



Ministry
of Defence



Contract Number: TTHC/0017
TORPEDOES REPAIR AND MAINTENANCE TERMS AND CONDITIONS

TABLE OF CONTENTS

1 SCHEDULE OF REQUIREMENTS

2 GENERAL CONDITIONS

2.1 DEFCONs

DEFCON501 (Edn.11/17) – Definitions and Interpretations
DEFCON503 (Edn.12/14) – Formal Amendments to Contract
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
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.05/18) – Protection of Personal Data
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.12/18) – Change of Control of Contractor
DEFCON620 (Edn.05/17) – Change Control Procedure
DEFCON637 (Edn.05/17) – Defect Investigation and Liability (please refer to Warranty Schematic)
DEFCON656B (Edn.08/16) – Termination for Convenience – £5m and Over
DEFCON659A (Edn.02/17) – Security Measures
DEFCON670 (Edn.02/17) – Tax Compliance

2.2 DEFINITIONS AND INTERPRETATIONS

2.3 PRECEDENCE

2.4 RESPONSIBILITIES

2.5 AUTHORITY TO PROCEED

2.6 DURATION

2.7 SUB-CONTRACTS

2.8 PLACE OF WORK

2.9 CAPITAL ASSETS

2.10 SECURITY

2.11 DISPUTE RESOLUTION

2.12 TRANSFER OF UNDERTAKINGS PROTECTION OF EMPLOYMENT –(TUPE)

3 SPECIFICATIONS, PLANS ETC

3.1 DEFCONs

DEFCON68 (Edn 02/19) – Supply of Data for Hazardous Articles, Materials and Substances
DEFCON117 (Edn.10/13) – Supply Of Information For NATO Codification And Defence Inventory Introduction

DEFCON129 (Edn. 07/19 – Packaging (For Articles Other Than Munitions)
DEFCON502 (Edn.05/17) – Specification Changes
DEFCON601 (Edn.04/14) – Redundant Materiel
DEFCON602A (Edn.12/17) – 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
DEFCON624 (Edn.11/13) – Use Of Asbestos
DEFCON627 (Edn.12/10) – Quality Assurance - Requirement for a Certificate of Conformity
DEFCON644 (Edn.07/18) – Marking of Articles

- 3.2 REQUIREMENT
- 3.3 EXCEPTIONAL TASKS
- 3.4 QUALITY ASSURANCE
- 3.5 SAFETY AND ENVIRONMENTAL MANAGEMENT
- 3.6 CONTRACT PLANS

4 PRICE

4.1 DEFCONs

DEFCON619A (Edn.09/97) – Customs Duty Drawback
DEFCON800 (Edn.12/14) – Qualifying Defence Contract
DEFCON801 (Edn.12/14) – Amendments to Qualifying Defence Contracts – Consolidated Versions
DEFCON802 (Edn.12/14) – QDC: Open Book on sub-contracts that are not Qualifying Sub-contracts
DEFCON804 (Edn.03/15) – QDC: Confidentiality of Single Source Contract Regulations Information

- 4.2 PROVISIONAL PRICING
- 4.3 SCHEDULE OF REQUIREMENT LINE ITEMS 1A, 1B, 2A AND 2B
- 4.4 SCHEDULE OF REQUIREMENTS LINE ITEM 3 EXCEPTIONAL TASKING
- 4.5 LIMITATION OF LIABILITY
- 4.6 POST CONTRACT PLANNING

5 INTELLECTUAL PROPERTY RIGHTS (IPR)

5.1 DEFCONs

DEFCON14 (Edn.11/05) – Inventions And Designs – Crown Rights And Ownership of Patents And Registered Designs
DEFCON15 (Edn.2/98) - Design Rights and Rights to Use Design Information. (Applicable to Item 3, Exceptional Tasking Only)
DEFCON21 (Edn.10/04) - Retention of Records
DEFCON90 (Edn.11/06) – Copyright
DEFCON91 (Edn 11/06) - Intellectual Property Rights in Software
DEFCON126 (Edn 11/06) - International Collaboration
DEFCON632 (Edn 08/12) - Third Party Intellectual Property Rights - Rights and Restrictions
DEFFORM 315 (Edn 2/98) - Contract Data Requirement

- 5.2 INTELLECTUAL PROPERTY RIGHTS CONDITIONS
- 5.3 DESIGN RIGHTS & PATENTS - SUBCONTRACTS
- 5.4 TECHNICAL PUBLICATIONS
- 5.5 STING RAY INFORMATION – NORWAY

6 LOANS

6.1 DEFCONs

DEFCON23 (Edn.08/09) – Special Jigs, Tooling and Test Equipment
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
DEFCON697 (Edn.07/13) – Contractors on Deployed Operations

- 6.2 GOVERNMENT FURNISHED ASSESTS (GFA)
- 6.3 MATERIAL ACCOUNTABILITY
- 6.4 SPECIAL JIGS, TOOLS, GAUGES AND TEST EQUIPMENT ETC
- 6.5 DISPOSAL OF GOVERNMENT PROPERTY
- 6.6 TRANSFER OF INITIAL SPARES
- 6.7 SPARES HOLDINGS

7 DELIVERY

7.1 DEFCONs

DEFCON113 (Edn.02/17) – Diversion Orders
DEFCON129J (Edn.18/11/16) The Use Of The Electronic Business Delivery Form
DEFCON507 (Edn.10/18) – Delivery
DEFCON514 (Edn.08/15) – Material Breach
DEFCON524 (Edn.10/98) – Rejection
DEFCON525 (Edn.10/98) – Acceptance
DEFCON612 (Edn.10/98) – Loss of or Damage to the Articles
DEFCON621B (Edn.10/04) – Transport (if the Contractor is responsible for transport).

- 7.2 CONTRACT DELIVERABLES
- 7.3 FORCE MAJEURE
- 7.4 DEFAULT

8 PAYMENTS/RECEIPT

8.1 DEFCONs

DEFCON5J (Edn.18/11/16) – 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
DEFCON649 (Edn.12/16) – Vesting

- 8.2 PAYMENT - ITEM 1 OF THE SCHEDULE OF REQUIREMENTS
- 8.3 PAYMENT - ITEM 2 OF THE SCHEDULE OF REQUIREMENTS
- 8.4 PAYMENT - ITEM 3 OF THE SCHEDULE OF REQUIREMENTS
- 8.5 PERFORMANCE INDICATORS

9 CONTRACT ADMINISTRATION

9.1 DEFCONs

DEFCON604 (Edn.06/14) – Progress Reports

DEFCON605 (Edn.06/14) – Financial Reports
DEFCON609 (Edn.08/18) – Contractor’s Records
DEFCON642 (Edn.06/14) – Progress Meetings
DEFCON647 (Edn.04/19) – Financial Management Information
Financial Management Information Annex A and B
DEFCON658 (Edn.10/17) – Cyber

- 9.2 MANAGEMENT AND REPORTING
- 9.3 CONTRACT CHANGE PROCEDURES
- 9.4 EXIT MANAGEMENT
- 9.5 CONTRACTOR RECORDS
- 10. WARRANTY

APPENDICES

Appendix 1 DEFFORM 111

DEFFORMs

DEFFORM 315 (Ed02/98) ‘Contract Data Requirements’
DEFFORM 528 (Ed12/17) ‘Import and Export Controls’

