

**MINISTRY OF DEFENCE**

**DEFENCE EQUIPMENT & SUPPORT**

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| **Tender Number** :TSSP/129 |
| **Description**:Interim Combined Arms Virtual Simulation (Deployed) (ICAVS(D)) |

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# SCHEDULE OF REQUIREMENTS

|  |  |  |
| --- | --- | --- |
|  | **MINISTRY OF DEFENCE** |  |
| **Name and Address of Company** | **Schedule of Requirements for****Interim Combined Arms Virtual Simulation (Deployed) (ICAVS(D))** | **Contract No** **TSSP/129**  |
| **Issued With****Tender Documents** | **On****24th February 2021** | **Previous Contract No** **JBTSC/0179****TSSP/0026** |

**Requirements**

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| **Item Number** | **Description** | **Quantity** | **Delivery Date** | **Notes to Supplier** |  **Price £ (ex-VAT)** |
| **Core Requirement** |
| 1 | Provision and delivery of virtual simulated training in accordance with the Statement of Requirements at Schedule 1 to the Contract for the core period:from 01 Apr 2022 to 31 Mar 2023As part of providing this service the Contractor shall supply a training scenario developed during this Contract and After-Action Review (AAR) facility to debrief and provide training material for re-use | 100 per year  | Year 1: 1 April 2022 – 31 March 2023 | In accordance with Statement of Requirement, clause 3.10 (Schedule 1 to the Terms & Conditions) & Milestone Payment Plan (Schedule 4 to the Terms and Conditions) |

|  |
| --- |
| Year 1: [INSERT FIRM COST] |

 |
| 2 | Provision and delivery of virtual simulated training in accordance with the Statement of Requirements at Schedule 1 to the Contract for the core period:from 01 Apr 2023 to 31 Mar 2024As part of providing this service the Contractor shall supply a training scenario developed during this Contract and After-Action Review (AAR) facility to debrief and provide training material for re-use | 100 per year | Year 2: 1 April 2023 – 31 March 2024 | In accordance with Statement of Requirement, clause 3.10 (Schedule 1 to the Terms & Conditions) & Milestone Payment Plan (Schedule 4 to the Terms and Conditions) |

|  |
| --- |
| Year 2: [INSERT FIRM COST] |

 |
| 3 | Provision and delivery of virtual simulated training in accordance with the Statement of Requirements at Schedule 1 to the Contract for the core period:from 01 Apr 2024 to 31 Mar 2025As part of providing this service the Contractor shall supply a training scenario developed during this Contract and After-Action Review (AAR) facility to debrief and provide training material for re-use | 100 per year | Year 3: 1 April 2024 – 31 March 2025 | In accordance with Statement of Requirement, clause 3.10 (Schedule 1 to the Terms & Conditions) & Milestone Payment Plan (Schedule 4 to the Terms and Conditions) |

|  |
| --- |
| Year 3: [INSERT FIRM COST] |

 |
| 4 | Provision and delivery of virtual simulated training in accordance with the Statement of Requirements at Schedule 1 to the Contract for the core period:from 01 Apr 2025 to 31 Mar 2026As part of providing this service the Contractor shall supply a training scenario developed during this Contract and After-Action Review (AAR) facility to debrief and provide training material for re-use | 100 per year | Year 4: 1 April 2025 – 31 March 2026 | Year 4: Fixed Price in accordance with Condition 4.4 VOP & In accordance with Statement of Requirement, clause 3.10 (Schedule 1 to the Terms & Conditions) & Milestone Payment Plan (Schedule 4 to the Terms and Conditions)  |

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| Year 4:[INSERT FIXED COST] |

 |
| 5 | Bespoke tasking to be carried out in accordance with Condition 2.17 for the period 01/04/22 to 31/03/2026  | In accordance with Condition 2.17 | N/A | N/A | Price per TAF in accordance with rates shown in Schedule 7 of TSSP/129 |
| **Options Years – In accordance with Clause 4.2 ‘Options’** |
| 6 | Option year 5: Provision and delivery of virtual simulated training in accordance with the Statement of Requirements at Schedule 1 to the Contract for the core period:from 01 Apr 2026 to 31 Mar 2027As part of providing this service the Contractor shall supply a training scenario developed during this Contract and After-Action Review (AAR) facility to debrief and provide training material for re-use | 100 per year | 01 Apr 2026 up to 31 Mar 2027 |

|  |
| --- |
| Year 5: Fixed Price in accordance with Condition 4.4 VOP & In accordance with Statement of Requirement, clause 3.10 (Schedule 1 to the Terms & Conditions) & Milestone Payment Plan (Schedule 4 to the Terms and Conditions) |

 | Year 5:[INSERT FIXED COST] |
| 7 | Option year 6: Provision and delivery of virtual simulated training in accordance with the Statement of Requirements at Schedule 1 to the Contract for the core period:from 01 Apr 2027 to 31 Mar 2028As part of providing this service the Contractor shall supply a training scenario developed during this Contract and After-Action Review (AAR) facility to debrief and provide training material for re-use | 100 per year | 01 Apr 2027 up to 31 Mar 2028 | Year 6: Fixed Price in accordance with Condition 4.4 VOP & In accordance with Statement of Requirement, clause 3.10 (Schedule 1 to the Terms & Conditions) & Milestone Payment Plan (Schedule 4 to the Terms and Conditions) | Year 6:[INSERT FIXED COST] |
| 8 | Bespoke tasking to be carried out in accordance with Condition 2.17 for the period 01/04/26 to 31/03/2027 – Yr. 5 | In accordance with Condition 2.17 | N/A | N/A | Price per TAF in accordance with rates shown in Schedule 7 of TSSP/129 |
| 9 | Bespoke tasking to be carried out in accordance with Condition 2.17 for the period 01/04/27 to 31/03/2028 – Yr. 6  | In accordance with Condition 2.17 | N/A | N/A | Price per TAF in accordance with rates shown in Schedule 7 of TSSP/129 |
| **Exercise Options – In accordance with clause 4.2 ‘Options’** |
| See Annex A to Terms and Conditions for Priced Additional Options |

2 GENERAL CONDITIONS

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

* For the purposes of Sub-Clause 1(e), reference to ‘special conditions of contract’ shall be taken to mean the narrative conditions of the Contract.
* For the purposes of Sub-Clause 1(v) and Clause 5 of DEFCON501, the persons designated to act on the behalf of the Authority shall be the Commercial Manager and Project Manager as detailed at Boxes 1&2 of DEFFORM 111.

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

* For the purposes of Clause 1 of DEFCON 503, the duly authorised representatives are:
	1. for the Authority, the Commercial Manager identified at Box 1 of the DEFFORM 111 or any Commercial authorised representative from Training & Simulation Systems Portfolio.
	2. for the Contractor, the Contractor’s head of Commercial or their authorised representative.

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

DEFCON516 (Edn.04 /12) - Equality

DEFCON518 (Edn.02/17) - Transfer

DEFCON520 (Edn.05/18) - Corrupt Gifts and Payments of Commission

DEFCON526 (Edn.08/02) - Notices

* For the purposes of this Contract, Sub-Clause 2(e) shall be acceptable as a means of delivery notice.

DEFCON527 (Edn.09/97) - Waiver

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

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

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

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

DEFCON532B (Edn.04/20) - Protection of Personal Data (Where Personal Data isn’t being processed on behalf of the Authority

* For the purpose of this Contract, all personal data identified within DEFFORM 532 at Schedule 12 to the Contract shall be subject to this condition. (To be completed if thought data will be held by contractor)

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

DEFCON538 (Edn.06/02) - Severability

DEFCON539 (Edn.08/13) - Transparency

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

DEFCON566 (Edn.10/20) - Change of Control of Contractor

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

DEFCON625 (Edn.10/98) - Co-Operation on Expiry of Contract

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

* The Contractor’s attention is drawn to Clause 5 of DEFCON 646. The Contractor shall, within one (1) month of Contract award, notify the Authority’s Commercial Manager (see Box 1 of the DEFFORM 111) of the details of its appointed agents in England and Wales.

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

DEFCON659A (Edn.02/17) - Security Measures

DEFCON660 (Edn.12/15) - Official-Sensitive Security Requirements

DEFCON675 (Edn.09/19) - Advertising Subcontracts

DEFCON678 (Edn.09/19) - SME Spend Data Collection

DEFCON 697 (Edn.07/13) - Contractors on Deployed Operations

Where the Authority has a requirement for the Contractor, a sub-contractor or both, to Deploy to undertake a task at an expected work location in a CONDO applicable area, the provisions of DEFCON 697 shall apply. DEFCON 697 shall become effective when such a task is included in the Contract.

**2.1. Definitions and Interpretations**

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

**“Authority’s Commercial Manager”** means the official named in Box 1 of the Appendix to Contract (DEFFORM 111).

**“Authority’s Project Manager”** means the official named in Box 2 of the Appendix to Contract (DEFFORM 111).

**“Background IPR” or “Background Intellectual Property Rights”** means all Intellectual Property Rights, including patents for any inventions, not generated in the performance of the work under the Contract.

 **“Critical Sub-contract”** means a sub-contract that is key to the success of the requirement.

**“Critical sub-contractor”** means a sub-contractor that is key to the success of the requirement.

"**Data Protection Legislation**" means: (i) Regulation (EU) 2016/679 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data (the "**General Data Protection Regulation**"); (ii) the Data Protection Act 2018 to the extent that it relates to processing of personal data and privacy; and (iii) all applicable Law about the processing of personal data and privacy.

**“Deliverable(s)”** means all Articles and Services required to be delivered by the Contractor to the Authority under this Contract.

"**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 is or is to be the employer of a Previous Contractor Employee.

**“Foreground IPR”** or **“Foreground Intellectual Property Rights”** means all Intellectual Property Rights, including patents, for any inventions generated in the performance of work under the Contract, and patents for any inventions conceived out of the technical requirements of the Contract if these have been first enabled in the performance of work under the Contract.

 **“Key Performance Indicators and Performance Indicators”** are the performance metrics that the Contractor shall be measured against. This procedure is set out in Schedule 3 to the Contract – Key Performance Indicators.

**“Management Information”** is the information the Contractor shall deliver to the Authority in accordance with Annex A to Schedule 1 – Statement of Requirements to the Contract Conditions.

**"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

 **“Option Year(s)”** means those requirements detailed in the Schedule of Requirements to this Contract which may be enacted by the Authority in adherence to Condition 4.2 (Options) of this Contract.

**“Party”** means either the Contractor or the Authority.

**“Parties”** means the Contractor and the Authority.

**"Previous Contractor"** means Newman & Spurr Consultancy Ltd, River View, 2 Meadows Business Park, Camberley, Surrey, GU17 9AB

**"Previous Contractor Employee"** means an employee of a Previous Contractor who immediately before the Relevant Transfer Date is assigned to carry out the services to be carried out by the Contractor or Sub-Contractor under this Contract and who has not been dismissed, resigned, been reassigned or objected to the Relevant Transfer

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

**"Relevant Transfer"** means a transfer to the Contractor or an Employing Sub-

 Contractor of a Previous Contractor Employee pursuant to this Contract and the

 Transfer Regulations.

