receipt and request further clarification from the Authority, if required on Part 1 of the TAF. The Authority shall endeavour to provide a clarification response to the Contractor (where applicable) within 5 Business Days. The Contractor shall complete Part 2 and return to the Authority's Commercial Officer within 15 Business Days of receipt of the TAF, or unless otherwise agreed with the Authority (refer to KPI 2 in Annex G to this Contract), along with a proposal and cost breakdown for the task using those rates and prices agreed at Appendix 2 to this Annex to produce a Firm Price.
- 1.3 On receipt of the TAF, if acceptable, the Authority shall complete Part 3, providing authorisation for the Contractor to conduct the task and will return the TAF to the Contractor's Commercial Officer. The Authority will record all approved tasks on Appendix 3 by formal Contract Amendment in accordance with DEFCON 503 (Edn.12/14).
- 1.4 On completion of a Task, the Contractor shall complete Part 4 of the TAF and forward it to the Authority's Project Manager for completion of Part 5 under which the Authority approves formal closure of the Task.

2. PROCEDURE FOR CHANGE TO EXISTING TASKS

- 2.1 Changes to TAFs shall be managed in accordance with DEFCON 620 (Edn.05/17). For clarity the following procedure shall apply:

2.1.1 A change may be proposed by the Authority or by the Contractor.

2.1.2 If the change is requested by the Contractor, they shall provide a written request detailing the change required, the reasons for the change, and an indication of the impact to delivery, price and Milestone payment plan (if applicable to the task), for the Authority's consideration.

2.1.3 If the Authority wishes to either:

2.1.3.1 pursue a requested change; or

2.1.3.2 propose a change

it shall notify the Contractor by re-issuing Part 1 of the TAF, updating the issue number accordingly.

2.1.4 The Contractor shall then issue Part 2 of the up-issued TAF within 15 Business Days of receipt, as a formal quotation for the Authority's consideration, in accordance with KPI 2.

2.1.5 The Authority shall endeavour to respond to the Contractor's completed Part 2 within 10 Business Days. It shall either;

2.1.5.1 approve the change by re-issuing Part 3 of the up-issued TAF; or

2.1.5.2 reject the change by email notification to the Contractor.

- 2.2 The Authority shall update Appendix 3 to Annex F (List of Approved Tasks) by formal Contract Amendment in accordance with DEFCON 503 (Edn.12/14).

TASK AUTHORISATION FORM**Part 1 – Request for Task**

The Authority has a requirement for the following Task:

Task No:	Issue No:	Priority:	Date:
Date raised:		Originator:	
Task Title:			
Task Description:			
Completion required by date			

Signature: _____

Part 3 – Authorisation to proceed

Approval to proceed with task: JSENS/00137 TASK_____ against a firm price of:

Project Manager's Approval:

Signature:.....Name:.....

Post Title:..... Date:.....

Finance Officer Approval:

Signature:.....Name:.....

Post Title:..... Date:.....

Commercial Officer Approval:

Signature:.....Name:.....

Post Title:..... Date:.....

Part 4 – Task Completion report (To be completed by the Contractor)

Task: JSENS/00137 TASK_ ___ is now considered to be complete. Any required evidence is also provided.

Signature.....Name:.....

Date.....Position in Company:.....

Part 5 – Confirmation of Task Completion by the Authority's Project Manager

Signature.....Name:.....

Date.....Post title:.....

Upon signature of Part 5, the Contractor can submit claim for payment

Firm Rates for Ad Hoc Tasking

REDACTED

List of Approved Tasks under Line Item 3

TASK No.	DESCRIPTION	VALUE (£)

Key Performance Indicators

This Annex sets out the mechanism by which the Contractor's performance under the Contract will be measured and monitored. In conjunction with Condition 8.2 of this Contract this Annex sets out how deductions to the quarterly service payment will be calculated and applied in the event that the Contractor fails to meet the Authority's requirement under this Contract.