ANNEXES

- A Service Definition Document (SDD)
- B Master Data Assumptions List (MDAL)
- C Charging Rates
- D Design Rights and Patents (Sub Contractor’s) Agreement
- E Government Furnished Equipment
- F Milestone Payment Plan
- G Contract Pricing/Equality of Information Statement
- H Exit Management
- I Assumptions, Exclusions & Limitations (AELs)
- J Exceptional Tasks
- K Task Approval Form
- L Proprietary Items
- M List of Standards applicable to the Contract
- N Warranty Schematic
- O Equipment List
- P Spares Model
- Q Spearfish EMMA Warrant Items
- R DEFFORM 539 ‘Commercially Sensitive Information’
- S Sting Ray EMMA Warrant Items
- T Project Controls Requirements

1. SCHEDULE OF REQUIREMENTS

Name and Address of Contractor BAE Systems Surface Ships Limited Broad Oak The Airport Portsmouth Hants PO3 5PQ	MINISTRY OF DEFENCE	Contract No TTHC/0017
	Schedule of Requirements for Torpedoes Repair and Maintenance	

Articles & Services Required:

Item Number	Description	Price £ (ex-VAT)
1a	Provision of Torpedo In Service Repair and Maintenance Support in accordance with the Service Definition Document (SDD) at Annex A to the Contract.	Target Cost Incentive Fee £[Redacted]
1b	Provision of surveillance services in support of Item 1a above.	Target Cost Incentive Fee £[Redacted]
1b	As above Euro element [Text has been redacted under the exemptions set out by the Freedom of Information Act.] N.B. Euro payments will be paid in Euros.	£[Redacted]
2a	Known planned spares for use by the Contractor in accordance with 'Spares Model' at Annex P of the Contract.	Target Cost Incentive Fee £[Redacted]
2b	Known planned spares for use by the Authority in accordance with 'Spares Model' at Annex P of the Contract.	Target Cost Incentive Fee £[Redacted]
	Total Target Price for Items 1 and 2 above	£229,701,650
3	Exceptional Tasks outside the scope of Items 1 and 2 above, as approved by the Authority and recorded at Annex J to the Contract.	(Firm Prices To be agreed on a case by case basis - see Condition 3.3)

[Text has been redacted under the exemptions set out by the Freedom of Information Act.]

CONDITIONS OF CONTRACT

The Contract is subject to the Terms and Conditions herewith.

2 GENERAL CONDITIONS

2.1 DEFCONs

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

DEFCON503 (Edn.12/14 – Formal Amendments to Contract

Note: For the purposes of this DEFCON, the Commercial Branch is the duly authorised representative of the Authority as recorded in Box 1 of DEFFORM 111.

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

DEFCON527 (Edn.09/97) – Waiver

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

Note: For the purposes of Clause 16 of this DEFCON, the periods shall be 20 Business Days.

DEFCON529 (Edn.09/97) – Law (English)

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

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

Note: For any activity under Schedule or Requirements line item 3 'Exceptional Tasking' the applicability of this DEFCON shall be decided on a case by case basis as agreed by the Authority and the Contractor.

For the purposes of Clause 7 (d) of this Condition:

1. the release of export-controlled information is subject to appropriate agreements or approvals being in place.
2. If the Authority is contemplating disclosure under Clause 7d of this DEFCON then it shall notify the Contractor of its intention before disclosing the information. The Contractor shall have the option of putting in place with the recipient a Non-Disclosure Agreement. If the Contractor and the recipient cannot conclude an agreement within 30 days then with the exception of financial, supplier technical and maintenance information, the Authority shall have the right to disclose information in accordance with Clause 7 of this DEFCON. The Authority shall assist in expediting the agreement of the Non-Disclosure Agreement.
3. The reference to professional advisor, consultant and other persons does not include contractors where "contractors" has the meaning set out in section 1(8) (a) and (b) of the Defence Reform Act 2014.

DEFCON532B (Edn.05/18) – Protection of Personal Data

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.12/18) – Change of Control of Contractor

Note: For the purposes of clause 1 of this Condition, Sub-contractors shall mean any UK company identified as a major sub-contractor in the Purchasing/Manufacturing Plan directly contracted by the Contractor to perform Services or deliver Goods under the Contract and shall not include suppliers of minor components or consumable items.

For the purposes of clause 2 of this Condition, a change of control will not occur if: (a) the cessation of control occurs as a part of a corporate restructuring of the Contractor's Group or (b) the legal entity acquiring control of the Contractor is a member of the Contractor's Group.

For the purposes of clause 5 of this Condition, The Authority shall have the right to terminate the Contract in whole or in part.

Clause 6 of this Condition shall be replaced in its entirety by the following: In the event that the Authority decides to terminate under clause 5 of this Condition, the termination process shall be in compliance with the terms of DEFCON 656B and associated Notes.

DEFCON620 (Edn.05/17) – Change Control Procedure

Note: For the purposes of Clause 3a, the period shall be 20 Business Days.

DEFCON656B (Edn.08/16) – Termination for Convenience – £5m and Over

Note: For the purposes of this Condition the periods referred to in Clauses 1 and 6b of DEFCON656B shall be 6 months and 4 months respectively.

The Total price for the purposes of DEFCON 656B shall mean the price payable to the Contractor by the Authority under the Contract for the full and proper performance by the Contractor of its part of the Contract.

DEFCON659A (Edn.02/17) – Security Measures

DEFCON670 (Edn.02/17) – Tax Compliance

2.2 DEFINITIONS AND INTERPRETATIONS

2.2.1 In the Contract the following expressions shall each have the meanings respectively assigned to them, except where the context requires otherwise:

2.2.1.1 The meanings set out in DEFCON501 shall apply to the Contract.

2.2.1.1 "Articles to the said Design" shall apply to anything produced by use of "the said design";

- 2.2.1.2 “Baseline Profit Rate” means the Baseline Profit Rate determined annually on a recommendation from the SSRO to the Secretary of State for Defence. It is the start point for calculating the Contract Profit Rate (CPR).
- 2.2.1.3 Business Days - 'business day' means any day excluding:
- (1) Saturdays, Sundays and public and statutory holidays in the jurisdiction of either party;
 - (2) privilege days notified in writing by the Authority to the Contractor at least 10 business days in advance; and
 - (3) such periods of holiday closure of the Contractor's premises of which the Authority is given written notice by the Contractor at least 10 business days in advance
- 2.2.1.4 “Contract” is an agreement concluded between the Authority and the Contractor, including all specifications, plans, drawings, schedules and other documentation, expressly made part of the agreement.
- 2.2.1.5 “Contract Amendment” means making modifications to, correcting, deleting from, or adding to an existing contract.
- 2.2.1.6 “Contract Award” is the date upon which the Contractor accepts the Authority’s offer of Contract.
- 2.2.1.7 “Contract Profit Rate” is the profit, in percentage terms, which the parties have agreed to add to the Contract costs to arrive at the Contract Price. This shall be determined through the SSCR six-step process.
- 2.2.1.8 “Day” means Calendar Day unless stated otherwise;
- 2.2.1.9 “Firmed” or “Firming” shall mean the process by which the parties agree to convert Provisional prices to actual prices which shall not then be subject to change, except via a Contract Amendment. This process is described in Condition 4.3;
- 2.2.1.10 A “Provisional Price” is a price that neither party intends to be the final contract price. It is a temporary price, pending agreement between the parties of the final Contract price
- 2.2.1.11 Reconciliation Point shall mean the points in time at which the parties shall agree to make past rates Firm and not subject to change as well as make necessary adjustments to past payments in accordance with the process described Condition 4.3;
- 2.2.1.12 “Report” means a written report;