**"Relevant Transfer Date**" means the date on which a Relevant Transfer is effected for Previous Contractor Employees.

**"Relevant Statutory Scheme"** has the same meaning as in Regulation 8 of the Transfer Regulations.

 **“Schedule of Requirements Item(s)”** means the item(s) listed in the Schedule of Requirements of this Contract.

**“Services”** shall have the meaning specified in the Statement of Requirement as at Schedule 1 to the contract.

**“Statement of Requirement”** means the Statement of Requirement as at Schedule 1 to the Contract Conditions.

**“Sub-contract”** or **“sub-contract”** means a sub-contract of any tier.

**“Sub-contractor”** means a sub-contractor of the Contractor of any tier.

**“Sub-contractor’s Employee**s" means those employees of any Sub-contractor.

"**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

**“Terms and Conditions”** means the contractual terms and conditions detailed here for the Provision of ICAVS(D) and all accompanying Schedules and Appendices.

“**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.

**“ICAVS(D) Requirement”** means all Contractor Deliverables including Articles & Services required to be delivered by the Contractor to the Authority under this Contract.

**2.2. Scope of Work**

The Contractor shall undertake all work and provide a managed service to meet the ICAVS(D) requirement in accordance with the Contract Terms and Conditions and associated Schedules.

**2.3. Contractor’s Responsibility**

2.3.1 For the purposes of this Contract and the work performed thereunder, the Contractor shall be designated as the Prime Contractor, and shall accordingly be wholly responsible to the Authority, subject to the provisions of the Contract, for the timely, economic and proper execution of the Contract as described in the Schedule of Requirements

2.3.2 The Contractor’s responsibilities referred to in Clause 2.3.1 above shall apply equally to work carried out by Sub-Contractors in respect of the requirements of the Contract.

2.3.3 Notwithstanding any official approval of, or expression of satisfaction with any Drawings, Specifications, Schedules or any other relevant technical, administrative or other Documents or Data by the Authority, the Contractor shall be wholly responsible for the efficient and accurate functioning as required by the Contract of all Articles/Services supplied under it, and for ensuring that any design is wholly complete, accurate and meets the specifications of the Contract, such that articles manufactured to such Design shall similarly meet the Technical Specifications and other requirements of the Contract.

**2.4. Precedence of Documents**

2.4.1. In the event of a conflict or inconsistency between the Terms and Conditions of the Contract and other referenced documentation notwithstanding the terms in DEFCON 501 (Definitions and Interpretations), the conflict or inconsistency shall be resolved according to the following descending order of precedence:

1. Schedule 1 to Contract Conditions – Statement of Requirement
2. Narrative Conditions of the Contract
3. DEFCONS of the Contract and any documents expressly called up by these
4. All other associated Schedules
5. Any other documents incorporated as/by reference of the Schedule of Requirements

2.4.2 The Contractor is required to meet all requirements of the Contract, in total.

2.4.3. In the event of any internal conflict in any document, or any conflict between any documents with the same order of precedence, the Authority shall be entitled to give directions as to which part of the relevant document or which document (as the case may be) shall take precedence over which other part or which other document (as the case may be).

**2.5. Sub-Contracting**

2.5.1 For the purposes of this Contract and the work to be performed hereunder, the Contractor is designated as Prime Contractor and shall accordingly be responsible to the Authority, subject to the provisions of this Contract, for the timely, economic and proper execution of the work under the Contract as described in the Schedule of Requirements. The Contractor’s responsibilities shall apply equally to work carried out by Sub-contractors in respect of the requirements of the Contract. Nomination of a Sub-contractor does not relieve the Contractor of his responsibilities. The Contractor shall make such arrangements with his Sub-contractor, and they with theirs, to ensure that the Sub-contracted elements are satisfactory and meet the requirements of the Contract.

2.5.2 The Contractor shall ensure that the Terms and Conditions of this Contract are reflected in all Sub-Contracts at whatever level to the extent necessary to enable the Contractor to meet his obligations to the Authority under the Contract. The Contractor shall ensure that the sub-contracts contain provisions which are substantially the same as the provisions in this Contract to the extent relevant to the sub-contract and necessary to enable the Contractor to fully meet its obligations under this Contract, and the Contractor shall ensure the sub-contractors comply with such provisions.

 2.5.3 Where the Contractor proposes to enter into a Sub-contract and/or to materially amend or terminate any existing Sub-contract which is a Critical Sub-contract, the Contractor shall inform the Authority in writing, which shall include sufficient details of the proposed Sub-contract, amendment or reasons for termination to enable the Authority to understand:

 a. the identity of the proposed Sub-contractor;

b. the value of the proposed Sub-contract or amendment and the pricing mechanism on which such value is based;

c. the proposed Sub-contractor’s or existing Sub-contractor’s current, complete and accurate cost and pricing data;

 d. a description of the supplies or services to be Sub-contracted;

e. confirmation that the relevant provisions of this Contract have been flowed down into the proposed Sub-contract or amendment to an existing Sub-contract;

f. the reasons for termination and the alternative arrangements proposed to be put in place by the Contractor in relation to the relevant activities;

g. information to allow the Authority to assess any interest of national security or operational sovereignty;

2.5.4 Notwithstanding any concerns that the Authority may raise regarding changes to critical Sub-contractors, the Contractor shall remain responsible and liable to the Authority at all times for the performance of its obligations under the Contract.

2.5.5 Informing the Authority of the award of a Sub-contract or an amendment to a Sub-contract shall not constitute the Authority’s agreement:

a. to the acceptability of any Terms and Conditions of the proposed Sub-contract or amendment which could not in the reasonable opinion of the Authority be ascertained from the information provided by the Contractor pursuant to Clause 2.5.4 above;

 or

b. relieve the Contractor of any responsibility for performing those aspects of the Contractor’s obligations under this Contract which form the subject matter of the proposed Sub-contract or amendment.

2.5.6 The obligations of the Contractor under this Contract shall not be affected or reduced in any way by the Authority entering into any agreement directly with a Sub-contractor or proposed Sub-contractor in connection with intellectual property rights or otherwise and/ or by the Authority giving its approval to the pricing or other terms of any Sub-contract or proposed Sub-contractor to the identity of any Sub-contract or proposed Sub-contractor.

2.5.7 Without prejudice to the generality of Clause 2.5.6 above, the Contractor shall as a minimum ensure that the provisions of this Contract specified in Sub-Clauses 2.5.7.a to 2.5.7.f below are incorporated in all Critical Sub-contracts so as to enable such provision to operate as between the Contractor and each relevant Sub-contractor (or as between relevant Sub-contractors of lower tiers as applicable) and be enforced by the Contractor (or relevant Sub-contractor as applicable):

 a. Intellectual Property Rights;

 b. Sub-contracting;

 c. Termination;

 d. Variation of Price;

 e. Earned Value Management;

 f. Security Measures;

**2.6 Duration**

2.6.1 The transition period will be as per the Statement of Requirement at Schedule 1 to the Contracts Terms & Conditions.

2.6.2 The Contract shall commence on 1 April 2022 and shall expire at midnight on 31 March 2026, unless extended under the terms of Condition 2.6.3 or terminated earlier in accordance with the provisions herein.

2.6.3 The Authority has the unilateral irrevocable right to extend the duration of the Contract by the Option Year periods specified in Condition 4.2 (Options).

2.6.4 The Contractor shall be required to fulfil his obligations under the Contract should a requirement extend beyond the Duration of the Contract.

 2.6.5 Any work against the Schedule of Requirements shall be raised within the period above. For work raised prior to this date, it is recognised that the actual work may continue on past the date specified. The Terms and Conditions of this Contract shall survive for the duration of this Contract for those tasks that may continue past the date of the Contract.

**2.7. Official and Official-Sensitive Security Conditions**

**2.7.1** Definitions

The term "Authority" for the purposes of this Schedule means Her Majesty’s Government Contracting Authority.The term "Classified Material" for the purposes of this Schedule means classified information and assets.

**2.7.2** Security Grading

The SENSITIVE caveat is used to denote UK OFFICIAL material that is of a particular sensitivity and where there is a need to reinforce the ‘need to know’. The Security Aspects Letter (SAL) at Schedule 9, issued by the Authority shall define the UK OFFICIAL-SENSITIVE material that is provided to the Contractor, or which is to be developed by it, under this Contract. The Contractor shall mark all UK OFFICIAL and UK OFFICIAL-SENSITIVE documents which it originates or copies during the Contract with the applicable security grading. Any changes in these classifications will be notified by the Authority with an amendment to the SAL.

**2.7.3** Security Conditions

The Contractor shall take all reasonable steps to adhere to the provisions specified in the Contract. The Contractor shall make sure that all individuals employed on any work in connection with the Contract have notice that these provisions apply to them and shall continue so to apply after the completion or earlier termination of the Contract. The Authority must state the data retention periods to allow the Contractor to produce a data management policy. If you are a Contractor located in the UK your attention is also drawn to the provisions of the Official Secrets Acts 1911 to 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.

**2.7.4** Protection of UK OFFICIAL and UK OFFICIAL-SENSITIVE Classified Material

The Contractor shall protect UK OFFICIAL and UK OFFICIAL-SENSITIVE material provided to 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 classified material whether accidentally or from deliberate or opportunist attack.

Once the Contract has been awarded, where Contractors are required to store or process UK MOD classified information electronically, they are required to register the IT system onto the Defence Assurance Risk Tool (DART). Details on the registration process can be found in the ‘Industry Security Notices (ISN)’ on Gov.UK website. ISNs 2017/01, 04 and 06, Defence Condition 658 and Defence Standard 05-138 details the DART registration, IT security accreditation processes, risk assessment/management and Cyber security requirements which can be found in the following links:

<https://www.gov.uk/government/publications/industry-security-notices-isns>.

<http://dstan.gateway.isg-r.r.mil.uk/standards/defstans/05/138/000002000.pdf>

<https://www.gov.uk/government/publications/defence-condition-658-cyber-flow-down>

All UK classified material including documents, media and other assets must be physically secured to prevent unauthorised access. When not in use UK OFFICIAL and UK OFFICIAL-SENSITIVE material shall be handled with care to prevent loss or inappropriate access. As a minimum UK OFFICIAL-SENSITIVE material shall be stored under lock and key and shall be placed in a lockable room, cabinets, drawers or safe and the keys/combinations shall be subject to a level of control.

Disclosure of UK OFFICIAL and UK OFFICIAL-SENSITIVE material must be strictly controlled in accordance with the *"need to know"* principle. Except with the written consent of the Authority, the Contractor shall not disclose the Contract or any provision thereof to any person other than to a person directly employed by the Contractor or sub-Contractor.

Except with the consent in writing of the Authority the Contractor shall not make use of the Contract or any information issued or provided by or on behalf of the Authority otherwise than for the purpose of the Contract, and, same as provided for in paragraph 8 above, the Contractor shall not make use of any article or part thereof similar to the articles for any other purpose.

Subject to any intellectual property rights of third parties, nothing in this Security Condition shall restrict the Contractor from using any specifications, plans, drawings and other documents generated outside of this Contract.

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 must be returned on completion of the Contract or, if directed by the Authority, destroyed in accordance with paragraph 2.7.13.