KPI 1 – Issue of Management Information

Service Area		Management
Description		Timely issue of full and accurate Quarterly Performance Reports (QPR) and any other required documentation provided in accordance with Annex A – SoR of this Contract (and applicable DIDs).
Definitions		Report covers all areas identified in the Statement of Requirement (Annex A and Appendix 1 of the Contract). Clock stops if Contractor can demonstrate to the Authority's Project Manager (APM) reasonable satisfaction that events outside their control have prevented timely submission. The APM and Contractor shall agree date and time for clock to re-start in such circumstances.
Authority Review Period		10 working days
Start		10 working days prior to QPM
Stop		Acceptance by the APM of a delivered, accurate Performance Report, that covers all areas required under the Contract. Worked example: QPM scheduled for Monday 30 April (am), acceptable QPR submitted Monday 16 April (pm)= 10 working days prior to QPM. However, if QPR submitted Tuesday 17 April (am)=9 working days prior to QPM.
Data Source		The Contractor
Data Maintainer		The Contractor
Data Provider		The Contractor
Monitoring Frequency		Quarterly
Reporting Frequency		Quarterly
Reporting Method		Quarterly Performance Reports
Level	Performance Criteria	Effect on Payment
GREEN	Satisfactory. QPR made available 10 working days prior to the scheduled QPM to the reasonable satisfaction of the APM.	Full payment of quarterly sum due under Item 1 of the Contract for that quarter (subject to impact of other KPIs).
AMBER	Cause for Concern. Contractor provides a QPR to the reasonable satisfaction of the APM 5-9 working days prior to the scheduled QPM.	1% permanent withhold of quarterly sum due under Item 1 of the Contract for that quarter.

RED	Unsatisfactory. Contractor provides a QPR to the reasonable satisfaction of the APM, 4 working days or less prior to the scheduled QPM.	2% withhold of quarterly sum due under Item 1 of the Contract for that quarter.
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KPI 2 - Provision of Tasking Information

Service Area		Management
Description		Provision of Tasking Information
Definitions		<p>Timely completion of full and accurate tasking proposals (Part 2 of the TAF) includes: Tasking information, scope of work, full cost breakdown (detailing each allowance separately) and timescales. Proposals are to be provided in accordance with Annex F and Condition 4.1 of the Contract.</p> <p>Where complexity of Tasking request prevents completion within 15 working days, the Contractor shall notify the Authority of this within 3 days of the initial request and request a longer response time. The APM shall be the ultimate arbiter of this decision.</p> <p>Clock stops if Contractor can demonstrate to the Authority's reasonable satisfaction that events outside their control have prevented timely delivery. The Authority and Contractor to agree date and time for clock to re-start in such circumstances.</p>
Authority Review Period		15 working days
Start		Issue of Tasking Form with Part 1 completed to the Contractor.
Stop		Acceptance of delivered, accurate Tasking Form, that covers all areas required, by the Authority in accordance with the Contract.
Data Source		The Contractor
Data Maintainer		The Contractor
Data Provider		The Contractor
Monitoring Frequency		Quarterly
Reporting Frequency		Quarterly
Reporting Method		Quarterly Management Reports
Level	Performance Criteria	Effect on Payment
GREEN	<p>Satisfactory.</p> <p>100% of all tasking information scheduled for completion in the quarter fully completed on or before the scheduled completion date to the reasonable satisfaction of the APM.</p>	Full payment of quarterly sum due under Item 1 of the Contract for that quarter (subject to impact of other KPIs).
AMBER	<p>Cause for Concern.</p> <p>50%-99% of all tasking information scheduled for completion in the quarter fully completed on or before the scheduled completion date to the reasonable satisfaction of the APM.</p>	2% permanent withhold of quarterly sum due under Item 1 of the Contract for that quarter.
RED	<p>Unsatisfactory.</p> <p>49% or fewer tasking information requests scheduled for completion in the quarter fully completed on or before the scheduled completion date to the reasonable satisfaction of the APM.</p>	4% permanent withhold of quarterly sum due under Item 1 of the Contract for that quarter.