- 2.2.1.13 “Sub Contractor” means any person, firm or company to whom the Contractor sub-lets any part of the work to be carried out by the Contractor as included in the Purchasing/Manufacturing Plan ;
- 2.2.1.14 “Supplier” means any person, firm or company from whom the Contractor purchases any items and is not included in the Purchasing/Manufacturing Plan;
- 2.2.1.15 “The Terms and Conditions” means the Conditions set out in the Contract, comprising of DEFCONs and narrative special Conditions (including referenced documentation);
- 2.2.1.16 “The Parties” means the Authority and the Contractor;
- 2.2.1.17 “The said Design” means any material, technique or process of manufacture developed under the Contract, as well as to any design developed;
- 2.2.1.18 “The Items” means the items detailed on the Schedule of Requirements which the Contractor is contracted to supply;
- 2.2.1.19 “Week” means 7 Calendar Days unless stated otherwise;
- 2.2.1.20 Notes against DEFCONs are special conditions of contract.
- 2.2.1.21 Unless otherwise stated, references to Clauses, Sub-Clauses, paragraphs, sub-paragraphs, Annexes and Appendices relate to the Contract. DEFCONs, DEFFORMs and DEFSTANs referenced in the Contract shall state the edition number thereof that applies to the Contract. Any changes to editions shall only be incorporated into the Contract by means of agreement between the parties and formal Contract Amendment.
- 2.2.1.22 Change In Law: means where a change to the Contract shall be reasonably considered to comply with a change in law, legislation, regulations, standards and any applicable judgement of a relevant court of law which changes a binding precedent

2.3 PRECEDENCE

2.3.1 In the event of a conflict or inconsistency between any parts of the Contract precedence shall be determined in accordance with Clause 1e) of DEFCON 501. With the exception of Change In Law AELs 19 & 20 (Annex I-AELs) Annexes to the Contract shall have equal precedence with the

Schedule of Requirements. Change In Law AELs 19 & 20 (Annex I-AELs) shall have equal precedence with the special conditions of contract.

2.3.2 In the event of any conflict or inconsistency between any parts of the Contract with the same order of precedence, or within any document forming part of the Contract, any question of precedence shall be agreed between the Authority and the Contractor. The party discovering the inconsistency shall notify the other within 20 Business Days of its discovery. Any agreement shall be detailed within a Contract Amendment, if appropriate.

2.4 RESPONSIBILITIES

2.4.1 The Contractor shall be responsible for the performance of all work required under the Contract.

2.4.2 Acceptance by the Authority of any of the Contractor's deliverable plans does not signify acceptance of liability for their accuracy, suitability or applicability. Acceptance only signifies the Authority's acknowledgement of the Contractor's delivery of those Plans and thereafter the Contractor's intention to implement the provisions of those Plans.

2.4.3 The Authority shall be responsible for meeting its obligations under the Contract.

2.4.4. In the event of a period of National tensions, emergencies or hostilities, the Authority may wish to maximise the supply of Torpedoes which may necessitate alterations to parts of Annex A. It is the responsibility of the Contractor to give full support to the Authority, subject to Condition 2.4.5 below, including but not limited to the resources available to the Contractor.

2.4.5 In the event of such tensions, emergencies and hostilities the Authority reserves the right to supplement the Contractor's staff with its own staff, where appropriate. The Authority also reserves the right to require the Contractor to provide the necessary resources to help increase the availability of Torpedoes. In such event, the Authority will negotiate with the Contractor fair and reasonable changes to the terms, conditions and price of this Contract.

2.5 AUTHORITY TO PROCEED

2.5.1 The Contractor shall be authorised to proceed with the Contract upon signature and return to the Authority of DEFFORM 10 and in the case of Contract Amendments DEFFORM 10B.

2.5.2 Authority to proceed with any work not identified in the Contract shall be subject to agreement of either a Contract amendment, or a specific tasking under Condition 3.3.

2.5.3 Any unauthorised work undertaken by the Contractor beyond the requirements of the Contract and in anticipation of the Authority's authorisation of work under further Contracts or amendment to Contract or tasking under Condition 3 below, is entirely at the Contractor's risk and the Authority accepts no liability for any expenditure, costs or undertakings associated with such work.

2.6 DURATION

2.6.1. The Contract Start Date shall be 1st November 2019 and shall terminate on 30th June 2026.

2.7 SUB-CONTRACTS

2.7.1 The Contractor shall be responsible for the award, administration and performance of all sub-contracts so that the delivery and performance requirements of the Contract are met.

2.8 PLACE OF WORK

2.8.1 Any change in the Contractor's or major Sub-Contractors' places of work during the period of the Contract (where work under the Contract is being performed) shall be reported to the Authority's Commercial Branch. (See Box 1 of the DEFFORM 111).

2.9 CAPITAL ASSETS

2.9.1 The Contractor and his Sub-Contractors shall provide, without capital assistance from the Authority, any additional capital assets, e.g. buildings, plant, machinery and equipment, necessary for the Contract, without prejudice to the Contractor's normal accounting procedures.

2.10 SECURITY

2.10.1 For the purpose of DEFCON 659A the classified matter of the TRAM Contract is defined in the following Security Aspects Letters:

2.10.1.1 Spearfish torpedo – TTHC/0017 SAL SPEARFISH (Dated 04/09/2019)

2.10.1.2 Sting Ray torpedo – TTHC/0017 SAL STING RAY (Dated 04/09/2019)

2.10.2 The Contractor shall confirm in writing to the Authority's Project Manager that the definition of the classified matter has been brought to the attention of the person directly responsible for the security of the Contract, that the definition is understood and that measures can be/will be taken to safeguard the classified matter. The Contractor shall immediately refer any difficulties in these respects to the Authority's Project Manager. Changes in the classification will be notified by the Authority's Project Manager to whom enquiries about the classified matter should be addressed.

2.10.3 Submissions for approval under Clause 7 of DEFCON 659A shall be submitted to the Deputy Head Security & Principal Security Adviser, Poplar - 1# 2004, MoD Abbey Wood Bristol BS34 8JH. (despsya-securityadvicecentre@mod.gov.uk)

2.11 DISPUTE RESOLUTION

2.11.1 Pursuant to DEFCON530, the following shall apply:

2.11.1.1 For the purposes of this Condition the 'respective representatives of the parties having authority to settle the matter' shall be defined as the, Torpedoes, Tomahawk and Harpoon (TTH) PT

Senior Commercial Officer and Project Manager for the Authority and the Torpedoes Project Lead and Senior Commercial Manager for the Contractor. If the dispute is not resolved at this level within 20 Business Days of referral or such other period that may be agreed between the Parties, the matter will be referred to the representatives as detailed in the table below.

Meeting Title	Authority Role	BAES Role	Timescales for Resolution
Project Level	TTH Team Leader	Head of UWW	20 Business Days
Initial Commercial Meeting	Senior Commercial Manager	Senior Commercial Manager	20 Business Days
Follow on Escalation Meeting	Weapons Commercial Deputy Head	Head of Commercial	20 Business Days
Final Escalation Meeting	Weapons Commercial Head	Commercial Director	20 Business Days

2.11.1.2 If the procedure laid down in this Condition fails to resolve the dispute then the provisions of DEFCON 530 shall apply.

2.12 TRANSFER OF UNDERTAKINGS PROTECTION OF EMPLOYMENT- (TUPE)

2.12.1 Where it is intended to transfer the services or any part of the services under the Contract to the Authority or a Replacement Contractor, the Parties shall jointly consider whether the Transfer of Undertakings (Protection of Employment Regulations) 2006 as amended ("TUPE Regulations") apply to such a transfer. The Parties shall determine the application of the Transfer Regulations within 20 business days of notification of the intention to transfer the services of any part thereof and each Party shall provide such information as the other Party reasonably requires in order to make such a determination.

2.12.2 Where it is determined that the TUPE Regulations apply, the Parties shall comply with their obligations under the TUPE Regulations and government policy in force at the time of notification.

