

TERMS AND CONDITIONS

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CONDITIONS OF CONTRACT

SECTION 1 – DEFENCE CONDITIONS (DEFCONS) AND DEFENCE FORMS (DEFFORMS)

1. DEFENCE CONDITIONS/FORMS

a. The Defence Conditions (DEFCONS) listed hereunder shall apply to the Contract:

DEFCON 5J (Edn 18/11/16)	Unique Identifiers
DEFCON 68 (Edn 02/16)	Supply of Data for Hazardous Articles, Materials and Substances. Only applicable when annotated on a Change Management Note (CMN)
DEFCON 76 (Edn 12/06)	Contractor's Personnel at Government Establishments.  
DEFCON 113 (Edn 02/16)	Diversion Orders. Only applicable when annotated on a CMN.
DEFCON 129 (Edn 04/16)	Packaging for Articles other than Munitions. Only applicable when annotated on a CMN
DEFCON 129J (Edn 18/11/16)	The Use of Electronic Business Delivery Form
DEFCON 176A (Edn 06/08)	MOD Requirements for Competition in Subcontracting (Non-Competitive Main Contract)
DEFCON 501 (Edn 08/16)	Definitions and Interpretations. In addition to the Definitions within this DEFCON, the Definitions at Annex A to the Contract, those contained in other DEFCONS or DEFFORMS called up in the Contract and those contained in any other Annex to the Contract, shall apply.
DEFCON 503 (Edn 12/14)	Formal Amendments to Contract. For the purpose of the Contract the authorised representative of the Authority is the Commercial Officer named in Box 1 of the Appendix to Contract (DEFFORM 111).
DEFCON 507 (Edn 10/98)	Delivery
DEFCON 509 (Edn 09/97)	Recovery of Sums Due
DEFCON 513 (Edn 06/10)	Value Added Tax (VAT)
DEFCON 515 (Edn 10/04)	Bankruptcy and Insolvency
DEFCON 516 (Edn 04/12)	Equality
DEFCON 518 (Edn 11/12)	Transfer
DEFCON 520 (Edn 08/15)	Corrupt Gifts and Payments of Commission

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DEFCON 521 (Edn 04/12)	Sub-Contracting to Supported Businesses
DEFCON 522 (Edn 18/11/16)	Payment and Recovery of Sums Due
DEFCON 524 (Edn 10/98)	Rejection Only applicable when annotated on a Change Management Note (CMN)
DEFCON 525 (Edn 10/98)	Acceptance Only applicable when annotated on a CMN
DEFCON 526 (Edn 08/02)	Notices
DEFCON 527 (Edn 09/97)	Waiver
DEFCON 528 (Edn 05/12)	Overseas Expenditure, Import and Export Licenses
DEFCON 529 (Edn 09/97)	Law (English)
DEFCON 530 (Edn 12/14)	Dispute Resolution (English Law). See Condition 27 of the Contract
DEFCON 531 (Edn 11/14)	Disclosure of Information
DEFCON 532B (Edn 06/10)	Protection of Personal Data For the purposes of this DEFCON the Personal Data Particulars is included in Annex O to the Contract.
DEFCON 534 (Edn 06/97)	Prompt Payment (Subcontracts)
DEFCON 537 (Edn 06/02)	Rights of Third Parties
DEFCON 538 (Edn 06/02)	Severability
DEFCON 539 (Edn 08/13)	Transparency For the purposes of the Contract the DEFFORM 539a referred to in clause 1b of this DEFCON is in Annex M to the Contract.
DEFCON 550 (Edn 02/14)	Child Labour and Employment Law
DEFCON 566 (Edn 04/15)	Change of Control of Contractor
DEFCON 602B (Edn 12/06)	Quality Assurance (Without Deliverable Quality Plan)
DEFCON 604 (Edn 06/14)	Progress Reports (see Annex D to the Contract)
DEFCON 608 (Edn 10/14)	Access And Facilities To Be Provided By The Contractor
DEFCON 609 (Edn 06/14)	Contractor's Records