KPI 3 – SQEP Attendance at Security Working Groups

Service Area		Management
Description		SQEP attendance at Security Working Groups (SWG)
Definitions		<p>Attendance at the JSENS Security Working Group (SWG) meetings (to a maximum of 4 per year).</p> <p>For the purposes of this KPI Attendance is defined as:</p> <p>Attendance and contribution to the SWG in accordance with SoR Item 5.5.6 including the receipt of TRS topics to be discussed received by the Authority no later than 10 working days prior to the SWG.</p> <p>Clock stops if the Contractor can demonstrate to the Authority's reasonable satisfaction that events outside their control have prevented timely delivery. The onus is on the Contractor to demonstrate that reasonable mitigation of foreseeable risks to attendance (e.g.: personnel absences) has been undertaken. The APM and Contractor shall agree date and time for clock to re-start in such circumstances.</p>
Authority Review Period		Quarterly
Start		10 Business Days prior to SWG
Stop		On completion of SWG.
Data Source		The Contractor
Data Maintainer		The Contractor
Data Provider		The Contractor
Monitoring Frequency		Quarterly
Reporting Frequency		Quarterly
Reporting Method		Quarterly Management Reports
Level	Performance Criteria	Effect on Payment
GREEN	Satisfactory. 100% attendance at Security Working Groups within the relevant quarter.	Full payment of quarterly sum due under Item 1 of the Contract for that quarter (subject to impact of other KPIs).
AMBER	Cause for Concern. 50%-99% attendance at Security Working Groups within the relevant quarter.	2% permanent withhold of quarterly sum due under Item 1 of the Contract for that quarter
RED	Unsatisfactory. 49% attendance at Security Working Groups within the relevant quarter.	4% permanent withhold of quarterly sum due under Item 1 of the Contract for that quarter

Note: any percentage calculation that is not whole will be rounded up to the nearest whole figure if the 1st decimal point is 5 or higher. If 4 or lower, the percentage calculation will be rounded down to the nearest whole figure.

Transfer Regulations**Employee Transfer Arrangements on Exit****1. Definitions**

1.1 In this Annex H, save where otherwise provided, words and terms defined in DEFCON 501 (Edn.11.17) and Condition 2 of the Contract shall have the meaning ascribed to them in DEFCON 501 (Edn.11/17) and Condition 2 of the Contract.

1.2 Without prejudice to any other Definitions of the Contract and its Annexes, unless the context otherwise requires:

“DPA” means Data Protection Act 1998 as amended or replaced from time to time;

“Employee Liability Information” has 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;

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

“Subsequent Relevant Transfer” means a transfer of the employment of Subsequent Transferring Employees from the Contractor or any Employing Sub-Contractor to a New Provider or the Authority under the Transfer Regulations;

“Subsequent Transfer Date” means the date on which the transfer of a Subsequent Transferring Employee takes place under the Transfer Regulations;

“Subsequent Transferring Employee” means an employee wholly or mainly employed or otherwise assigned to the Services (or in respect of partial termination, the relevant part of the Services) whose employment transfers under the Transfer Regulations from the Contractor or any Employing Sub-Contractor to a New Provider;

“Transfer Regulations” means the Transfer of Undertakings (Protection of Employment) Regulations 2006 as amended from time to time and/or the Service Provision Change (Protection of Employment) Regulations (Northern Ireland) 2006 (as amended from time to time), as appropriate.

2. Employment

2.1 Information on Re-Tender, Partial Termination, Termination or Expiry

2.1.1 No earlier than [two] years preceding the termination, partial termination or Expiry of this Contract or a potential Subsequent Transfer Date or at any time after the service of a notice to terminate this Contract or the provision of any of the Services (whether in whole or part) or on receipt of a written request by the Authority, the Contractor shall (and shall procure that any Employing Sub-Contractor shall):

- (a) Supply to the Authority such information as the Authority may reasonably require in order to consider the application of the Transfer Regulations on the termination, partial termination or expiry of this Contract;
- (b) Supply to the Authority such full and accurate and up-to-date information as may be requested by the Authority including the information listed in Appendix 1 to this Annex H relating to the employees who are wholly or mainly employed, assigned or engaged in providing the Services or part of the Services under this Contract who may be subject to a Subsequent Relevant Transfer;