3. SPECIFICATIONS, PLANS, ETC

3.1 DEFCONs

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

Note: The Contractor shall supply Safety Data Sheets for TRAM in the same format and following the same approach as per TCC & SFU contracts and shall (following Contract negotiations) not be required to sign a DEFFORM 68.

DEFCON117 (Edn.10/13) – Supply Of Information For NATO Codification And Defence Inventory Introduction

DEFCON129 (Edn.07/19) – Packaging (For Articles Other Than Munitions)

Note: In the event that special packaging is not mandated, the Contractor shall use suitable Commercial Packaging for each delivery.

DEFCON502 (Edn.05/17) – Specification Changes

DEFCON601 (Edn.04/14) – Redundant Materiel

Note: This DEFCON shall apply only to material issued under DEFCON611 or otherwise by the Authority.

For the purposes of this Condition a list of Authority owned serviceable and unserviceable items held by the Contractor shall be prepared in accordance with DEFCON601 and submitted to the Authority annually. The first report is due 1 April 2020 and the final report upon Contract completion

DEFCON602A (Edn.12/17) – 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

Note: For the purposes of DEFCON608 facilities provided should include electronic communications media (i.e. telephone, facsimile, IT to include internet connectivity etc.).

DEFCON624 (Edn.11/13) – Use Of Asbestos

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

DEFCON644 (Edn07/18) – Marking of Articles

3.2 REQUIREMENT

3.2.1 The Contract covers In Service Support for the repair and maintenance of Spearfish Heavyweight Torpedoes and Sting Ray Lightweight Torpedoes. All In Service Support work shall be carried out in accordance with the SDD at Annex A. For the purposes of DEFCON502, Annex A shall be deemed the "Specification" for Item 1 of the Schedule of Requirements. Payments shall be made in accordance with Annex F, the Milestone Payment Plan.

3.3 EXCEPTIONAL TASKS

3.3.1 Exceptional Tasks under Item 3 of the Schedule of Requirements "Tasks" shall cover any activities outside the scope of work set out at Items 1 and 2 of the Schedule of Requirements that may be required by the Authority. The tasking procedure set out in Conditions 3.3.2-3.3.9 below shall apply in all cases.

3.3.2 The Authority's Project Manager (see Box 2 of Appendix 1) or the Contractor (as requested by the Authority) shall raise a Task Approval Form (TAF) in the format of Annex K. After endorsement of the technical requirement and Statement of Work by the Authority's Project Manager at Part 1 of the TAF, the Contractor shall provide a firm price quotation at Part 2 of the TAF.

3.3.3 Any tasks raised under Annex K shall follow the QDC principles of costs being attributable, appropriate and reasonable, and use the provisional labour rates at Annex C 'Charging Rates' and the agreed profit rate calculation for the Contract noting that the Baseline Profit Rate at the point that the task price is agreed is to be used. For Contract Management purposes tasks will be added to Annex J, at a point in time to be agreed between both Parties.

3.3.4 The Contractor shall use competitive tendering wherever possible in their prices for tasking.

3.3.5 In the event that it is not possible to agree a firm price for the work at the outset, the Authority may, with the agreement of the Contractor, approve a Limit of Liability for the task, to allow the work to proceed. A firm price shall be agreed between the parties prior to final payment of the task.

3.3.6 Authority to proceed with any Task will be given by signature of Part 3 of the TAF Form by the Authority's Project Manager and the Authority's Finance and Commercial Officers. The Contractor shall not undertake any work until in receipt of a fully authorised Tasking Form.

3.3.7. On completion of the Task, the Contractor shall complete and return the TAF Part 4 to the Authority.

3.3.8 In exceptional circumstances, specific Tasks, of long duration (greater than six (6) months) and high value (greater than one hundred thousand pounds (£100K)), may have a Stage Payment Plan agreed within the task. The stage payments would only be made against clearly defined milestones. The Contractor's proposed Stage Payment Plan shall be submitted together with their firm price quotation at Part 2 of the TAF Form.

3.3.9 Notwithstanding sub condition 3.3.3 above, Tasks shall, unless otherwise agreed by the Parties, use the Terms and Conditions of this contract.

3.4 QUALITY ASSURANCE

3.4.1 The Contractor shall implement and maintain a Quality Management System for the duration of the Contract consistent with ISO **ISO9001:2015** or other appropriate accreditation. This certification shall be maintained for all relevant activities under the terms of the Contract.

3.4.2 The Contractor shall adhere to the Standards set out in Annex M which shall be implemented in the Contractor's Quality Plan as agreed by the Authority.

3.4.3 The following are the Quality Assurance Authorities:

3.4.3.1 The "Quality Assurance Authority" (QAA) means the TTH Team Leader.

3.4.3.2 The "Government Quality Assurance Representative"(GQAR) means the TTH Quality Assurance Focal Point, or their delegated representative.

3.4.3.3 In **ISO9001:2015**: "The Customer" means "The Authority"

3.4.4 The GQAR may carry out quality assurance activity at the Contractor's works, and, following reasonable notice to the Contractor, at those of its sub-contractors. To provide the right of access to Sub-contractors' works all sub-contracts placed by the Contractor shall be annotated as follows: "This order is in aid of a MOD Contract and may be subject to quality assurance activity at your works by the GQAR, who will advise you accordingly. You shall provide at no additional direct cost to this Company or to the Authority such reasonable accommodation, facilities and assistance as the GQAR may require. Such accommodation shall be adequately furnished, lighted, heated and ventilated and shall include suitable cloakroom and telephone facilities."

3.5. SAFETY AND ENVIRONMENTAL MANAGEMENT

3.5.1. For audit purposes the Authority will appoint an Independent Safety and Environmental Auditor (ISEA) to assure compliance to the Safety Management System (SMS) Plan and the Environmental Management System Plan (EMSP) (on an as and when required basis).

3.5.2. The ISEA shall be given unrestricted access to safety and environmental information, subject to agreement of appropriate confidentiality measures, held by the Contractor and its Sub-contractors and suppliers. The ISEA will also be given full access to Authority held safety and environmental information.

3.5.3. The Contractor shall enable the Authority and the ISEA to carry out audits of the Contractor's SMS and EMSP and the joint work with the TTH DT at a frequency agreed with the TTH DT.

3.5.4. The Authority's representative for safety management for the purposes of the Contract is:

DES WPNSTTH-CSEM,

DE&S, Fir 3C, # 4316,

MOD Abbey Wood,

Bristol, BS34 8JH.

Tel 030 679 35409

3.5.5. The Contractor shall store and make available to the Authority on request, the Safety and Environmental Case for each Torpedo System in scope of this Contract.

3.6 CONTRACT PLANS

3.6.1 The Contractor shall prepare and maintain Plans for the duration of the Contract as listed in Section 4 of Annex A unless otherwise agreed with the Authority. The Contractor shall manage and deliver the requirements at Annex A in accordance with these Plans. The Authority shall be provided by the Contractor with a copy of all reissues of such Plans as defined in Annex A.

3.6.2 Any plans produced under the terms of this Contract shall be used as a Project Management tool only. Acceptance by the Authority shall only be construed as acknowledgement of the Contractor's intention to implement the provisions therein and shall not be construed as acceptance of liability for the accuracy, suitability or applicability of the Plan. The provision and acceptance of any plan shall not in any way limit or exclude the Contractor's obligation under the Contract and shall be entirely without prejudice to the Authority's rights, privileges and powers under the Contract.