**2.7.5** Access

Access to UK OFFICIAL and UK OFFICIAL-SENSITIVE material 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 their duties.

The Contractor shall ensure that all individuals requiring access to UK OFFICIAL-SENSITIVE information have undergone basic recruitment checks. This should include establishing proof of identity; confirming that they satisfy all legal requirements for employment by the Contractor; and verification of their employment record. Criminal record checks should also be undertaken where permissible under national/local laws and regulations. This is in keeping with the core principles set out in the UK Government (HMG) Baseline Personnel Security Standard (BPSS) which can be found at:

<https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/714002/HMG_Baseline_Personnel_Security_Standard_-_May_2018.pdf>

**2.7.6** Hard Copy Distribution

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

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

**2.7.7** Electronic Communication and Telephony and Facsimile Services

UK OFFICIAL information may be emailed unencrypted over the internet. UK OFFICIAL-SENSITIVE information shall normally only be transmitted over the internet encrypted using either a National Cyber Security Centre (NCSC) Commercial Product Assurance (CPA) cryptographic product or a UK 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 required TLS implementation are available at:

<https://www.ncsc.gov.uk/guidance/tls-external-facing-services>

Details of the CPA scheme are available at:

<https://www.ncsc.gov.uk/scheme/commercial-product-assurance-cpa>

Exceptionally, in urgent cases UK OFFICIAL-SENSITIVE information may be emailed unencrypted over the internet where there is a strong business need to do so, but only with the prior approval of the Authority. However, it 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 require. Such limitations including any regarding publication, further circulation or other handling instructions shall be clearly identified in the email sent with the material.

UK OFFICIAL information may be discussed on fixed and mobile telephones with persons located both within the country of the Contractor and overseas. UK OFFICIAL-SENSITIVE information may be discussed on fixed and mobile telephones only where there is a strong business need to do so and only with the prior approval of the Authority.

UK OFFICIAL information may be faxed to recipients located both within the country of the Contractor and overseas, however UK OFFICIAL-SENSITIVE information may be transmitted only where there is a strong business case to do so and only with the prior approval of the Authority.

**2.7.8** Use of Information Systems

The detailed functions that must be provided by an IT system to satisfy the minimum requirements cannot all be described here in specific detail; it is for the implementers to identify possible means of attack and ensure proportionate security mitigations are applied to prevent a successful attack.

The Contractor should ensure 10 Steps to Cyber Security(Link below) is applied in a proportionate manner for each IT and communications system storing, processing or generating UK OFFICIAL or UK OFFICIAL-SENSITIVE information. The Contractor should ensure competent personnel apply 10 Steps to Cyber Security.

<https://www.ncsc.gov.uk/guidance/10-steps-cyber-security>.

As a general rule, any communication path between an unauthorised user and the data can be used to carry out an attack on the system or be used to compromise or ex-filtrate data.

Within the framework of the 10 Steps to Cyber Security, the following describes the minimum security requirements for processing and accessing UK OFFICIAL-SENSITIVE information on IT systems.

a. Access. Physical access to all hardware elements of the IT system is to be strictly controlled. The principle of *“least privilege”* will be applied to System Administrators. Users of the IT System (Administrators) should not conduct ‘standard’ User functions using their privileged accounts.

b. Identification and Authentication (ID&A). All systems are to have the following functionality:

1. Up-to-date lists of authorised users.
2. Positive identification of all users at the start of each processing session.

c. Passwords. Passwords are part of most ID&A security measures. Passwords are to be *“strong”* using an appropriate method to achieve this, e.g. including numeric and *“special”* characters (if permitted by the system) as well as alphabetic characters.

d. Internal Access Control. All systems are to have internal Access Controls to prevent unauthorised users from accessing or modifying the data.

e. Data Transmission. Unless the Authority authorises otherwise, UK OFFICIAL-SENSITIVE information may only be transmitted or accessed electronically (e.g. point to point computer links) via a public network like the Internet, using a CPA product or equivalent as described in paragraph 2.7.7 above.

f. Security Accounting and Audit. Security relevant events fall into two categories, namely legitimate events and violations.

1. The following events shall always be recorded:

(a) All log on attempts whether successful or failed,

(b) Log off (including time out where applicable),

(c) The creation, deletion or alteration of access rights and privileges,

(d) The creation, deletion or alteration of passwords.

1. For each of the events listed above, the following information is to be recorded:

(a) Type of event,

(b) User ID,

(c) Date & Time,

(d) Device ID.

The accounting records are to have a facility to provide the System Manager with a hard copy of all or selected activity. There also must be a facility for the records to be printed in an easily readable form. All security records are to be inaccessible to users without a need to know. If the operating system is unable to provide this then the equipment must be protected by physical means when not in use i.e. locked away or the hard drive removed and locked away.

g. Integrity & Availability. The following supporting measures are to be implemented:

* + 1. Provide general protection against normally foreseeable accidents/mishaps and known recurrent problems (e.g. viruses and power supply variations),
		2. Defined Business Contingency Plan,
		3. Data backup with local storage,
		4. Anti-Virus Software (Implementation, with updates, of an acceptable industry standard Anti-virus software),
		5. Operating systems, applications and firmware should be supported,
		6. Patching of Operating Systems and Applications used are to be in line with the manufacturers recommended schedule. If patches cannot be applied an understanding of the resulting risk will be documented.

h. Logon Banners. Wherever possible, a *“Logon Banner”* will be provided to summarise the requirements for access to a system which may be needed to institute legal action in case of any breach occurring. A suggested format for the text (depending on national legal requirements) could be:

*“Unauthorised access to this computer system may constitute a criminal offence”*

i. Unattended Terminals. Users are to be automatically logged off the system if their terminals have been inactive for some predetermined period of time, or systems must activate a password protected screen saver after 15 minutes of inactivity, to prevent an attacker making use of an unattended terminal.

j. Internet Connections. Computer systems must not be connected direct to the Internet or *“un-trusted”* systems unless protected by a firewall (a software based personal firewall is the minimum but risk assessment and management must be used to identify whether this is sufficient).

k. Disposal. Before IT storage media (e.g. disks) are disposed of, an erasure product must be used to overwrite the data. This is a more thorough process than deletion of files, which does not remove the data.

**2.7.9** Laptops

Laptops holding any UK OFFICIAL-SENSITIVE information shall be encrypted using a CPA product or equivalent as described in paragraph 2.7.7.

Unencrypted laptops and drives containing personal data are not to be taken outside of secure sites[[1]](#footnote-2). For the avoidance of doubt the term *“drives”* includes all removable, recordable media e.g. memory sticks, compact flash, recordable optical media (CDs and DVDs), floppy discs and external hard drives.

Any token, touch memory device or password(s) associated with the encryption package is to be kept separate from the machine whenever the machine is not in use, left unattended or in transit.

Portable CIS devices holding the Authorities’ data are not to be left unattended in any public location. They are not to be left unattended in any motor vehicles either in view or in the boot or luggage compartment at any time. When the vehicle is being driven the CIS is to be secured out of sight in the glove compartment, boot or luggage compartment as appropriate to deter opportunist theft.

**2.7.10** Loss and Incident Reporting

The Contractor shall immediately report any loss or otherwise compromise of any OFFICIAL or OFFICIAL-SENSITIVE material to the Authority. In addition any loss or otherwise compromise of any UK MOD owned, processed or UK MOD Contractor generated UK OFFICIAL or UK OFFICIAL-SENSITIVE material is to be immediately reported to the UK MOD Defence Industry Warning, Advice and Reporting Point (WARP), within the Joint Security Co-ordination Centre (JSyCC) below. This will assist the JSyCC in formulating a formal information security reporting process and the management of any associated risks, impact analysis and upward reporting to the UK MOD’s Chief Information Officer (CIO) and, as appropriate, the Contractor concerned. The UK MOD WARP will also advise the Contractor what further action is required to be undertaken.

JSyCC WARP Contact Details

Email: DefenceWARP@mod.gov.uk (OFFICIAL with no NTK restrictions)

RLI Email: defencewarp@modnet.rli.uk (MULTIUSER)

Telephone (Office hours): +44 (0) 30 6770 2185

JSyCC Out of hours Duty Officer: +44 (0) 7768 558863

Mail: Redacted

Reporting instructions for any security incidents involving MOD classified material can be found in Industry Security Notice 2017/03 as may be subsequently updated at:

<https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/651683/ISN_2017-03_-_Reporting_of_Security_Incidents.pdf>

**2.7.11** Sub-Contracts

Where the Contractor wishes to sub-contract any elements of a Contract to sub-Contractors within its own country or to Contractors located in the UK such sub-contracts will be notified to the Contracting Authority. The Contractor shall ensure that these Security Conditions are incorporated within the sub-contract document.

The prior approval of the Authority shall be obtained should the Contractor wish to sub-contract any UK OFFICIAL-SENSITIVE elements of the Contract to a sub-Contractor facility located in another (third party) country. The first page of Appendix 5 (MOD Form 1686 (F1686) of the Security Policy Framework Contractual Process chapter is to be used for seeking such approval. The MOD Form 1686 can be found at Appendix 5 at:

<https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/710891/2018_May_Contractual_process.pdf>

If the sub-contract is approved, the Contractor will flow down the Security Conditions in line with paragraph 2.7.11 above to the sub-Contractor. Contractors located overseas may seek further advice and/or assistance from the Authority with regards the completion of F1686.

**2.7.12** Publicity Material

Contractors wishing to release any publicity material or display hardware that arises from a Contract to which these Security Conditions apply must seek the prior approval of the Authority. Publicity material includes open publication in the Contractor’s publicity literature or website or through the media; displays at exhibitions in any country; lectures or symposia; scientific or technical papers, or any other occasion where members of the general public may have access to the information even if organised or sponsored by the UK Government.

**2.7.13** Physical Destruction

As soon as no longer required, UK OFFICIAL and UK OFFICIAL-SENSITIVE material shall be destroyed in such a way as to make reconstitution very difficult or impossible, for example, by burning, shredding or tearing into small pieces. Advice shall be sought from the Authority when information/material cannot be destroyed or, unless already authorised by the Authority, when its retention is considered by the Contractor to be necessary or desirable. Unwanted UK OFFICIAL-SENSITIVE information/material which cannot be destroyed in such a way shall be returned to the Authority.

**2.7.14** Interpretation/Guidance

Advice regarding the interpretation of the above requirements should be sought from the Authority.

Further requirements, advice and guidance for the protection of UK classified information at the level of UK OFFICIAL-SENSITIVE may be found in Industry Security Notices at:

<https://www.gov.uk/government/publications/industry-security-notices-isns>

**2.7.15** Audit

Where considered necessary by the Authority the Contractor shall provide evidence of compliance with this Security Condition and/or permit the inspection of the Contractors processes and facilities by representatives of the Contractors’ National/Designated Security Authorities or the Authority to ensure compliance with theserequirements.

 **2.8. Controlled Information**

2.8.1 This Condition shall apply in addition to and notwithstanding DEFCON 531 (Disclosure of Information) or any other confidentiality condition of the Contract.