- (c) Provide the information promptly and in any event not later than three months from the date when a request for such information is made and at no cost to the Authority;
 - (d) Acknowledge that the Authority will use the information for informing any prospective New Provider for any services which are substantially the same as the Services or part of the Services provided pursuant to this Contract;
 - (e) Inform the Authority of any changes to the information provided under paragraph 2.1.1(a) or 2.1.1(b) up to the Subsequent Transfer Date as soon as reasonably practicable.
- 2.1.2 Three months preceding the termination, partial termination or expiry of this Contract or on receipt of a written request from the Authority the Contractor shall:
- (a) Ensure that Employee Liability Information and such information listed in Part A of Appendix 2 of this Annex H (Personnel Information) relating to the Subsequent Transferring Employees is provided to the Authority and/or any New Provider;
 - (b) Inform the Authority and/or any New Provider of any changes to the information provided under this Paragraph 2.1.2 up to any Subsequent Transfer Date as soon as reasonably practicable;
 - (c) Enable and assist the Authority and/or any New Provider or any sub-contractor of a New Provider to communicate with and meet those employees and their trade union or other employee representatives.
- 2.1.3 No later than 28 days prior to the Subsequent Transfer Date the Contractor shall provide the Authority and/or any New Provider with a final list of the Subsequent Transferring Employees together with the information listed in Part B of Appendix 2 of this Annex H (Personnel Information) relating to the Subsequent Transferring Employees. The Contractor shall inform the Authority and/or New Provider of any changes to this list or information up to the Subsequent Transfer Date.
- 2.1.4 Paragraphs 2.1.1 and 2.1.2 of this Annex are subject to the Contractor's obligations in respect of the DPA and the Contractor shall use its best endeavours to obtain the consent of its employees (and shall procure that its Sub-Contractors use their best endeavours to obtain the consent of their employees) to the extent necessary under the DPA or provide the data in an anonymous form in order to enable disclosure of the information required under paragraphs 2.1.1 and 2.1.2. Notwithstanding this paragraph 2.1.4, the Contractor acknowledges (and shall procure that its Sub-Contractors acknowledge) that they are required to provide sufficient information to the Authority to enable the Authority to determine the nature of the activities being undertaken by employees engaged in providing the Services, to assess whether there is an organised grouping for the purposes of the Transfer Regulations and to assess who is assigned to such organised grouping. To the extent that anonymous data has been provided by the Contractor pursuant to its obligations under Paragraph 2.1.1 or 2.1.2 above, the Contractor shall provide full data to the Authority no later than 28 days prior to the Subsequent Transfer Date.
- 2.1.5 On notification to the Contractor by the Authority of a New Provider or within the period of six months prior to the Termination Date or after service of a notice to terminate this Contract (whether in whole or in part), whichever is earlier and in any event on receipt of a written request by the Authority, the Contractor shall not and shall procure that an Employing Sub-Contractor shall not:
- (a) Materially amend or promise to amend the rates of remuneration or other terms and conditions of employment of any person wholly or mainly employed or engaged in providing the Services under this Contract; or
 - (b) Replace or re-deploy from the Services any person wholly or mainly employed or engaged in providing the Services, or materially increase or decrease the number of persons performing the Services under this Contract or the working time spent on the Services (or any part thereof); or

- (c) Reorganise any working methods or assign to any person wholly or mainly employed or engaged in providing the Services (or any part thereof) any duties unconnected with the Services (or any part thereof) under this Contract; or
- (d) Terminate or give notice to terminate the employment of any person wholly or mainly employed or engaged in providing the Services (or any part thereof) under this Contract other than in the case of serious misconduct or for poor performance,

save in the ordinary course of business and with the prior written consent of the Authority (not to be unreasonably withheld or delayed) and the Contractor shall indemnify and keep indemnified the Authority in respect of any reasonable costs (including reasonable legal costs), losses and expenses and all damages, compensation, fines and liabilities arising out of or in connection with any breach of paragraphs 2.1.1, 2.1.2, 2.1.3 or 2.1.5 of this Annex H.

- 2.1.6 The Authority may at any time prior to the period set out in paragraph 2.1.5 of the Annex H request from the Contractor any of the information in sections 1(a) to (d) of Appendix 1 and the Contractor shall and shall procure any Sub-Contractor will provide the information requested within 28 days of receipt of that request.

2.2 Obligations in Respect of Subsequent Transferring Employees

- 2.2.1 To the extent that the Transfer Regulations apply on expiry, termination or partial termination of this contract, the Contractor shall and shall procure any Employing Sub-Contractor shall and the Authority shall and shall procure that a New Provider shall in such circumstances:
 - (a) Before and in relation to the Subsequent Transfer Date liaise with each other and shall co-operate with each other in order to implement effectively the smooth transfer of the Subsequent Transferring Employees to the Authority and/or a New Provider; and
 - (b) Comply with their respective obligations under the Transfer Regulations including their obligations to inform and consult under Regulation 13 of the Transfer Regulations.