4. PRICE

4.1 DEFCONs

DEFCON619A (Edn.09/97) – Customs Duty Drawback

DEFCON800 (Edn.12/14) – Qualifying Defence Contract

DEFCON801 (Edn.12/14) – Amendments to Qualifying Defence Contracts – Consolidated Versions

DEFCON802 (Edn.12/14) – QDC: Open Book on sub-contracts that are not Qualifying Sub-contracts

DEFCON804 (Edn.03/15) – QDC: Confidentiality of Single Source Contract Regulations Information

[Text has been redacted under the exemptions set out by the Freedom of Information Act.]

4.6 POST CONTRACT PLANNING

4.6.1 The Contractor and the Authority shall jointly review the performance of the Contract in sufficient time, by 30th June 2023, with a view to assessing the potential and scope for any future arrangement, subject to procurement regulations.

5. INTELLECTUAL PROPERTY RIGHTS (IPR)

5.1 DEFCONs

DEFCON14 (Edn.11/05) – Inventions And Designs – Crown Rights And Ownership of Patents And Registered Designs

DEFCON15 (Edn.2/98) - Design Rights and Rights to Use Design Information.

DEFCON21 (Edn.10/04) - Retention of Records

Note: For the purposes of Clause 3 of this Condition the period shall be 5 years following the termination or expiration of the Contract.

DEFCON90 (Edn.11/06) – Copyright

Note: For the purposes of this Condition the nations prescribed for the purposes of Clause 4 c) of DEFCON90 shall be the NATO nation states, Sweden, Australia and New Zealand and any Nation State to whom the MOD disposes of the equipment.

DEFCON91 (Edn 11/06) - Intellectual Property Rights in Software

Note: For the purposes of this Condition the nations prescribed for the purposes of Clause 3e) of DEFCON91 (Intellectual Property Rights in Software) shall be the NATO nation states, Sweden, Australia and New Zealand and any Nation State to whom the MOD disposes of the equipment.

DEFCON126 (Edn 11/06) - International Collaboration

Note: For the purposes of this Condition the period referred to in Clauses 2 and 3 of DEFCON126 shall be 15 years from the commencement date of the Contract or as may otherwise be agreed.

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

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

Note: Applicable to Line Item 3 'Exceptional Tasking' on a case by case basis, agreed by the Authority and the Contractor.

DEFFORM 315 (Edn 2/98) -Contract Data Requirement

Note: In respect of "Application" as defined in DEFCONs 15, and 21 above, the relevant Contract Data Requirement(s) form is a generic DEFFORM 315 (Edn 2/98). In the event that new design work subject to DEFCON 15, and 21 above arises under Item 3 of the Contract then the Contractor shall notify the Authority accordingly and specific DEFFORM 315s shall be raised to cover such work prior to commencement of any activity. The items listed at Annex L are accepted by the Authority for the purposes of the Contract only as "proprietary" to the Contractor or a third party.

5.2 INTELLECTUAL PROPERTY RIGHTS CONDITIONS

5.2.1 The Contractor shall incorporate all authorised changes to the design necessary for the Contractor to continue to meet the requirements of the

Contract. "Authorised changes to the design" to be so incorporated shall include, but not be limited to, all changes to the design of the Spearfish and Sting Ray Torpedoes or their ancillary equipment under the control of the Contractor and any changes to the Spearfish and Sting Ray Handbooks. Such change(s) may be authorised by the Contractor's Modification Committee except for changes affecting safety, performance and end user interface which shall be authorised by the Authority's Spearfish and Sting Ray Torpedo Modification Committees.

5.3 DESIGN RIGHTS & PATENTS – SUBCONTRACTS

5.3.1 The Contractor shall not place any sub-contract or order involving work on studies, design or development, required under the Contract, without the prior approval of the Authority's Commercial Branch

5.3.2 The Contractor shall not enter into any commitment, in relation to such work, until the Sub-contractor has entered into an agreement with the Authority in the form set out in Annex D. Wherever possible the request for approval should be accompanied by two copies of the agreement signed by the Sub-contractor. If in any circumstances, the Contractor is unable to comply with this Condition he shall report the matter to the Authority's Commercial Branch and await further instruction before placing the sub-contract or order.

5.4 TECHNICAL PUBLICATIONS

5.4.1 The Contractor shall ensure that the Authority has the right to copy, amend, extend or have copied, amended or extended any technical publication called for under the Contract or any part thereof including any such part when incorporated in any amended or extended version of such technical publication, and to circulate, use or have used said technical publication including any amended or extended version and any copies thereof for any United Kingdom Government purpose.

5.4.2 The Contractor shall not be liable for any changes made by the Authority to the Technical Publications.

5.4.3. Note that the Contractor under Contract TORPC/01119 Spearfish Upgrade shall provide a new series of authorised and approved handbooks (Books of Reference (BRs) and Charge Books (CBs)) for the Spearfish Mod 1 Weapon System.

[Text has been redacted under the exemptions set out by the Freedom of Information Act.]

6. LOANS

6.1 DEFCONs

DEFCON23 (Edn.08/09) – Special Jigs, Tooling and Test Equipment

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

Note: For the purposes of this Condition the Contractor's liability under Clauses 3 and 4 of DEFCON 76 shall be limited to *[Text has been redacted under the exemptions set out by the Freedom of Information Act.]*

per incident in accordance with agreement DCS/04/04/32/01/07 dated 6 February 2017.

DEFCON611 (Edn.02/16) – Issued Property

DEFCON694 (Edn.07/18) – Accounting For Property of the Authority

DEFCON697 (Edn.07/13) – Contractors on Deployed Operations

Note: Applicable to exceptional tasks only.

6.2 GOVERNMENT FURNISHED ASSETS (GFA)

6.2.1 Under DEFCON 611 the Contractor shall be liable for the costs for the repair, maintenance and calibration of all GFA issued on loan for the duration of the Contract. Any material due for return to the Authority may be returned in a Serviceable Not New condition.

6.2.2 The Contractor may request additional GFA or the transfer of assets in addition to those referenced in Condition 6.6. Such requests will detail the items required and the reasons they are needed to support the Contract. The Authority shall consider any such requests.

6.3 MATERIAL ACCOUNTABILITY

6.3.1 The Contractor shall maintain registers on a computer database, in the format agreed with the Authority, listing all material obtained and supplied on the Contract under DEFCON 611 and DEFCON 23.

6.3.2 The Contractor shall provide the Authority, the Comptroller and Auditor General and their authorised representatives with full access to, the right of inspection of, and extraction from all records whether manual or on computer that relate to Government Property on loan.

6.3.3 The right of the Authority to reject Articles under the Contract shall in no way be prejudiced by or through the fact that the Articles in question may have been made from or include materials, components, instruments etc supplied by the Authority.

6.4 SPECIAL JIGS, TOOLS, GAUGES AND TEST EQUIPMENT ETC

6.4.1 With the exception of the Equipment to be issued from MOD sources the Contractor is expected to provide, from his own resources, all other jigs, tools, gauges and items of test equipment.

6.4.2 No special items are to be provided as a charge to the Contract without the prior approval of the Authority.

6.4.3 Should such approval be given, the conditions of DEFCON 23 shall, unless otherwise stated, apply to the special items authorised.

6.4.4 The Contractor shall not claim any grant from Government funds towards the costs of any jigs, tools, moulds, dies, manufacturing gauges or test equipment which are provided by the Contractor and for which the amount payable by the Authority is the actual or estimated full amount of any such items.

6.4.5 Where the Contractor is to bear the full cost of any jigs, tools, moulds, dies, manufacturing gauges or test equipment provided under a sub-contract, the Contractor shall include in the sub-contract provision that such items shall become the property of the Contractor, and that the Sub-contractor shall not claim any assistance from Government funds in respect of any such items.