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

2.8.3 The Contractor shall:

a. hold the Controlled Information and not use it other than for the purpose of discharging its obligations under the Contract;

b. not copy the Controlled Information except as strictly necessary for the purpose of discharging its obligations under the Contract;

c. not disclose the Controlled Information to any third party unless so authorised in writing beforehand by the Authority;

d. protect the Controlled Information diligently against unauthorised access and against loss; and,

e. act diligently to ensure that:

1. Controlled Information is disclosed to its employees only to the extent necessary for the purpose of discharging its obligations under the Contract;
2. employees to whom Controlled Information is disclosed are made aware of and required to comply with the terms of this Condition.

2.8.4 Where Controlled Information is provided to the Contractor, it shall:

a. 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.

b. maintain this register for the duration of the Contract and for two years following completion of the Contract.

c. 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,

d. 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.

2.8.5 This Condition shall not diminish or extinguish any right of the Contractor to copy, use or disclose any other information to the extent that it can show:

a. 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;

b. 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;

c. that the information concerned was lawfully provided by a third party without restriction on use or further disclosure; or

d. from its records, that the information was derived independently of the Controlled Information;

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

**2.9. Amendments to Contract**

In addition to the terms of DEFCON 503 (Formal Amendments to Contract) only the Authority’s Commercial Manager (or authorised representative) detailed at Box 1 of DEFFORM 111 shall be authorised to vary the terms and conditions of the Contract, including but not limited to specifications, standards of drawings which form part of the Contract.

**2.10. Contractor’s Personnel**

2.10.1 Key personnel identified in the Statement of Requirement shall have the appropriate qualifications and competences for this Contract.

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

 **2.11. Managing Agency**

Authority Right to Appoint a Managing Agent

2.11.1 Notwithstanding any provisions to the contrary in the Contract or in any other agreement between the Parties, at any time during the term the Authority may appoint a third party (Managing Agent) to manage and operate all or any part of this Contract for and on behalf of the Authority and to give directions to the Contractor as the Authority’s managing agent (the “Managing Agent”), within the scope of its authority notified to the Contractor pursuant to clause 2.11.3 below.

2.11.2 The appointment of the Managing Agent shall be at the sole discretion of the Authority notwithstanding any provisions to the contrary.

2.11.3 The Authority shall notify the Contractor in writing of the Managing Agents appointment and the scope of the Managing Agent’s authority. Such notification shall also include expected date of transition to the new Managing Agent.

2.11.4 The Contractor shall, within the limits of the authority notified to it under Condition 2.11.3 treat and deal with and accept the directions and instructions of the Managing Agent as the Authority’s agent for the duration of such appointment.

2.11.5 Notwithstanding anything else in this condition 2.11, the Managing Agent shall not have the authority to amend the terms or conditions of this Contract without the written approval of the Authority, save in respect of any changes contemplated in accordance with condition 2.17 - Tasking Procedures for Additional Work (Bespoke Tasking) and 2.18 - Contract Change Procedure

2.11.6 Where the Authority in its sole discretion notifies the Contractor in writing that it wishes to novate this Contract to the Managing Agent, the Contractor shall promptly take all such steps, carry out all such actions and execute and deliver all such instructions and documentation as may be necessary or expedient to give effect to the novation.

 Authority Right to Disclose Commercially Sensitive Information to the Managing Agent

2.11.7 Notwithstanding any provisions to the contrary in this Contract (or any other agreement) or the provisions of DEFCON 531 (if applicable) the Authority may disclose the whole or any part of this Contract to the Managing Agent, including (without limitation) any relevant confidential and/or commercially sensitive information. The Authority may also release information regarding the existence of this contract, the duration, the scope, the deliverables and the overall value to suppliers taking part in the tendering process for the Management Agent role

2.11.8 The Contractor shall, following appointment of a Managing Agent pursuant to clauses 2.11.1 – 2.11.6 disclose to the Managing Agent any such information as the Contractor is required to disclose or provide to the Authority, or the Authority has a right to request, in accordance with the terms and conditions of this Contract.

2.11.8 Where the consent of any third party is required before confidential information can be disclosed to the Managing Agent, the Contractor shall use its best endeavours to obtain such consent within a period of two (2) weeks from the date of request from the Managing Agent.

**2.12. Exit Strategy**

2.12.1 The Exit Period, as identified in the Exit Plan, shall commence on the earliest of the following events:

a. the latest date that meets the contract end date; or

b. on receipt of a notice of termination for Contractor default in accordance with clause 7.2 (Default & Termination) or

 c. on written notice of termination given by the Authority.

2.12.2 The Exit Period shall be for not less than six (6) calendar months following its commencement in accordance with 2.12.1b following which the Contract shall be deemed to have expired.

**2.13. Exit Plan**

2.13.1 The Contractor shall, six (6) months after Contract award, deliver the final versionof the Exit Plan, (which shall become schedule 11 of the contract). This final Exit Plan shall be reviewed, updated and maintained throughout the term of this Contract in accordance with this condition 2.13. Prior to this, the Contractor’s draft Exit Plan shall apply.

 2.13.2 The Contractor shall comply with the Contractor's Exit Plan for the Exit Period to ensure that the Contractor can at all times satisfy its obligations following the termination or expiry of the Contract.

2.13.3 The Contractor shall review and when necessary update the Exit Plan twelve (12) Months prior to the end of the Term in accordance with the provisions of the Exit Plan and shall ensure that it is able to implement the Exit Plan throughout the Term in accordance with its terms. All such updates must be approved by the Authority.

 2.13.4 The Contractor shall promptly comply with all reasonable instructions from the Authority with regards to the implementation of the Exit Plan, including co-operating with any Replacement Contractor and in relation to transfer of Contractor Personnel.

2.13.5 All costs incurred in developing, updating and implementing the Exit Plan shall be payable by the Contractor.

2.13.6 On expiration of the Contract, at any time and for whatever reason, the Authority shall not be liable for additional charge(s) other than those the Contract conditions that apportion liability to the Authority in respect of the winding up of the Contract, for the handover by the Contractor, to any successor Contractor or the Authority, of all the data relevant to the performance of this work by that successor Contractor.

**2.14. Obligation to Assist**

2.14.1 Following termination or expiry of this Contract, the Contractor shall continue to implement the Exit Plan during the Exit Period to ensure the orderly and efficient ransition of all activities undertaken or to be undertaken by the Contractor and Sub-Contractors under this Contract to the Authority. The Contractor and Sub Contractors shall co-operate with all reasonable instructions of the Authority in connection with this transition.

 2.14.2 The Contractor shall also provide any reasonable assistance requested by the Authority to allow the Services to continue without interruption following the expiry date or termination date and to satisfy the obligations under clause 2.14.1.

2.14.3 The Contractor shall also make key personnel reasonably available, during the Exit Period, to the Authority and / or any replacement Contractor, in order to affect the orderly and timely transfer of provision of the Services.

2.14.4 During the Exit Period the Contractor shall make available, in a format which they would expect were they the successor, to either a successor Contractor, the Authority or Managing Agent the following:

a. Any Intellectual Property Rights (“IPR") acquired from any third party as a direct result of the performance of this Contract;

b. Any IPR created by the Contractor during the performance of the Contract (foreground IPR);

c. Any IPR owned by the Contractor that existed prior to the date of this Contract (background IPR) that is used in the performance of this Contract;

 d. All GFA used by the Contractor in the performance of this Contract.

e. All reports, databases, software etc produced over the period of the Contract.

 2.14.5 The Contractor shall include a handover provision within the Exit Period, for any successor contractor or the Authority to be directly briefed by the present Contractor, in all matters that the successor contractor or Authority may raise as relevant to the past and/or future performance of work under the Contract. The handover will be carried out at a location most advantageous to its purpose and shall be agreed to by the Authority. The handover duration shall be defined in the Exit Plan and agreed with the Authority.

 **2.15. Re-Competition Data**

2.15.1 Where the Authority requests it either as a separate deliverable or as part of the Exit Plan, the Contractor shall provide to the Authority the following information for the purpose of actual or potential re-competition of, and managing transition to any potential Replacement Contractor of the provision of, the ICAVS(D) Requirement or similar to the ICAVS(D) Requirement (in whole or in part):

a. without prejudice to the timetable for, and provisions relating to, delivery of information relating to potential transferring employees as defined within the TUPE provisions within the Contract;

b. the Management Information, less the Commercially Sensitive Information, from the date of the award of this Contract to the end of the expiry of the Contract (in accordance with condition 2.12; and

c. such other information used by the Contractor in its performance of its duties and obligations under the Contract, including (without limitation) processes, procedures, manuals, guides, instructions, repair and maintenance information, technical documentation in relation to software and equipment and configuration control documentation.

 **2.16. Continued Performance**

Save as expressly specified in the Exit Plan, the Contractor shall at all times during the Exit Period continue to perform its obligations in accordance with the provisions of this Contract.

**2.17. Tasking Procedures for Additional Work (Bespoke Tasking)**

Minor Tasks

2.17.1 For additional work called for under Schedule of Requirements Line Items 5, 8 & 9 with the estimated value of which is less than £50,000 (Fifty thousand pounds) per Task, the following procedure shall apply:

a. A sequentially numbered Tasking Authorisation Form (TAF) (as attached at Schedule 6), approved by the Authority’s Project Manager and Commercial Officer summarising the work required, shall be issued to the Contractor.

b. Within two weeks from receipt of an appropriately approved Tasking Order, the Contractor shall forward their firm priced proposal for the work which shall detail the capabilities the Contractor will deliver through the Tasking Order, the deliverables the Contractor proposes to provide and an installation programme with timescales where appropriate. In the event of a unique task, the schedule for receipt shall be mutually agreed between the Contractor and the Authority. The Contractor shall also forward the firm price quotation for the work, in accordance with the provisions of DEFCON 643 (Price Fixing – Non-Qualifying Contracts) supported by full breakdown of costs under the headings of Direct Labour including the associated Man hour/Wages rates (as listed in Schedule 7, Materials, Bought out Parts/Proprietary items, PVR&D, Sub-Contract costs, Overheads and Profit etc.

c. Approved Tasking Forms shall be returned to the Contractor, detailing the Firm price and shall be the authority to proceed with the work. Following completion of the task, the Contractor shall complete part 4 of the Tasking form to show that the work has been undertaken, and forward this to the Authority’s Project Manager for approval.

d. For the purposes of administration, the Agreement shall be amended periodically, in accordance with the provisions of DEFCON 503 (Formal Amendments to Contract), to reflect the Minor tasks brought under the Agreement in the preceding period. Any Amendments raised shall incorporate any new TAFs into Schedule 8, no later than 4 months after each Task Order’s formal issuance.

2.17.2 Any work undertaken on a Minor task without prior approval from the Authority, shall be undertaken at the Contractor’s risk.