2.3 Unexpected Subsequent Transferring Employees

- 2.3.1 If a claim or allegation is made by an employee or former employee of the Contractor or any Employing Sub-Contractor who is not named on the list of Subsequent Transferring Employees provided under paragraph 2.1.3 (an "**Unexpected Subsequent Transferring Employee**") that he has or should have transferred to the Authority and/or New Provider by virtue of the Transfer Regulations, the Party receiving the claim or allegation shall notify the other Party (or the Contractor shall notify the Authority on the Sub-Contractor's behalf and the Authority shall notify the Contractor on the New Provider's behalf) in writing as soon as reasonably practicable and no later than ten Business Days after receiving notification of the Unexpected Subsequent Transferring Employee's claim or allegation, whereupon:
 - (a) The Contractor shall (or shall procure that the Employing Sub-Contractor shall), as soon as reasonably practicable, offer and/or confirm continued employment to the Unexpected Subsequent Transferring Employee or take such other steps so as to effect a written withdrawal of the claim or allegation; and
 - (b) If the Unexpected Subsequent Transferring Employee's claim or allegation is not withdrawn or resolved the Contractor shall notify the Authority (who will notify any New Provider who is a party to such claim or allegation), and the Authority (insofar as it is permitted) and/or New Provider (as appropriate) shall employ the Unexpected Subsequent Transferring Employee or as soon as reasonably practicable, (subject to compliance with its obligations at paragraph 2.3.1(c)(iii)), serve notice to terminate the Unexpected Subsequent Transferring Employee's employment in accordance with his contract of employment; and
 - (c) The Contractor shall indemnify the Authority against all reasonable costs (including reasonable legal costs) losses and expenses and all damages, compensation, fines and liabilities arising out of or in connection with any of the following liabilities incurred by the Authority or New Provider in dealing with or disposing of the Unexpected Subsequent Transferring Employee's claim or allegation:

- (i) Any additional costs of employing the Unexpected Subsequent Transferring Employee up to the date of dismissal where the Unexpected Subsequent Transferring Employee has been dismissed in accordance with paragraph 2.3.1(b);
- (ii) Any liabilities acquired by virtue of the Transfer Regulations in relation to the Unexpected Subsequent Transferring Employee;
- (iii) Any liabilities relating to the termination of the Unexpected Subsequent Transferring Employee's employment but excluding such proportion or amount of any liability for unfair dismissal, breach of contract or discrimination attributable:
 - (A) To a failure by the Authority or a New Provider to act reasonably to mitigate the costs of dismissing such person);
 - (B) Directly or indirectly to the procedure followed by the Authority or a New Provider in dismissing the Unexpected Transferee; or
 - (C) To the acts/omissions of the Authority or a New Provider not wholly connected to the dismissal of that person;
- (iv) Any liabilities incurred under a settlement of the Unexpected Subsequent Transferring Employee's claim which was reached with the express permission of the Contractor (not to be unreasonably withheld or delayed);
- (v) Reasonable administrative costs incurred by the Authority or New Provider in dealing with the Unexpected Subsequent Transferring Employee's claim or allegation, subject to a cap per Unexpected Subsequent Transferring Employee of £5,000; and
- (vi) Legal and other professional costs reasonably incurred;

the Authority shall be deemed to have waived its right to an indemnity under paragraph 2.3.1(c) if it fails without reasonable cause to take, or fails to procure any New Provider takes, any action in accordance with any of the timescales referred to in this paragraph 2.3.

2.4 Indemnities on Subsequent transfer under the Transfer Regulations on Partial Termination, Termination or Expiry of the Contract