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DEFCON 611 (Edn 02/16)	Issued Property
DEFCON 612 (Edn 10/98)	Loss of or Damage to the Articles
DEFCON 625 (Edn 10/98)	Co-operation on Expiry of Contract
DEFCON 627 (Edn 12/10)	Quality Assurance - Requirement for a Certificate of Conformity
DEFCON 632 (Edn 08/12)	Third Party Intellectual Property – Rights and Restrictions
DEFCON 642 (Edn 06/14)	Progress Meetings (see Annex D to the Contract)
DEFCON 656B (Edn 08/16)	Termination for Convenience
DEFCON 659A (Edn 11/14)	Security Measures
DEFCON 660 (Edn 12/15)	Official-Sensitive Security Requirements See also Annex I to the Contract.
DEFCON 670 (Edn 07/14)	Tax Compliance
DEFCON 694 (Edn 03/19)	Accounting For Property of the Authority

NOTE. The obligations on either Party, contained within the DEFCONS and DEFFORMS at Section 1 and those in the General Conditions at Section 2 of the Terms and Conditions of Contract, are summarised in Annex R to the Contract.

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SECTION 2 – GENERAL CONDITIONS

2. ENTIRE AGREEMENT

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

3. CONTRACTOR'S WARRANTIES

a. The Contractor warrants and represents that:

(1) it has the full capacity and authority to enter into, and to exercise its rights and perform its obligations under the Contract;

(2) from the Effective Date of Contract and for so long as the Contract remains in force it shall give the Authority Notice of any litigation, arbitration (unless expressly prohibited from doing so in accordance with the terms of the arbitration), administrative or adjudication or mediation proceedings before any court, tribunal, arbitrator, administrator or adjudicator or mediator or relevant authority against itself or a Sub-contractor which would adversely affect the Contractor's ability to perform its obligations under the Contract;

(3) at the Effective Date of Contract no proceedings or other steps have been taken and not discharged (nor, to the best of the knowledge of the Contractor, threatened) for its winding-up or dissolution or for the appointment of a receiver, administrative receiver, administrator, liquidator, trustee or similar officer in relation to any of its assets or revenues;

(4) for so long as the Contract remains in force it shall give the Authority Notice of any proceedings or other steps that have been taken but not discharged (nor to the best of the knowledge of the Contractor, threatened) for its winding-up or dissolution or for the appointment of a receiver, administrator, liquidator, trustee or similar officer in relation to any of its assets or revenues.

4. PUBLICITY AND COMMUNICATIONS WITH THE MEDIA

a. The Contractor shall not, and shall ensure that any employee or Sub-contractor shall not, communicate with representatives of the press, television, radio or other media on any matter concerning the Contract unless the Authority has given its prior written consent.

5. CHILD LABOUR AND EMPLOYMENT LAW

a. In performing the Contract, the Contractor shall comply in all material respects with Child Labour Legislation and applicable employment Legislation of those jurisdiction(s) where the Contract is being performed.

b. The Contractor agrees to use reasonable efforts to reflect this Condition in any sub-contract that it enters into to satisfy the requirements of the Contract and to require its Sub-contractors to reflect this Condition in their subcontracts that they enter into to satisfy the requirements of the Contract.

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6. SUB-CONTRACTING

- a. Sub-contracting any part of the Contract shall not relieve the Contractor of any obligation, duty or liability attributable to the Contractor under the Contract.
- b. The Contractor shall ensure, to the extent that they are applicable, and where so governed in the Contract, that the Conditions of the Contract are reflected in any sub-contract(s) for any part of the Contract.
- c. The Contractor shall not place any sub-contract or order involving the design or development of Articles without the prior written consent of the Authority's Commercial Officer.
- d. Unless otherwise agreed, such consent will be conditional on the proposed Sub-contractor concluding a direct agreement with the Authority (in this instance the Authority's Commercial Officer) in the form set out at Annex N to the Contract. Wherever possible the request for approval should be accompanied by two copies of the agreement signed by the Sub-contractor. If, in any case the Contractor is unable to comply with this condition he shall report the matter to the Authority's Commercial Officer and await further instructions before placing the sub-contract or order.