6.5 DISPOSAL OF GOVERNMENT PROPERTY

6.5.1 Throughout the duration of the Contract, Authority owned property deemed surplus to requirements may only be disposed of by prior agreement of the Authority. Disposal of Classified or contaminated material may only be disposed of through an appropriately cleared contractor.

6.5.2 Waste arisings from routine Contractor Repair Facility weapon processing may be disposed by the Contractor without further approval from the Authority.

6.6 TRANSFER OF SPARES

6.6.1 Any Spearfish and Sting Ray Torpedo spares, held by the Contractor against previous Torpedo Contracts with the Authority shall, be transferred to the ownership of the Authority for use under this Contract.

6.6.2 The Contractor shall deliver all such available spares to the Authority's Defence Munitions sites, retaining only such spares as necessary to support the Contractor Repair Facility for the purposes of fulfilling its obligations under this Contract.

6.7 SPARES HOLDINGS

6.7.1 In the event of transfer of the Services to the Authority or a replacement contractor upon expiry or early termination of the Contract any remaining unused spares provided to, or purchased, by the Contractor in accordance with the Contract shall be identified and delivered by the Contractor, in accordance with the instructions of the Authority, back to the Authority or replacement contractor.

6.7.2 Whilst the period of performance of the Contract is in accordance with Condition 2.6, the Contractor shall procure spares on behalf of the Authority for a further additional year. These additional spares are detailed at Annex P

7. DELIVERY

7.1 DEFCONs

DEFCON113 (Edn.02/17) – Diversion Orders

DEFCON129J (Edn.18/11/16) –The Use Of The Electronic Business Delivery Form

DEFCON507 (Edn.10/18) – Delivery

DEFCON514 (Edn.08/15) – Material Breach

Note: See Clause 4.5.1.a

DEFCON524 (Edn.10/98) – Rejection

DEFCON525 (Edn.10/98) – Acceptance

Note: For the purposes of this Condition all items delivered under this Contract the period for rejection under DEFCON 525 Clause 1a shall be 15 Business Days from completion and delivery.

DEFCON612 (Edn.10/98) – Loss of or Damage to the Articles

DEFCON621B (Edn.10/04) – Transport (if the Contractor is responsible for transport).

7.2 CONTRACT DELIVERABLES

7.2.1 The deliverables to be provided under the Contract and delivery date requirements are set out in Annexes A & F . If additional deliverables are agreed they shall be added to Annex F.

7.3 FORCE MAJEURE

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

7.3.1.1. acts of nature;

7.3.1.2. war;

7.3.1.3. hostilities, including acts of terrorism;

7.3.1.4. fire or flood at any of the Contractor’s premises or those of its suppliers except to the extent that the fire or flood was caused by their own negligence;

7.3.1.5. import/export restrictions by the UK or Foreign Governments;

7.3.1.6. national strikes (if relevant to the performance of the contract), other than at BAE Systems (Plc) companies; and

7.3.1.7. pandemics as defined by the World Health Organisation.

7.3.1.8. Notwithstanding whether a Contract Change is agreed such change in Law shall be treated as a Force Majeure event in accordance with clause 7.3. until such time as a contract change is agreed or rejected in accordance with clause 9.3 contract change procedures.

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

7.3.3. Subject to 7.3.4 below, the Contractor shall be entitled to an appropriate extension of time for performing such obligations provided always that the Contractor has used, to the satisfaction of the Authority, all reasonable endeavours, both to mitigate the effects of the Force Majeure Event, and to facilitate the continued performance of its obligations under this Contract.

7.3.4. With the exception of a Change in Law, the maximum extension of time granted under this Condition shall be agreed on a case by case basis, after

which time the Authority may, on giving written notice to the Contractor, terminate this Contract in whole or in part in accordance with DEFCON 656B.

7.4 DEFAULT

7.4.1 Should there be a fundamental or persistent failure to provide Articles or Services under the Schedule of Requirements, or any portion thereof, in accordance with the requirements of the Contract within the period or periods specified in the Contract or if it becomes evident to the Authority that such provision or any portion thereof will not be completed substantially in accordance with the requirements of the Contract within the period or periods specified in the Contract and that any such failure materially undermines the Authority's ability to effectively use the Articles or Services to be provided under the Contract, the Authority may by written notice, inform the Contractor of its intention to determine the Contract.

7.4.2 Upon such an event, the Contractor shall within 45 days, or such other period as the Contractor and the Authority may agree, following receipt of such notification submit to the Authority a Rectification Plan showing when and how action will be taken to remedy the cause of such notification. The Contractor and the Authority shall act reasonably in agreeing such Rectification Plan.

7.4.3 Following agreement of the Rectification Plan between the Contractor and the Authority, the Authority shall immediately rescind its notice of intent to determine the Contract and the Contractor shall immediately implement the Rectification Plan.

7.4.4 If following the reasonable endeavours of the parties to agree the Rectification Plan no such agreement is reached, or the Rectification Plan is not immediately implemented by the Contractor upon its agreement, the Authority may without prejudice to any other remedies determine the Contract by written notification either in part in respect of the Articles or Services not delivered at the time of such determination, or in full in respect of all the Articles or Services to which the Contract relates other than those delivered or performed in accordance with the Contract before that time. The notification of Contract determination shall include, at the discretion of the Authority, a Transition Period prior to the termination date of the Contract to enable the Authority to reasonably ensure the transfer, in accordance with the Exit Management arrangements set out in Annex H of the Contract, of the provision of the Articles or Services supplied under the Contract.

7.4.5 The Authority, by agreement with the Contractor, may take delivery of and accept as much of the remaining work under the Contract as it may require.

7.4.6 The Parties agree that the provisions of Condition 7.4.4 above shall not be implemented unless and until an appropriate attempt has been made to finally resolve any dispute arising under this Condition in accordance with Condition 2.11.

7.4.7 Where the Authority has determined the Contract under Condition 7.4.4 above and without prejudice as aforesaid the Authority may replace the

Articles or Services as respects which the Contract is so determined by purchasing other articles or services of the same or similar description from a Replacement Contractor or by provision by the Authority, and there shall be recoverable from the Contractor the amount by which the aggregate of the cost of purchasing or providing articles or performing services in this way exceeds the amount which would have been payable to the Contractor in respect of all the Articles or Services so replaced if they had been delivered or performed in accordance with the Contract.

8. PAYMENTS/RECEIPTS

8.1 DEFCONs

DEFCON5J (Edn.18/11/16) – 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

DEFCON649 (Edn.12/16) – Vesting

8.2 PAYMENT – ITEM 1 OF THE SCHEDULE OF REQUIREMENTS

8.2.1 The Authority shall, subject to the provisions of this Condition 8.2, make to the Contractor Advances against the Contract price payable for Item 1 of the Schedule of Requirements in accordance with the Milestone Payment Plan set out at Annex F

8.2.2 “Advances” or “Advance Payments” shall mean payment for which the Contractor is entitled through performing work in accordance with Annex A and which may be claimed in advance of completion of the Contract.

8.2.3 The Contractor shall be entitled to Advances against the Contract price to be claimed in accordance with DEFCON 522 when:

8.2.3.1 the Contractor has completed all work comprised in the Milestone for which the Advance Payment is sought; and

8.2.3.2 the Contractor shall have complied with all its contractual obligations that impinge on progress of the work covered by the Milestone Payment Plan including, where required under the Contract, the provision of information required by the Authority for the purposes of assessing contractual performance; and

8.2.3.3 provided the Authority shall not be obliged to make a payment to the Contractor in respect of a completed Milestone if the Authority has reasonable cause to believe that the Contractor will be unlikely to render complete or part complete performance of their obligations in respect of Item 1 of the Contract.