- 2.4.1 If on the expiry, termination or partial termination of the Contract there is a Subsequent Relevant Transfer, the Contractor shall indemnify the Authority and any New Provider against all reasonable costs (including reasonable legal costs) losses and expenses and all damages, compensation, fines and liabilities arising out of or in connection with any claim by any employee or trade union representative or employee representative arising whether before or after the Subsequent Transfer Date out of any failure by the Contractor or any Sub-Contractor to comply with their obligations under Regulation 13 of the Transfer Regulations in relation to any Subsequent Transferring Employee or any other employee of the Contractor or any Sub-Contractor affected by the Subsequent Relevant Transfer (as defined by Regulation 13 of the Transfer Regulations), save to the extent that all reasonable costs (including reasonable legal costs), losses and expenses and all damages, compensation, fines and liabilities are a result of the act or omission of the Authority or the New Provider.
- 2.4.2 If there is a Subsequent Relevant Transfer, the Authority shall indemnify the Contractor against all reasonable costs (including reasonable legal costs) losses and expenses and all damages, compensation, fines and liabilities arising out of, or in connection with:
 - (a) Any claim or claims by a Subsequent Transferring Employee at any time on or after the Subsequent Transfer Date which arise as a result of an act or omission of the Authority or a New Provider or a sub-contractor of a New Provider during the period from and including the Subsequent Transfer Date;
 - (b) Subject to paragraph 2.4.1 any claim by any employee or trade union representative or employee representative arising whether before or after the Subsequent Transfer Date out of

any failure by the Authority or a New Provider or a sub-contractor of a New Provider to comply with their obligations under Regulation 13 of the Transfer Regulations in relation to any Subsequent Transferring Employee or any other employee engaged wholly or mainly in connection with the Services by the New Provider or any other employee of the Authority or any New Provider affected by the Subsequent Relevant Transfer effected by this Contract (as defined by Regulation 13 of the Transfer Regulations),

save to the extent that all reasonable costs (including reasonable legal costs), losses and expenses and all damages, compensation, fines and liabilities are a result of the act or omission of the Contractor or any Employing Sub-Contractor.

- 2.4.3 In the event of a Subsequent Relevant Transfer, the Authority shall indemnify the Contractor in respect of all reasonable costs (including reasonable legal costs), losses and expenses and all damages, compensation, fines and other liabilities arising out of or in connection with or as a result of a substantial change by the Authority [or a New Provider or any sub-contractor of a New Provider] on or after the Subsequent Transfer Date to the working conditions of any Subsequent Transferring Employee to the material detriment of any such Subsequent Transferring Employee. For the purposes of this paragraph 2.4.3, the expressions "substantial change" and "material detriment" shall have the meanings as are ascribed to them for the purposes of Regulation 4(9) of the Transfer Regulations.

2.5 Contracts (Rights of Third Parties) Act 1999

- 2.5.1 A New Provider may enforce the terms of paragraph 2.3 and 2.4 against the Contractor in accordance with the Contracts (Rights of Third Parties) Act 1999.
- 2.5.2 The consent of a New Provider (save where the New Provider is the Authority) is not required to rescind, vary or terminate this Contract.
- 2.5.3 Nothing in this paragraph 2.5 shall affect the accrued rights of the New Provider prior to the rescission, variation, expiry or termination of this Contract.

2.6 General

- 2.6.1 The Contractor shall not recover any Costs and/or other losses under this Annex H where such Costs and/or losses are recoverable by the Contractor elsewhere in this Contract and/or are recoverable under the Transfer Regulations or otherwise.

**Contractor Personnel-Related Information to be released upon
Re-Tendering where the Transfer Regulations Apply**

1. Pursuant to paragraph 2.1.1(b) of this Annex H, the following information will be provided:
 - a) The total number of individual employees (including any employees of Sub-Contractors) that are currently engaged, assigned or employed in providing the Services and who may therefore be transferred. Alternatively the Contractor should provide information why any of their employees or those of their Sub-Contractors will not transfer;
 - b) The total number of posts or proportion of posts expressed as a full-time equivalent value that currently undertakes the work that is to transfer;
 - c) The preceding 12 months total pay costs – (Pay, benefits employee/employer ERNIC and Overtime);
 - d) Total redundancy liability including any enhanced contractual payments.
2. In respect of those employees included in the total at 1(a), the following information:
 - a) Age (not date of Birth);
 - b) Employment Status (i.e. Fixed Term, Casual, Permanent);
 - c) Length of current period of continuous employment (in years, months) and notice entitlement;
 - d) Weekly conditioned hours of attendance (gross);
 - e) Standard Annual Holiday Entitlement (not "in year" holiday entitlement that may contain carry over or deficit from previous leave years);
 - f) Pension Scheme Membership;
 - g) Pension and redundancy liability information;
 - h) Annual Salary;
 - i) Details of any regular overtime commitments (these may be weekly, monthly or annual commitments for which staff may receive an overtime payment);
 - j) Details of attendance patterns that attract enhanced rates of pay or allowances;
 - k) Regular/recurring allowances;
 - l) Outstanding financial claims arising from employment (i.e. season ticket loans, transfer grants).
3. The information to be provided under this Appendix 1 should not identify an individual employee by name or other unique personal identifier unless such information is being provided 28 days prior to the Subsequent Transfer Date.
4. The Contractor will provide (and will procure that the Sub-Contractors provide) the Authority/tenderers with access to the Contractor's and Sub-Contractor's general employment terms and conditions applicable to those employees identified at paragraph 1(a) of this Appendix 1.