Major Tasks

2.17.3 For additional work called for under Schedule of Requirements Line Items 5, 8 & 9 estimated to exceed £50,000 DEFCON 643 (Price Fixing) and the following procedure shall apply:

 a. The Commercial Officer named in the DEFFORM 111 shall write to the Contractor outlining the Authority’s requirement.

 b. Within 5 working days from receipt of the request, except where the Contractor notifies the Commercial Officer in writing (and thereafter the parties shall determine a mutually agreed date), the Contractor shall submit a date for which the proposal will be submitted to the Authority. On this date the Contractor shall submit the proposal for the work intended to be undertaken to meet the requirement, together with a Firm price quotation supported by full breakdown of costs under the headings of, if applicable:

* Direct Labour including the associated Man hour/Wages rates (in accordance with those detailed in Schedule 7)
* Materials,
* Bought out Parts/Proprietary items,
* PVR&D,
* Sub-Contract costs
* Overheads and Profit etc.
* Statement of Requirements
* Draft Project Schedule
* Key Milestones
* GFA list
* Training and installation – Concept
* Options - listed separately
* Contractor Logistics Support including concept and pricing
* Compliance with SRD provided by MOD.
* Full breakdown of hours – clearly identifiable to justify pricing and cost drivers
* Costed Risk Register
* Assumptions and Exclusions
* Payment profile

2.17.4 The Contractor shall not undertake any work on a Major Task until authorised to do so. Costs associated with any work undertaken prior to their acceptance of a formal written amendment to the Agreement shall be the liability of the Contractor.

2.17.5 The Authority reserves the right to seek competitive tenders for additional work called for under Schedule of Requirements Line Items 5,8,9 as effective competitive procurement will continue to be an important tool for achieving best value for money.

2.17.6 In the event the Authority invokes the right to seek competitive tenders, the Contractor will be entitled to participate in the competitive procurement activity, subject to the provisions therein.

**2.18. Contract Change Procedure**

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

2.18.2 Changes may include, but shall not be limited, to the following:

 a. Changes to Deliverables;

b. Flexing of funding to facilitate the curtailment or expansion of activities being undertaken;

c. Introduction of new work as a result of the identification of new technologies or the work of other programmes;

d. Removal of work that is unnecessary to achieve Contract outcomes or for which better value for money can be achieved through a decision to allocate the cost of that work to other Contract outcomes;

2.18.3 Changes to Contract requirements may be proposed by the Authority, or by the Contractor, using Schedule 18 – Change Proposal Form. For Contractor initiated changes the Contractor shall be responsible for the preparation and submission of a Change Proposal. For Authority initiated changes, the Authority shall submit in writing, details of the change required and the reason for the change.

2.18.4 For any change identified by either Party as an urgent change, both Parties shall use reasonable endeavours to meet and agree the urgent change as soon as reasonably practicable.

2.18.5 Any Change Proposal submitted by the contractor shall contain sufficient information to enable the Authority to make a decision on whether or not to proceed on the proposed change.

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

2.18.7 Where a study is required, the Contractor shall not proceed until authority to proceed with the study has been provided by the Authority’s Commercial Manager.

2.18.8 For proposed contractual changes, the Change Proposal submissions shall include a breakdown of all costs and other factors affected by the proposed change. These shall include, but not be limited to:

 a. Breakdown of all pricing of the proposed change;

 b. Programme Schedules;

 c. Statements of Work;

 d. Deliverables;

 e. System Requirements;

 f. Commonality;

 g. Any other input that may result

This information shall contain sufficient detail as to allow the Authority accurately to assess the extent to which the price quoted for the revised requirement is fair and reasonable.

2.18.9 The firm price shall not only include those cost changes directly relating to the change itself but also any consequential cost changes that may arise elsewhere under the Contract. The Authority shall not be liable for any consequential costs that were not identified prior to approval of the Change Proposal Form concerned.

2.18.10 Where a change has originated from the Authority, the Contractor shall provide in response a proposal in accordance with Condition 2.18. No preparation costs shall be allowable for a Contractor originated Change Proposal Form.

2.18.11 Any changes initiated by the Contractor which are necessary to ensure compliance with the requirements of the Contract shall be the liability of the Contractor.

2.18.12 In accordance with DEFCON 643 (Price Fixing), the price submitted in the Change Proposal shall be supported by details of the rationale used to determine the proposed costs, including a detailed breakdown (embracing all levels of the supply chain). If required, the Contractor shall also provide the Authority with full visibility of the costs of any part of the original work to which the proposed change relates.

2.18.13 All labour rates used shall be those set out in Schedule 7 to the Contract.

2.18.14 Work in connection with any proposed change shall not commence until the Authority’s Commercial Officer (see Box 1 of DEFFORM 111) or their authorised representative formally offers the change as a contract amendment in accordance with the requirements of Condition 2.9 (Amendments to the Contract). Any work undertaken or costs incurred in advance of the acceptance of any Change Proposal will be entirely at the Contractor’s own risk. Once a proposed change has been agreed and a contract amendment to incorporate it has been accepted by the Contractor, then the Contractor shall implement the change in accordance with the duly amended terms and conditions of the Contract.

2.18.15 All price changes shall be subject to DEFCONs 643 (Price Fixing – Non-Qualifying Contracts) and 647 (Financial Management Information) as appropriate.

2.18.16 The Contractor agrees to the information in Clause 4.5 (Open Book Accounting) being used to provide equality of information to the Authority in pricing any changes to the Contract.

2.18.17 The Authority reserves the right to reject or not take forward any proposed change contained in a Change Proposal Form. In the case of rejection or non-adoption the Authority shall give the Contractor reasons for that rejection.

2.18.18 Where, under exceptional circumstances, it is necessary for work to commence prior to an agreed price, the Authority may agree a maximum price limiting the Authority’s liability.

**2.19. Sustainable Procurement – Best Practice**

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

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

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

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

**2.20. Import and Export Licences**

2.20.1 The Contractor shall be responsible for securing any licences or security clearances necessary to enable him to meet his obligations under the terms of the Contract and shall confirm to the Authority, with supporting evidence that such licences and clearances have been secured. No addition to the Contract price shall be accepted by the Authority in respect of these activities.

2.20.2 The Contractor shall make sure any Non-Disclosure Agreement, Technical Assistance Agreement or International Traffic in Arms Regulations Requirements or similar are in place to allow the Contract to be performed on time.

**2.21. Capital Facilities**

The Contractor shall provide all resources necessary for the purposes of carrying out the requirements of this Contract other than those agreed as Government Furnished Assets at Schedule 5 to the Contract.

**2.22. Authortiy’s Personnel**

2.22.1 The Authority may engage organisations to assist it with the Contract. In such circumstances these parties (known as “Authority’s Representatives”) shall be deemed to be approved representatives of the Authority to whom the Contractor shall co-operate fully and provide all reasonable assistance to them in performing the roles and responsibilities assigned to them by the Authority.

2.22.2 Any contract placed by the Authority for the services mentioned in Clause 2.22.1 above shall include suitable provisions for the protection of the confidentiality of any information released under the said contract.

3 SPECIFICATIONS, PLANS, ETC

DEFCON68 (Edn.02/19) - Supply of Data for Hazardous Articles, Materials and Substances

* For the purpose of this contract, Schedule 13 to the Contract (DEFFORM 68) shall be used to document all Safety Data Sheet (SDS) relating to any article provided under this contract.

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

DEFCON502 (Edn.05/17) - Specifications Changes

DEFCON524A (Edn. 02/20) - Counterfeit Material

DEFCON601 (Edn.04/14) - Redundant Material

* DEFCON 601 shall only apply to Government Furnished Assets provided under DEFCON 611 (Issued Property) and detailed at Schedule 5 of the Contract.

 DEFCON602A (Edn.12/07) - Quality Assurance (With Deliverable Quality Plan)

 DEFCON606 (Edn. 06/14) - Change and Configuration Control Procedure

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

DEFCON627 (Edn.12/10) – Requirement for a Certificate of Conformity

DEFCON658 (Edn. 10/17) – Cyber

* Further to DEFCON 658 the Cyber Risk Profile of the Contract is Moderate, as defined in Def Stan 05-138 (Reference – RAR-G28Y5FXZ).

3.1. Quality Management

Quality management is a key element of the overall project. The Authorityrequires that all the Quality requirements included in the contract are to be complied with for the duration of the contract. The contractor shall operate and maintain its Quality Management System (QMS) certified or not, throughout the duration of the contract. The Authority must be notified of any changes to the QMS certification and the Authority reserves the right to refuse any deliverable or part of which does not meet requirements.

The Contractor shall immediately inform the Authority of any amendments to the QMS certification scope or if it is revoked or suspended with immediate effect.

The Authority if deemed necessary, retains the right to carry out audits pertaining to the contract.

The Contractor shall comply with the requirements of AQAP 2110 Edition D v1 - NATO Quality Assurance Requirements for Design, Development and Production.

The Contractor shall comply with the requirements of Def Stan 05-57 issue 7.

A deliverable Quality Plan is required in accordance with DEFCON 602A and AQAP 2105 Edition C Version 1 NATO Requirements for Quality Plans. The quality plan shall be delivered to Quality Assurance Representative at per the details in DEFFORM 111 (Schedule19) within 3 months of contract award.

**3.2 Developmental Software**

The Contractor shall comply with the requirements of AQAP 2210 Edition A Version 2 – NATO Supplementary Software Quality Assurance Requirements to AQAP 2110 OR AQAP 2310.

**3.3 Concessions**

Concessions shall be managed in accordance with Def Stan 05-061 Part 1, Issue 6 – Quality Assurance Procedural Requirements.

**3.4 Contractor Working Parties**

Where the Contractor is required to undertake specific tasks at a MOD establishment, facility or at locations external to the Contractor’s premises, the requirements of Def Stan 05-61 Part 4 - Contractor Working Parties shall be complied with.

**3.5 Avoidance of Counterfeit Material**

For the purposes of this Contract the requirements of Def Stan 05-135 Avoidance of Counterfeit Materiel shall apply.

**3.6 Informative Quality Assurance Standards**

Where Government Quality Assurance (GQA) is performed against this contract it will be in accordance with AQAP 2070 Edition B V4.

For the purposes of this contract ISO 25051:2014 Software Engineering – Software Product Quality Requirements and Evaluation (SQuaRE)- Requirements for Quality of COTS software product and instructions for testing shall apply.

3.7. Integrated Logistics Support (ILS)

The Contractor shall be responsible for complying and delivering against the ILS requirements in the SRD, SOR, Initial R&M Case, Initial Supportability Case and the Authority’s ILS Plan – Annex F to Schedule 1 Statement of Requirement.

3.8. Safety and Environment

3.8.1 The Contractor shall conduct the ICAVS(D) managed service in accordance with:

 a. Health & Safety at Work Act 1974

b. Environmental Protection Act 1990

c. DEFSTAN 00-56

3.8.2 The Contractor shall provide access to records, including Sub-Contractor records, for Contract purposes; to enable the MOD appointed Independent Safety Auditor, Advisor or Assessor to carry out safety audits and other assessment activities to meet MOD safety requirements.

3.9. Risk & Opportunity Management

3.9.1 The Contractor shall produce and manage the risk registers, reports and processes in accordance with section 17 of the Statement of Requirement at Schedule 1 to the Contract. The Risk & Opportunity Register shall be maintained by the Contractor for the duration of the Contract and shall include all risks in the supply chain including those of their sub-contractors.

**3.10. Accident, Misuse & Neglect (AM&N)**

The Authority reserves the right to update the Terms and Conditions with an AM&N conditions and associated process. Should it decide to do so an amendment to the contract will be issued.

**3.11. Configuration Control**

For the purposes of the Contract, Defence Standard 05-57 entitled ‘Configuration Management of Defence Materiel’ shall apply.