8.2.4 Where the Authority intends to rely on Condition 8.2.3.3 as the basis for rejecting any claim for an advance payment which the Contractor may make, the Authority shall give to the Contractor notice in writing of his intention together with the Authority's reasons for the rejection.

8.2.5 Save as hereby provided the entitlement of the Contractor to retain all advances against the Contract price is conditional on complete performance of Item 1 of the Contract. Where the Authority terminates the Contract otherwise than in accordance with DEFCON 656B, the Authority shall without prejudice to any other right or remedy of either party be entitled to recover in full all advances against the Contract Price made before termination, except where Articles or Services have been delivered or rendered in accordance with the Contract and acceptance has occurred.

8.2.6 In the event of repayment to the Authority under the provisions of Condition 8.2.5 above then all that which vested in the Authority under the provisions of DEFCON 649 shall re-vest in and become the absolute property of the Contractor.

8.3 PAYMENT – ITEM 2 OF THE SCHEDULE OF REQUIREMENTS

8.3.1 Payment in respect of Spares deliveries under Item 2 of the Schedule of Requirements shall be on the complete delivery of each batch of spares in accordance with DEFCON 522 and the Milestone Payment Plan set out at Annex F.

8.3.2 The Contractor shall provide evidence to support their claim in respect of spares, however in the event that small quantities/value of spares are outstanding, the Authority will not unreasonably withhold payments for the missing items, and these shall be monitored to ensure delivery in the near future.

8.3.3 In the event that higher quantities/values of spares are missing, the Authority reserves the right to adjust the relevant monthly payment accordingly.

8.4 PAYMENT - ITEM 3 OF THE SCHEDULE OF REQUIREMENTS

8.4.1 Payment in respect of Exceptional Tasks authorised under Item 3 of the Schedule of Requirements shall be on completion of each such Task unless otherwise agreed by the Authority. A claim certifying the particular Task is completed shall be submitted to the Authority's Project Manager for approval and claimed in accordance with DEFCON 522.

8.5 PERFORMANCE INDICATORS

8.5.1 In addition to Condition 2.2, in the Contract the following expressions shall each have the meanings respectively assigned to them, except where the context requires otherwise:

8.5.1.1. Assessment Period or Period shall mean each Quarter during which the Contractor's performance shall be assessed by the Authority against the 7 Performance Indicators. The Authority's assessment, including the outcome, shall be discussed between the parties at the Quarterly Progress Meeting.

8.5.1.2. Performance Indicators or PIs shall mean the Performance Indicators defined at Appendix 2 to Annex A of the Contract
Incentivisation Element shall mean the 2% incentivisation element of the Contractor's profit rate, as agreed in accordance with the Single

Source Pricing Regulations, as defined in the Defence Reform Act 2014. These Performance Indicator guidelines and retention shall only apply to the Incentivisation Element of the Contractor's core payments (SoR 1a).

8.5.1.3. Factored Incentivisation Element shall mean adjustments to the Incentivisation element to reflect the PIs not achieved in the Assessment Period.

8.5.1.4. RED shall mean where the Authority reasonably considers the Contractor has not met the agreed standard for a particular Performance Indicator in an Assessment Period.

8.5.1.5. GREEN shall mean where the Authority reasonably considers the Contractor has met the agreed standard for a particular Performance Indicator in an Assessment Period.

8.5.1.6. Retention shall mean where the Authority retains the 2% Incentivisation Element or an element thereof associated with the Core Payment due in any one or more periods. This retention shall be for a period of up to four periods OR indefinitely, in accordance with the process described herein.

8.5.1.7. Core Payment shall mean the sums due in consideration of the core service provided by the Contractor under this Contract, in accordance with Item 1a of the Schedule of Requirements.

8.5.1.8. The Contract performance shall be measured against the seven Performance Indicators (PIs) which are held at Appendix 2 to Annex A of the Contract. This measurement shall be achieved by monitoring performance via the PI tables in Appendix 2 to Annex A of the Contract. The intent of the Performance Indicators is to monitor the Contract performance throughout the Contract period. Sentencing of performance shall be undertaken at each Quarterly Progressing Meeting. Performance against the Performance Indicators shall determine payment or retention of the Contractor's profit rate Incentivisation Element (2%) in whole or in part, as allowable under the Single Source Pricing Regulations.

8.5.1.9. Where an instance relating to any of the PIs cannot be progressed due to a need for information or authorisation from the Authority, such waiting time (from the date of Contractor request until the date of receipt of the information or authorisation) will be discounted from the PI measures for that period, as it would be unreasonable to assess a PI impacted by that period of information gathering. Similarly, where it can be proven that performance against a certain Performance Indicator was frustrated by circumstances or actions outside the control of the Contractor, that PI shall be discounted from the PI measures for that period and for measurement purposes it

will be assumed to have been achieved (GREEN).

8.5.1.10. Where the same PI is not met in consecutive periods that failed PI score shall not be offset by any other exceeded PIs in those periods. This is to enable the Authority to acknowledge sustained failure for this PI and for the Contractor to undertake the applicable corrective action to remedy the failure at no additional cost to the Authority and shall also recognise performance against each and every PI is of importance to the Authority.

8.5.1.11. Each PI shall be considered and assessed separately and where each PI is met (or 'discounted' in accordance with para 2 above) during any one period (Quarter) it shall be considered GREEN.

8.5.1.12. Where any two or more PIs are not met during any one period (Quarter) each PI which falls below the agreed standard met shall be considered RED.

8.5.1.13. Where two or more PIs are sentenced as RED in any one period, the Contractor's profit rate Incentivisation Element shall be retained by the Authority in accordance with the table below. In such a circumstance, the Incentivisation Element of the Contractor's core payment shall be reduced by the corresponding percentage (Factored Incentivisation Element) relating to the number of RED PIs.

No of Red KPIs in Period	% of Incentivisation Element Retained in Period
1	0%
2	0.5%
3-4	1.0%
5-6	1.5%
7	2%

8.5.1.14. Where two or more REDs are experienced in any one period, the Incentivisation Element shall be retained by the Authority following any adjustments due in accordance with clause 6 (Factored Incentivisation Element).

8.5.1.15. The Contractor shall be paid the Incentivisation Element for all PIs in which they achieve GREEN in in any period. If the Contractor has achieved more than one RED, any retained amounts will be paid to the Contractor if they return to a GREEN status overall (i.e. in all PI areas).

8.5.1.16. If the Contract does not return to an overall GREEN status within four consecutive periods of carrying 2 or more REDs, any money retained by the Authority shall be retained indefinitely and cannot be reclaimed by the Contractor. For clarity, this shall be a rolling three-

assessment period, as such any money is forfeited indefinitely after four quarters on a quarter-by-quarter basis.

8.5.1.17. Where there are 2 or more RED PIs for all of the remaining 3 or 4 Periods of the contract, the Factored Incentivisation Element to be retained on those periods (in accordance with clause 6) will be forfeited permanently. For the last 1 or 2 periods of the Contract, 2, 3 or 4 RED PIs will incur a temporary retention of the Factored Incentivisation Element to be paid with the final contract payment milestone. If there are 5 or greater RED PI's in the last 1 or two quarters, the Factored Incentivisation Element will be permanently forfeited.

8.5.1.18. Retention Example: If the contract or scores 2 or more REDs for four periods, a RED in assessment period five would mean they would forfeit the Incentivisation Element from the first assessment period where they experienced a RED factored in accordance with para 6 above. If in assessment period six, they returned to an overall GREEN status, The Contractor shall be entitled to be paid the retained Incentivisation Element from periods 2-5 inclusive.