Personnel Information to be released Pursuant to this Contract**Part A**

1. Pursuant to paragraph 2.1.2 of this Annex H, the written statement of employment particulars as required by section 1 of the Employment Rights Act 1996 together with the following information (save where that information is included within that statement) which will be provided to the extent it is not included within the written statement of employment particulars:
 - 1.1 Personal, Employment and Career
 - a) Age;
 - b) Security Vetting Clearance;
 - c) Job title;
 - d) Work location;
 - e) Conditioned hours of work;
 - f) Employment Status;
 - g) Details of training and operating licensing required for Statutory and Health and Safety reasons;
 - h) Details of training or sponsorship commitments;
 - i) Standard Annual leave entitlement and current leave year entitlement and record;
 - j) Annual leave reckonable service date;
 - k) Details of disciplinary or grievance proceedings taken by or against transferring employees in the last two years;
 - l) Information of any legal proceedings between employees and their employer within the previous two years or such proceedings that the transferor has reasonable grounds to believe that an employee may bring against the transferee arising out of their employment with the transferor;
 - m) Issue of Uniform/Protective Clothing;
 - n) Working Time Directive opt-out forms; and
 - o) Date from which the latest period of continuous employment began.
 - 1.2 Performance Appraisal
 - a) The current year's Performance Appraisal;
 - b) Current year's training plan (if it exists); and
 - c) Performance Pay Recommendations (PPR) forms completed in the current reporting year, or where relevant, any bonus entitlements.
 - 1.3 Superannuation and Pay
 - a) Maternity leave or other long-term leave of absence (meaning more than 4 weeks) planned or taken during the last two years;
 - b) Annual salary and rates of pay band/grade;
 - c) Shifts, unsociable hours or other premium rates of pay;

- d) Overtime history for the preceding twelve-month period;
- e) Allowances and bonuses for the preceding twelve-month period;
- f) Details of outstanding loan, advances on salary or debts;
- g) Cumulative pay for tax and pension purposes;
- h) Cumulative tax paid;
- i) National Insurance Number;
- j) National Insurance contribution rate;
- k) Other payments or deductions being made for statutory reasons;
- l) Any other voluntary deductions from pay;
- m) Pension Scheme Membership;
- n) For pension purposes, the notional reckonable service date;
- o) Pensionable pay history for three years to date of transfer;
- p) Percentage of any pay currently contributed under additional voluntary contribution arrangements; and
- q) Percentage of pay currently contributed under any added years arrangements.

1.4 Medical

- a) Sickness and absence records for the immediately preceding four-year period; and
- b) Details of any active restoring efficiency case for health purposes.

1.5 Disciplinary

- a) Details of any active restoring efficiency case for reasons of performance; and
- b) Details of any active disciplinary cases where corrective action is on going.

1.6 Further Information

- a) Information about specific adjustments that have been made for an individual under the Disability Discrimination Act 1995 or the Equality Act 2010;
- b) Short term variations to attendance hours to accommodate a domestic situation;
- c) Individuals that are members of the Reserves, or staff that may have been granted special leave as a School Governor; and
- d) Information about any maternity or other statutory leave or other absence from work.

Part B

1.7 Information to be provided 28 days prior to the Subsequent Transfer Date:

- a) Employee's full name;
- b) Date of Birth
- c) Home address;
- d) Bank/building society account details for payroll purposes Tax Code.

DEFFORM 539A Tenderer's Commercially Sensitive Information Form**REDACTED****ITT Ref No:**

JSSENS/00137

Description of Tenderer's Commercially Sensitive Information:**Cross Reference(s) to location of sensitive information in Tender:****Explanation of Sensitivity:****Details of potential harm resulting from disclosure:****Period of Confidence (if applicable):****Contact Details for Transparency / Freedom of Information matters:**

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