**3.12. Notice of Accident**

The Authority and Contractor will give immediate notice to each other by telephone and confirm in writing if the equipment is involved in an accident resulting in injury to persons or damage to property. In giving that notification the Authority and Contractor, both recognise that no admission of liability, offer, promise of payment or indemnity can be agreed without formal notification to the Authority’s commercial manager. Responsibility will be determined as set out in clause 7.3.

4 PRICE

DEFCON643 (Edn 12/14) – Price Fixing Non Qualifying Contracts

• For this Contract, this DEFCON shall apply for the purposes of amendments, TAFs and extensions to the Contract only

DEFCON647 (Edn 04/19) – Financial Management Information

• For this Contract, this DEFCON shall apply in conjunction with Earned Value Management requirements as stated in condition 9.5.

**4.1. Price – Contract Years 1- 4 (Core)**

4.1.1 All work carried out under Schedule of Requirements; line items 1 - 3 shall be firm priced from the outset. The payment will be paid quarterly in arrears subject to Schedule 3 – Key Performance Indicators(KPIs). Each quarter an invoice should be raised on CP&F, for a quarter of the annual price in line with Schedule 4 Milestone Payment Plan, minus any service credits incurred.

4.1.2 Schedule of Requirements, line Item 4 shall be Fixed price and shall be subject to indexation in accordance with Condition 4.4 (Variation of Price) of this Contract. The payment will be paid quarterly in arrears subject to Schedule 3 – Key Performance Indicators (KPIs). Each quarter an invoice should be raised on CP&F, for a quarter of the annual price in line with Schedule 4 Milestone Payment Plan, minus any service credits incurred.

4..1.3 All work carried out under Schedule of Requirements line item 5, following an approved Tasking Form being issued by the Authority, shall be firm priced from the outset utilising the rates detailed in Schedule 7 – Rate Card.

4.1.4 The prices shall include all costs of the Contractor satisfying their obligations under these Items in accordance with the Terms and Conditions of the Contract. The prices are inclusive of all royalties, licences, and taxes (excluding Value Added Tax).

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4.2. Options

4.2.1 The Authority shall have the unilateral irrevocable right to extend the Contract by two (2) twelve (12) month periods known as the ‘Option Years’. These Option Years are detailed in the Schedule of Requirements at line item 6 & 7. The Authority shall have the right to invoke these Option Years individually, as two (2) individual twelve (12) month periods, as one collective twenty-four (24) month period, or any such combination of Option Years.

4.2.2. Should the Authority require to enact any combination of Option Years, then the Authority shall invoke the option(s) in writing to the Contractor, no less than twelve (12) calendar weeks before the expiry date of the Contract.

4.2.3 Should the Authority invoke any option to extend the contract in line with clause 4.2.1 the ability to carry out additional Bespoke Tasking, for the same time period will also be invoked, as per Schedule of Requirements Line Items 8 & 9.

4.2.4 Should the Authority require to enact any of the Options detailed at Annex A to the Terms and Conditions, then the Authority shall invoke the option(s) in writing to the Contractor, no less than four (4) calendar weeks before the commencement of the requirement and will be raised as an Amendment to Contract, in line with DEFCON 503 (Formal Amendments to Contract).

4.2.5 The Terms and Conditions of this Contract shall apply to any Option Year(s) or other Options detailed in the Schedule of Requirements and Annex A to the Terms and Conditions, that are taken up by the Authority.

4.2.6 The Authority reserves the rights to seek competitive tenders for the option requirement(s) of this Contract. In such event, the Contractor shall not relinquish any of his obligations to supply the core services of the Contract.

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

4.3. Options – Pricing

4.3.1 The Option years, Schedule of Requirements line items 6 & 7, shall be Fixed price and if invoked by the Authority, shall be subject to indexation in accordance with Condition 4.4 (Variation of Price) of this Contract. Other than this indexation the price shall not be subject to variation.

4.3.2 Schedule of Requirements line items 8 & 9, shall be firm priced at the time each Tasking is raised in line with Schedule 7 – Rate Card.

4.3.3 For any options at Annex A to the Terms and Conditions – Schedule of Requirements – Additional Option Pricing, pricing for Years 1 – 3 shall be firm priced and Years 4 - 6, shall be Fixed price and if invoked by the Authority, shall be subject to indexation in accordance with Condition 4.4 (Variation of Price) of this Contract. Other than this indexation the price shall not be subject to variation.

4.4. Variation of Price

4.4.1 The prices stated in the Schedule of Requirements for articles and services being provided after March 31st 2025 (completion 3 years of Service) should be fixed at Contract start price levels 2021. The prices do not include provision beyond this date for increases or decreases in the market price of the articles being purchased. Any such variation shall be calculated in accordance with the following formula:

 V = P (a + b (Oi/Oo)) – P

 Where:

 V represents the variation of price

 P represents the FIXED price as stated in the Schedule of Requirements

O represents the index. For the purposes of this Contract the following indices shall be utilised:

 K8ZU – Services Producer Price Index (SPPI)

Oo represents the Average Price Index figure for the base period 2021/2022

Oi represents the average Price Index period for the 12 months immediately prior to the start of the Contract placement date/Option being taken.

 a represents the Non-Variable Element 0% or 0

 b represents the Variable Element 100% or 1

 a+b=1

4.4.2 The Index referred to in this Condition 4.4. shall be taken from the Office of National Statistics (ONS) website: <http://www.ons.gov.uk/>, “K8ZU Services Producer Price Inflation time series dataset”

4.4.3 Indices published with a B or F marker or a suppressed value, in the last 3 years are not valid for Variation of Price Conditions and shall not be used. Where the price index has an ‘F’ marker or suppression applied to it during the term of the Contract, the Authority and the Contractor shall agree an appropriate replacement index or indices. The replacement index or indices shall cover, to the maximum extent possible, the same economic activities as the original index or indices.

4.4.4 In the event that any material changes are made to the indices (e.g. a revised statistical base date) during the period of the contract and before final adjustment of the final contract price, then the re-basing methodology outlined by the Office for National Statistics (ONS) to match the original index to the new series shall be applied.

4.4.5 In the event the agreed index or indices cease to be published (e.g. because of a change in the Standard Industrial Classification (SIC) System) the Authority and the Contractor shall agree an appropriate replacement index or indices, which shall cover to the maximum extent possible the same economic activities as the original index or indices. The methodology outlined by the Office for National Statistics used for rebasing indices shall then be applied.

4.4.6 Notwithstanding the above, any extant index / indices agreed in the Contract shall continue to be used as long as it is / they are available and subject to ONS revisions policy. Payments calculated using the extant index / indices during its / their currency shall not be amended retrospectively as a result of any change to the index or indices.

4.4.7 The Contractor shall notify the Authority of any significant changes in the purchasing / manufacturing plan on the basis of which these provisions were drawn up and agreed, or of any other factor having a material bearing on the operation of these provisions such as to cause a significant divergence from their intended purpose, in order that both parties may consider whether any change in this provision would be appropriate.

4.4.8 Prices shall be adjusted taking into account the effect of the above formula as soon as possible after publication of the relevant indices or at a later date if so agreed between the Authority and the Contractor. Where an index value is subsequently amended, the Authority and the Contractor shall agree a fair and reasonable adjustment to the price, as necessary.

4.4.9 Claims under this Condition shall be submitted to The Invoice Paying Authority, as stated at Box 11 of DEFFORM 111, certified to the effect that the “requirements of this Condition 4.4 (Variation of Price) have been met.

4.4.10 Claims for adjustment to agreed payments under the Variation of Price circumstances detailed in Condition 4.4 (Variation of Price) shall be submitted annually at the end of November each year.

**4.5. Open Book Accounting**

4.5.1 The Contractor shall at all times maintain full, current and accurate financial and accounting records relating to the performance of its obligations under this Contract. Such records shall include, without limitation:

* + 1. direct labour and indirect labour costs
		2. direct material and sub-contract costs, including the full cost of purchasing or sourcing Articles;
		3. overhead costs analysed to identify appropriate categories;
		4. payment details to suppliers and Sub-contractors;
		5. capital expenditure;
		6. such other information as the Authority may reasonably require;

4.5.2 For any proposed contract amendment, the Contractor shall provide open book data to the Authority, including access to the original competitive bid pricing information and current financial and accounting records insofar as such information is relevant to the change, in order that the Authority can ascertain a fair and reasonable price for the amendment.

4.5.3 The open book data at Clause 4.5.1b shall include Tier 1 sub-contractors’ information. Where the Contractor is unable to obtain open book data from a sub-contractor not based in the United Kingdom, then the Contractor shall obtain agreement with the sub-contractor for an audit to be completed by authorities in their respective country.

4.5.4 Subject to five (5) Business Days’ notice, the Contractor shall provide any facilities that the Authority may reasonably require for the Authority or its nominated representatives to visit the Contractor’s offices and the offices of its Sub-contractors (or any place where such records are held) to examine such records maintained under this Condition.

4.5.5 The Contractor shall make available audited financial statements (which shall contain a full set of accounts including, but not limited to a profit and loss account, balance sheet and cash flow statement, or equivalent financial statements, audited by a firm of independent accountants, Auditor’s and Directors reports and accompanying explanatory notes, including changes to accounting policies) for the Contractor and its ultimate holding company, as soon as reasonably practicable after each becomes available.

4.5.6 All financial statements pursuant to Clause 4.5.5 shall be prepared on a basis consistently applied in accordance with generally accepted accounting principles in England, or accounting principles consistent with UK reporting accounting standards or relevant international accounting and reporting standards. They shall give a true and fair view of the results of the Contractor’s operations for the period in question, and of the state of the Contractor’s affairs as at the date at which the financial statements are made.

4.5.7 Without prejudice to the Contractor’s obligations under DEFCON 659A (Security Measures), the Contractor shall retain the records referred to in Condition 4.5 for the period of at least 6 years from the respective start dates.

**4.6 Changes/Cancellation of Exercises**

4.6.1 The Authority reserves the right to change the scheduling of exercises at no additional cost up to thirty (30) Business Days prior to commencement of the scheduled exercise.

4.6.2 On occasions it may be necessary to re-schedule at shorter notice. Should the Contractor incur additional costs due to short notice then it is the responsibility of the Contractor to present a breakdown of actual costs associated to TSSP Commercial Manager, acceptance of which should be confirmed in writing prior to the Contractor proceeding and will be confirmed by formal Contract amendment in accordance with DEFCON 503 (Formal Amendments to Contract) as soon as is practicable.

**4.7 Pricing of Changes to the Requirement**

4.7.1 Where a change in requirement as detailed in the Contract change procedure at

Condition 2.14 necessitates an adjustment to an agreed price under the Contract, or a new price to be added to the Contract, the Contractor shall submit to the Authority within ten (10) Business Days (or such other period of time as agreed with the Authority) of the request the following information in support of the price quoted:

a. A firm price quotation, utilising the agreed labour rates detailed at Schedule 7 to the Contract, for the work required to be carried out under the proposed amendment. The quotation should provide to the Authority full visibility of the build-up of the price. This information, shall contain sufficient detail as to allow the Authority accurately to assess the extent to which the price quoted for the revised requirement is fair and reasonable

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4.7.2 All price changes shall be subject to DEFCONs 643 (Price Fixing) and 647 (Financial Management Information) as appropriate.