9. CONTRACT ADMINISTRATION

9.1 DEFCONs

DEFCON604 (Edn.06/14) – Progress Reports

Note: For the purposes of the Contract, the frequency of reports shall be Quarterly.

DEFCON605 (Edn.06/14) – Financial Reports

Note: For the purposes of the Contract, the frequency of reports shall be Quarterly.

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

Note: See Clause 9.5.1.

DEFCON642 (Edn.06/14) – Progress Meetings

DEFCON647 (Edn.04/19) – Financial Management Information

Financial Management Information Annex A and B

Note: For the purposes of DEFCON 647, the Contractor's obligations shall be discharged by the provision of the assessment of completion against the Milestone using data already prepared within the schedule and the monthly Contractor's control account manager's pack as part of the Project Controls Requirements in accordance with Annex T to the Contract. It is recognised by the Authority that this assessment is an estimate of completion only based on best judgement and information available to the Contractor at the time. The assessment shall not be used as the basis for repudiation of the Contract and/or anticipated breach.

DEFCON658 (Edn.10/17) – Cyber

9.2 MANAGEMENT AND REPORTING

9.2.1 Meeting requirements are set out in Annex A.

9.2.2 The Contractor shall convene Quarterly Progress Review Meetings (QPRM). The Authority's Project Manager (or his nominated representative) shall chair the QPRMs and the Contractor shall provide the necessary facilities for such meeting as well as providing the Secretariat. This shall include, but not be limited to, accommodation for the meeting, agendas, any necessary input documentation for the meeting, draft minutes for approval and formal issue of agreed minutes.

9.2.3 The QPRMs shall review all aspects of the Contract and both Parties undertake to make available their respective, empowered representatives to allow such reviews to be performed.

9.2.4 The Contractor shall provide Progress Reports quarterly. These Reports are to be delivered to the Authority within 14 calendar days of the end of the relevant period and are to inform discussion at the subsequent QPRM. The Reports shall address compliance of the programme and technical status of the overall project and the individual Service Definition Elements (SDEs) to the requirements of the Contract. A summary of safety and risk management issues shall be included.

9.2.5 On no account is the Contractor to take any action arising from any Meeting, the nature of which requires a formal Contract Amendment, before a Contract Amendment is issued by the Authority's Commercial Branch.

9.2.6 The Contractor shall invite the Authority, to attend all formal Sub-Contract progress meetings.

9.3 CONTRACT CHANGE PROCEDURES

9.3.1 Proposals for change to the Contract may be initiated by the Authority or the Contractor, and must be referred to the Authority's Commercial Officer (by the Contractor) or the Contractors Commercial Department (by the Authority).

9.3.2 Proposals for change to the Contract shall identify the necessary implications of the change to provide full visibility of the effect on the Contract.

9.3.3 The Contract shall only be amended by the written authority of the Authority's Commercial Officer, and with the written agreement of the Contractor.

9.3.4 A Contract Amendment will be issued by the Authority's Commercial Officer to the Contractor. Unequivocal acceptance by the Contractor, in writing, shall commit the changes to the Contract.

9.3.5 The Authority's Commercial Branch shall be responsible for maintenance and administration of the Contract documentation.

9.3.6 The Authority shall give reasonable consideration to the proposed Contract Change. If the parties are unable to agree to the proposed Contract Change or are unable to agree an alternative means by which the relevant Change In Law can be complied with, either party may require the

disagreement to be dealt with in accordance with Clause 2.11 (the Dispute Resolution Clause).

9.4 EXIT MANAGEMENT

9.4.1 Exit management arrangements and associated obligations of the Authority and the Contractor are set out in Annex H.

9.5 CONTRACTOR RECORDS

9.5.1 For the purposes of DEFCON 609, the Contractor shall retain the following records;

9.5.1.1 Financial Information

9.5.1.2 Technical and Engineering Information

9.5.1.3 Configuration Data

9.5.1.4 Safety and Environmental Information

9.5.1.5 Planning and Management Information

9.5.1.6 Public Stores Account Information

9.5.2 The Authority shall act reasonably in seeking information for specific purposes.

10. WARRANTY

10.1 The Contractor shall rectify by repair or replacement and without increase in the Contract price, any defects in workmanship and materials of the Articles except where Annex N identifies that there is no liability or that the liability is covered under another contract. Articles shall be warranted for 12 months from the date of Delivery to the Authority.

10.2 The Warranty described at Condition 10.1 shall apply only in respect of defects which are notified to the Contractor by the Authority (or Defence Munitions) within 20 Business Days of discovery of the said defect. The Authority has a duty to mitigate the cost to and time and resources required from the Contractor under this Condition 10.

10.3 The Contractor shall have no liability under Conditions 10.1 and 10.2 above in respect of:

10.3.1. defects arising from the use of materials purchased by the Authority directly from sources other than the Contractor;

10.3.2. material which has been repaired, replaced or modified by the Authority, its end customer or contractors without the consent of the Contractor; or

10.3.3. defects for which the Authority is responsible including but not limited to material which has been incorrectly stored, maintained or operated, or mistreated or mishandled by the Authority.

10.4 The Warranty described in this Condition is in lieu of all other rights of the Authority at law in respect of defects falling within the scope of this Condition.

10.5 Except as expressly set out in this Agreement all warranties, conditions, terms, undertakings, and obligations which would otherwise be implied by statute, common law, custom, trade usage, course of dealing or otherwise are excluded to the fullest extent permitted by law.

DEFFORM 111
(Edn 11/17)

Appendix - Addresses and Other Information

1. Commercial Officer

Name: Emily Evans

Address: Torpedoes, Tomahawk and Harpoon PT, Fir 3c #4316,
DE&S, MOD Abbey Wood, Bristol BS34 8JH

Email: Emily.Evans748@mod.gov.uk



8. Public Accounting Authority

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

☎ 44 (0) 161 233 5397

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

☎ 44 (0) 161 233 5394

2. Project Manager, Equipment Support Manager or PT Leader
(from whom technical information is available)

Name: To be confirmed

Address Torpedoes, Tomahawk and Harpoon PT, Fir 3c #4316 DE&S
,MOD Abbey Wood, Bristol BS34 8JH

Email: [To be confirmed](#)



9. Consignment Instructions

The items are to be consigned as follows:

See Terms & Conditions of Contract

3. Packaging Design Authority

Organisation & point of contact: DE&S Through Life Support Defence
Packaging, Building S11, Fort Halstead, Sevenoaks, Kent TN14 7BP
(Where no address is shown please contact the Project Team in Box 2)

☎ 01959 897253

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

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

Air Freight Centre

IMPORTS ☎ 030 679 81113 / 81114 Fax 0117 913 8943

EXPORTS ☎ 030 679 81113 / 81114 Fax 0117 913 8943

Surface Freight Centre

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

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

B. JSCS

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

JSCS Fax No. 01869 256837

www.freightcollection.com

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



(b) U.I.N.

5. Drawings/Specifications are available from

6. Intentionally Blank

7. Quality Assurance Representative:

See Terms & Conditions of Contract

Commercial staff are reminded that all Quality Assurance requirements should be listed under the General Contract Conditions.

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

11. The Invoice Paying Authority

Ministry of Defence

☎ 0151-242-2000

DBS Finance

Walker House, Exchange Flags

Fax: 0151-242-2809

Liverpool, L2 3YL

Website is:

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

12. Forms and Documentation are available through *:

Ministry of Defence, Forms and Pubs Commodity Management

PO Box 2, Building C16, C Site, Lower Arcott

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

Applications via fax or email: DESLCSLS-

OpsFormsandPubs@mod.uk

*** NOTE**

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

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

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