4.7.3 The Contractor agrees to the information in Clause 4.5 - Open Book Accounting being used to provide Equality of Information (E of I) to the Authority in pricing any changes to the Contract. Using Schedule 15 to the Contract, the Contractor shall complete an E of I Pricing Statement for all Contract amendments in relation to Changes to the Requirement in accordance with DEFCON 643 (Price Fixing). Once completed the E of I Pricing Statement shall be added to Schedule 15 as an appendix.

4.7.4 Timely pricing of a proposed amendment is essential to the efficient execution of the Contract. The Contractor shall make all reasonable endeavours to supply information and negotiate within thirty (30) calendar days of the provision of the change by the Authority. The price within the Contractor’s proposal shall be a fair and reasonable price, and the Contractor shall adopt a system of parallel working with the Authority (and his representatives) when preparing his quotation.

4.7.5 Unless otherwise agreed at Clause 4.7.6 below, no work under the proposed amendment shall commence until a price has been agreed.

4.7.6 Where, under exceptional circumstances, it is necessary for work to commence prior to an agreed price, the Authority may agree a maximum price limiting the Authority’s liability.

4.7.7 The Authority, may at its own discretion, use an independent contractor to aid with the assessment of pricing.

4.7.8 In the event the change to the requirement is anticipated to be above £5M, the contractor shall price the change in accordance with the Single Source Contract Regulations 2014.

 5 INTELLECTUAL PROPERTY RIGHTS

 DEFCON90 (Edn 11/06) – Copyright

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

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

If it is deemed that a sub-contractor will generate the IP a DEFFORM 177 – Design Rights and Patents (Subcontractor's Agreement) will need to be raised and included as a new Schedule to Contract.

5.1. Marking of Deliverables

5.1.1 This Condition 5.1 shall apply in addition to and not withstanding DEFCON 90 (Copyright). All Deliverable materials, documents and or works, including progress reports, shall be marked in accordance with the relevant Intellectual Property Rights (IPR) provision against which they are delivered under this Contract. Failure to do so shall be valid grounds for the rejection by the Authority of any such Deliverable.

5.1.2 In the event that any Deliverable by the Contractor or his sub-contractor or any tier is identified incorrectly as containing or comprising Background Intellectual PR or otherwise subject to third party rights (and such Intellectual Property Rights are Foreground IPR) then the Authority shall nevertheless be entitled to exercise its rights in relation to Foreground IPR.

5.1.3 In the case of single ownership of the Intellectual Property Rights (including copyright, design right and the information) in any Deliverable document, the body text shall be marked to indicate Background IPR and Foreground IPR and a key relating to such marking shall be provided by the Contractor.

5.1.4 In the case of any Deliverable document comprising or containing more than one copyright work, or the inclusion of any third party Background IPR (including copyright or design right), the copyright work, the work in which design right subsists and/or the Background IPR shall be further marked to indicate the individual owners of each IPR (including design right) and/or copyright work including the relevant section, part, paragraph, diagram and or drawing and a key relating to such marking shall be provided by the Contractor.

5.2. Confidentiality

5.2.1 Notwithstanding any other term of this Contract, the Contractor shall ensure all information released to Sub-contractors and any third parties for the performance of this contract shall be in accordance with DEFCON 531 (Disclosure of Information) and DEFCON 660 (Official-Sensitive Security Requirements) and Condition 2.7 of this Contract.

6 LOANS

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

DEFCON611 (Edn.02/16) - Issued Property

DEFCON694 (Edn.07/18) - Accounting for Property of the Authority

6.1. Licences

Any land or premises (including temporary buildings) made available to the Contractor by the Authority in connection with the Contract shall be made available to the Contractor free of charge and shall be used by the Contractor solely for the purposes of performing the Contract. The Contractor shall have the use of such land or premises as Licensee and shall vacate the same upon completion of the Contract. Any utilities required by the Contractor shall be subject to the charges set out elsewhere in the Contract.

**6.2. Supply of Government Furnished Assets (GFA)**

6.2.1 The Authority will provide the Contractor with access to the Government Furnished Assets, Equipment and Services listed at Schedule 5 to the Contract, for the sole purposes of carrying out any activities linked to the achievement of the Deliverables and outputs set out in the Statement of Requirement, Terms and Conditions and associated Schedules to this Contract.

6.2.2 The Authority does not give any warranty or undertaking as to the completeness, accuracy, or fitness for any purpose of any of the Authority provided information. Neither the Authority nor its agents or employees shall be liable to the contractor in contract (save as expressly provided elsewhere in the Contract), tort, statute nor otherwise, as a result of any inaccuracy, omission, unfitness for any purpose, or inadequacy of any kind, in the Authority provided information.’

6.2.3 The Authority is under no obligation to provide any GFA which is not included in Schedule 5 to the Contract. In the event that the Contractor identifies GFA additional to that detailed at Schedule 5 to the Contract to enable him to perform this Contract he may submit a written request to the Authority. Additional GFA may be supplied by the Authority on loan, providing that they are reasonable for the Authority to provide, are available during the requested periods of use, and that the Contractor can demonstrate that the GFA is relevant to the Contract and cannot be reasonably procured/supplied elsewhere by the Contractor. Any additional GFA which is agreed by the Authority will be added to the Contract by contract amendment in accordance with DEFCON 503 (Formal Amendments to Contract).

6.2.4 The Contractor shall notify the Authority when GFA supplier warranty is due to expire or when software licences require renewal. All issued GFA shall remain the property of the Authority.

6.2.6The contractor will not be held liable for a failure to deliver his contracted services arising as a consequence of a failure by the Authority, for whatever reason, to supply any items of the GFA list, provided the contractor has taken all reasonable steps to mitigate the impact of such a failure.’

7 DELIVERY/ACCEPTANCE

DEFCON507 (Edn.10/18) - Delivery

DEFCON514 (Edn.08/15) - Material Breach

DEFCON 621B (Edn.10/04) - Transport (If Contractor Is Responsible for Transport)

7.1 Key Performance Indicators (KPIs)

7.1.1 The Contractor shall meet all of the stated KPIs and outlined in Schedule 3 – Key Performance Indicators to Contract Conditions.

7.1.2 Performance against the KPIs will be captured and monitored in accordance as per Condition 9.1 (Performance Reports).

7.2 Default & Termination

7.2.1 In this Condition Contractor Default means: -

a. Any failure by the Contractor to deliver the ICAVS(D) Requirement within the timescales specified;

b. Any material breach other than a failure to deliver the ICAVS(D) Requirement under the Contract;

c. Any persistent breach of any of the Contractor’s obligations under the Contract. For the purposes of the Contract a persistent breach shall be a breach of the Contract by the Contractor as measured by the Performance Indicators in Schedule 3 - Key Performance Indicators of the Contract other than a breach or event which falls into any of the categories of default set out in a,b,d of this Clause;

d. Breach of the requirements of DEFCON 68 (Supply of Data for Hazardous Articles, Materials and Substances), DEFCON 515 (Bankruptcy and insolvency), DEFCON 518 (Transfer), DEFCON 520 (Corrupt Gifts), and DEFCON 659A (Security Measures).

7.2.2 The Authority retains the right to issue a Rectification Notice to the Contractor that will detail any Contractor default in accordance with Clause 7.2.1.

7.2.3 If the Authority has elected for a Rectification Notice in accordance with Clause 7.2.2. within twenty (20) Business Days (or such longer period as the Authority may specify) of the receipt of the Rectification Notice, the Contractor shall make a rectification proposal to the satisfaction of the Authority which shall, as a minimum, specify:

 a. The extent to which the Contractor proposes to rectify the Contractor Default;

b. Details of all measures the Contractor proposes to take to rectify the Contractor Default, and

c. The timescale within which the Contractor proposes to rectify the Contractor Default.

7.2.4 If the Authority receives the Contractor’s rectification proposal under Clause 7.2.3 within twenty (20) Business Days (or such longer period as the Authority may specify) of the receipt by the Contractor of the Rectification Notice, the Authority shall consider the proposal and may accept, reject or amend the proposal.

7.2.5 If the Authority accepts or amends the Contractor’s rectification proposal under 7.2.4, the Contractor shall rectify the Contractor Default in accordance with the proposal as accepted, and the Contractor shall take such action without imposing any additional charge on the Authority.

7.2.6 The Authority shall have the right to terminate the contract by providing notice in writing, if,

a. The Contractor fails to make a rectification proposal in accordance with Clause 7.2.3, or

b. The Contractor does not take the remedial action as the Authority has specified in accordance with Sub-Clause 7.2.3.c; or

c. The Authority and the Contractor cannot agree a mutually acceptable rectification proposal; or

d. The Authority does not deem it appropriate to request a Rectification Plan in accordance with Clause 7.2.2.

7.2.7 The termination of the Contract shall be without prejudice to the rights, obligations and liabilities of the Parties which have accrued or become due prior to the date of termination.

7.2.8 In addition to the Authority’s rights of termination under other Conditions/clauses, the Contract or any part thereof may be terminated by the Authority at any time subject to three months’ notice in writing to the Contractor. Where appropriate, the Authority may require the Contractor to furnish a report covering work to be done to the date of termination, with such recommendations as may be possible to make at that stage. The Authority's liability shall be confined to payment, within the provisions of the Contract, for work done to the date of termination.

**7.3 Alternative Dispute Resolution**

7.3.1 The Parties agree to try and resolve any dispute arising under the Contract initially by discussion with the end user. A local ad hoc meeting may be convened for the purposes of attempting to resolve the dispute in the first instance.

7.3.2 In the event that the dispute remains unresolved, it shall be referred to Authority's Project Manager (PM) detailed at Box 2 of DEFFORM 111 and Commercial Officer (CO) for consideration. A meeting between the Authority’s CO, PM and their counterparts in the Contractor's organisation may be held for further clarification on the dispute.

7.3.3 In the event the dispute continues to remain unresolved, it shall be referred to the Authority’s Senior Commercial and Portfolio Lead. A meeting between the two and their counterparts in the Contractor’s organisation may be held for further clarification on the dispute.

7.3.4 If after the above referrals and any subsequent meetings with the Contractor as detailed above, the dispute remains unresolved, the dispute shall be dealt with in accordance with DEFCON 530 (Dispute Resolution).

**7.4 Deliverables**

7.4.1 The acceptance procedures that apply to the articles and services in the Schedule of Requirements are set out in Annex B to Schedule 1 of the Contract (ITEAP).

7.4.2 The services are required to be provided in accordance with the timescales detailed in the Schedule of Requirements to the Contract Conditions.

7.4.3 The Contractor shall inform the Authority as soon as he becomes aware of any event or reasons likely to result in failure to meet the delivery of any articles or services detailed in the Schedule of Requirements to the Contract Conditions.

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**8 PAYMENTS/RECEIPTS**

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

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

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

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

DEFCON649 (Edn.12/16) - Vesting

DEFCON670 (Edn 02/17 - Tax Compliance

**8.1. Payment**

8.1.1 The Contractor shall be paid Quarterly in arrears as detailed at Schedule 4 – Milestone Payment Plan to the Contract in line with Schedule 3 – Key Performance Indicators.

8.1.2 The Contractor shall have rendered, to the satisfaction of the Authority’s Project Manager, complete performance of his contractual obligations in accordance with the Schedule of Requirements and the Contract Terms and Conditions in their entirety against which the claim is being sought, during the period to which the Payment applies.

8.1.3 Claims for payment shall be submitted to the Authority via Contract Purchasing and Finance (CP&F) and will be authorised providing they have been completed in accordance with Condition 8.1.2.

8.1.4 Should the Contractor incur costs due to changes or cancellation, Clause 4.6 (Changes/Cancellation of Exercises) will apply.

9 CONTRACT ADMINISTRATION

DEFCON604 (Edn.06/14) - Progress Reports

For the purposes of the Contract, the frequency of reports shall be quarterly.

DEFCON609 (Edn.08/18) - Contractor's Records

DEFCON642 (Edn.06/14) - Progress Meetings

* 1. **Performance Reports**

9.1.1 The Contractor will provide to the Authority on a quarterly basis, within ten (10) Business Days of the end month, a report in accordance with the Statement of Requirements showing its performance against Schedule 3 - Key Performance Indicators.

9.1.2 The sentencing committee, which comprises of members of the Authority’s ICAVS(D) Project Team and the Contractor’s ICAVS(D) Project Team shall meet between ten (10) and fifteen (15) Business Days after the provision of this report and seek to agree the Service Credits and Service Failure Points which are to be applied on the basis of the report provided. The Sentencing Committee shall inform the Contractor of its decision within five (5) Business Days of its meeting.

a.If the Sentencing Committee cannot reach agreement having consulted as appropriate with their respective line managers, the matter shall be referred to senior management representatives of both parties shall resolve the matter as quickly as possible and inform the Contractor of its decision. If an agreement still cannot be reached, the matter shall be referred to the Dispute Resolution Procedure as detailed in DEFCON530 (Dispute Resolution).

b.The Service Credits shall be applied to the following quarters total amount by the Contractor in accordance with Schedule 4 – Milestone Payment Plan, or if the matter has been referred, the Service Credits shall be applied to the quarterly total amount next following the resolution of the matter.

**9.2. Management Information (MI)**

9.2.1 The Contractor shall deliver to the Authority the Specified MI, as described in Annex A to Schedule 1 – Statement of Requirement to the Contract.

**9.3 Progress Meetings**

9.3.1 The Contractor shall attend meetings in accordance with Schedule 1 - Statement of Requirements to the Contract.

9.3.2 Other meetings are to be held at a convenient and mutually agreed time and location in association with the requirement.

**9.4 Relationship Management Plan**

The Contractor and the Authority shall maintain the Relationship Management Plan, at Schedule 10 to the Contract, throughout the duration of the Contract which shall be reviewed at twelve (12) monthly intervals in order to maintain and improve the relationship wherever possible. The outcome of the measurements and the steps taken for improvement will be subject to independent assurance from outside of the project at the Authority’s discretion.

**9.5 Earned Value Management**

The Contractor shall develop, deliver and update as needed over the term of the contract, an Earned Value Management Plan (EVMP) in accordance with the requirements stated in Annex C of Schedule 1 - Statement of Requirement.

**9.6 Publicity**

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

**9.7 Transfer of Undertakings (Protection of Employment) (TUPE)**

9.7.1 Save where otherwise provided, words and terms defined under this Condition 9.7 shall have the meaning ascribed to them under Condition 2.1 (Definitions) of the Contract

Previous Contractor Employees - Employee Information

9.7.2 No later than three months prior to the Relevant Transfer Date the Authority shall provide to the Contractor the information listed at Schedule 16A part A in respect of Previous Contractor Employees to the extent that such information has been provided to the Authority by the Previous Contractor.

9.7.3 The Authority shall provide the Contractor with any update to the information provided under paragraph 9.7.2 as soon as is reasonably practicable, to the extent that such information has been provided to the Authority by the Previous Contractor.

9.7.4 The Contractor shall provide any information provided to it by the Authority pursuant to paragraph 9.7.2 to an Employing Sub-Contractor within seven Business Days of receipt to the extent that such Previous Contractor Employees are to transfer to an Employing Sub-Contractor under a Relevant Transfer on the Relevant Transfer Date.

9.7.5 Paragraph 9.7.2 is subject to the Authority and any Previous Contractor’s obligations in respect of the Data Protection Legislation and any data provided by the Authority in accordance with paragraph 9.7.2 shall be provided in anonymous form in order to enable its disclosure. To the extent anonymous data has been provided by the Authority pursuant to its obligations under Paragraph 9.7.2 above, the Authority shall provide full data no later than 28 days prior to the Relevant Transfer.

9.7.6 The Authority does not warrant the accuracy of the information provided under paragraph 9.7.2.

Obligations in Respect of Previous Contract Employees

9.7.7 The Contractor and the Authority acknowledge (and the Contractor shall procure that the Employing Sub-Contractor acknowledges) that the provision of the Services under this Contract will constitute a Relevant Transfer.

9.7.8 The Contractor agrees (and will procure that the Employing Sub-Contractor agrees) that from the Relevant Transfer Date the contracts of employment of any Previous Contractor Employees together with any collective agreements (save insofar as such contracts and such agreements relate to benefits for old age, invalidity or survivors under any occupational pension scheme or otherwise do not transfer pursuant to regulation 4A of the Transfer Regulations) will take effect as if originally made between the Contractor or an Employing Sub-Contractor and the Previous Contractor Employees (or the relevant trade union, as the case may be) subject to any variations to such contracts of employment made pursuant to Regulation 9 of the Transfer Regulations, where applicable.

9.7.9 The Contractor agrees that it will comply with its obligations under sections 257 and 258 of the Pensions Act 2004 and the Transfer of Employment (Pension Protection) Regulations 2005.

9.7.10 Save for any liabilities in respect of Previous Contractor Employees under a Relevant Statutory Scheme or Schemes, the Contractor or Employing Sub-Contractor (as the case may be) shall have responsibility for all emoluments and outgoings (including without limitation all wages, bonuses, commissions, payments in respect of holiday taken after the Relevant Transfer Date as appropriate, PAYE, national insurance contributions and contributions to retirement benefit schemes) in relation to the Previous Contractor Employees with effect from and including the Relevant Transfer Date and shall indemnify the Authority and the Previous Contractor in respect of the same.

Indemnities

9.7.11 The Contractor shall indemnify and hold harmless the Authority and any Previous Contractor against all demands, claims, liabilities, losses and damages, costs and expenses (including all interest, penalties, legal and other costs and expenses) together with any applicable Value Added and similar taxes or liability for deduction of PAYE tax properly incurred by the Authority or any Previous Contractor arising out of or in connection with:

1. any breach by the Contractor and/or any Employing Sub-Contractor of their obligations under Regulation 13 of the Transfer Regulations;
2. any act or proposal by the Contractor or any Employing Sub-Contractor prior to or following the Relevant Transfer Date which amounts to a repudiatory breach of contract as referred to in Regulation 4(11) of the Transfer Regulations and/or to make a substantial change in working conditions of any Previous Contractor Employee to the material detriment of that employee. For the purposes of this sub-clause the expressions “repudiatory breach”, “substantial change” and “material detriment” shall have the same meanings as for the purposes of Regulation 4(9) and 4(11) of the Transfer Regulations; and
3. any collective agreement or any arrangement with any trade union or staff association after the Relevant Transfer Date.
4. Any variations or proposed variations to any Previous Contractor Employee’s terms and conditions of employment pursuant to regulations 4(5) and 4(5B).

General Provisions Applicable to Previous Contractor Employees and Contractor Personnel – Contractor Indemnity

9.7.12 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 the employment or termination of employment by the Contractor or any Employing Sub-Contractor of any person (including the Previous Contractor Employees) engaged in connection with the provision of the Services during the term of this Agreement.

Post Transfer Reporting

9.7.13 The Contractor shall upon request by the Authority provide (or shall procure that an Employing Sub-Contractor shall provide) the Authority with the following information in respect of the employees who are wholly or mainly employed, assigned or engaged in providing the Services:

1. any proposed, agreed or imposed changes to terms and conditions of service;
2. disputes relating to compliance with the Transfer Regulations which are regarded as unresolved by a recognised Trade Union;
3. any court action or tribunal proceedings relating to compliance with the Transfer Regulations;
4. completed court action or tribunal proceedings relating to compliance with the Transfer Regulations; and
5. out of court settlements relating to compliance with the Transfer Regulations if possible having regard to the wording of the settlement.

Staff Transfer Arrangements on Exit –

Employment - Information on Re-tender, Partial Termination, Termination or Expiry

9.7.14 No earlier than one year 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 Schedule 16B, Part A 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 9.7.14 a or 9.7.14 b up to the Subsequent Transfer Date as soon as reasonably practicable.

9.7.15 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 B of Schedule 16B 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 the information provided under this Paragraph 9.6.15 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.

9.7.16 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 C of Schedule 16B 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.

9.7.17 Within 14 days following the relevant Subsequent Transfer Date the Contractor shall provide to the Authority and/or any New Provider the information set out in Part D of Schedule 16B respect of Subsequent Transferring Employees.

9.7.18 Paragraphs 9.7.14 and 9.7.15 of this condition are subject to the Contractor's obligations in respect of the Data Protection Legislation 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 Data Protection Legislation or provide the data in an anonymous form in order to enable disclosure of the information required under paragraphs 9.7.14 and 9.7.15 Notwithstanding this paragraph 9.7.17, 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 9.7.14 or 9.7.15 above, the Contractor shall provide full data to the Authority no later than 28 days prior to the Subsequent Transfer Date.

9.7.19 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 9.7.14, 9.7.15, 9.7.16, 9.7.17 or 9.7.19 of this condition.

9.7.20 The Authority may at any time prior to the period set out in paragraph 9.7.18 above request from the Contractor any of the information in sections 1(a) to (d) of Schedule 16 B and the Contractor shall and shall procure any Sub-Contractor will provide the information requested within 28 days of receipt of that request.

Obligations in Respect of Subsequent Transferring Employees

9.7.21 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.

Unexpected Subsequent Transferring Employees

9.7.22 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 9.7.16 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 9.7.22 (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 19.6.22(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;

9.7.23 the Authority shall be deemed to have waived its right to an indemnity under paragraph 9.7.23 (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 clauses 9.7.22 & 9.7.23.

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

9.7.24 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.

9.7.25 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 9.7.24 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.

9.7.26 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 9.7.26, 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.

Contracts (Rights of Third Parties) Act 1999

9.7.27 Pursuant to the terms of DEFCON 537, 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.

9.7.28 The consent of a New Provider (save where the New Provider is the Authority) is not required to rescind, vary or terminate this Contract.

9.7.29 Nothing in clause 9.7.27, 9.7.28 & 9.7.29 shall affect the accrued rights of the New Provider prior to the rescission, variation, expiry or termination of this Contract.

General

9.7.30 The Contractor shall not recover any Costs and/or other losses under condition 9.7 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.

1. Secure Sites are defined as either Government premises or a secured office on the contractor premises. [↑](#footnote-ref-2)