7. PERFORMANCE OF WORK UNDER THE CONTRACT

- a. The Contractor shall meet the requirements of the Contract and the requirements as stated in Annex B to the Contract, and shall allocate sufficient resources to ensure the provision of the Services or Articles and to enable it to comply with its obligations under the Contract.
- b. The Contractor shall:
 - (1) comply with any applicable quality assurance requirements specified in Condition 10 of the Contract in providing the Services and Articles under the Contract;
 - (2) comply with all relevant Legislation applicable as at the Effective Date of Contract; and
 - (3) discharge its obligations under the Contract with all due skill, care, diligence and operating practice by appropriately experienced, qualified and trained personnel.
- c. The provision of this Condition 7 shall survive any performance, acceptance or payment pursuant to the Contract and shall extend to any remedial services provided by the Contractor.
- d. The Contractor shall:
 - (1) observe, and ensure that the Contractor's Team observe, all health and safety rules and regulations and any other security requirements that apply at any of the Authority's premises;
 - (2) notify the Authority in writing as soon as it becomes aware of any health and safety hazards or issues which arise in relations to the Services or delivery of Articles; and
 - (3) before the date on which the Services are to start, or Articles are delivered, obtain, and at all times maintain, all necessary licences and consents as referenced in the Contractor's proposal.

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e. The Contractor shall make all reasonable endeavours to maintain continuity of key personnel filling the roles under the Contract. In the event that changes in the Contractor's personnel delivering the Core Services becomes unavoidable, the Contractor shall give the Authority reasonable notice of the changes and, without undue delay, replace with persons to be agreed by the Authority, including a suitable period of handover, at the Contractor's expense. Such Authority acceptance of personnel shall not be withheld or delayed unreasonably.

8. ACCEPTANCE

a. Acceptance of work performed under the Contract shall be in accordance with the following process:

- (1) Acceptance of work under Item 1 of the Schedule of Requirements shall be upon delivery of the Service under that Item;
- (2) Acceptance of work carried out under Item 2 shall be as set out in individual Change Management Note (CMN).
- (3) Acceptance of work carried out under Items 3 and 4 of the Schedule of Requirements shall be following approval of the of the documents called for thereunder, by the Authority's Project Manager

9. DISRUPTION

a. The Contractor shall take reasonable care to ensure that in the performance of its obligations under the Contract it does not disrupt the operations of the Authority, its employees or any other contractor employed by the Authority.

b. The Contractor shall inform the Authority's Commercial Officer in writing, of any actual or potential industrial action which affects or might affect its ability at any time to perform its obligations under the Contract as soon as it becomes aware of the actual or potential industrial action and certainly no later than 7 (seven) Business Days before the action is due to take place, whether such action be by its own employees or others.

c. The Contractor shall have robust contingency plans in place to ensure that, in the event of industrial action by the Contractor's personnel, provision of the Services or Articles is maintained and such contingency plans shall be available for the Authority to inspect and/or comment on at any reasonable time and shall be updated and revised as necessary by the Contractor throughout the Period of the Contract.

10. QUALITY ASSURANCE

a. The Contractor shall maintain certified quality assurance assessed contractor status compliant to BS EN ISO 9000:2015 Quality Management Systems. Plus:

- (1) Compliance with AQAP 2110 Edition D Version 1 - dated 1 June 2016
- (2) Compliance with Def Stan 05-61 Part 1 Issue 6 - dated 31 March 2016 and Part 4 Issue 3 dated 25 October 2002
- (3) Compliance with Def Stan 05-135 – dated 10 July 2014

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b. The Contractor shall maintain his quality certification throughout the Period of the Contract. The Contractor shall notify the Authority's Project Manager in writing immediately if his certification changes, or if the scope of his certification changes.

11. SAFETY AND ENVIRONMENTAL PROTECTION

a. The Contractor shall in all its operations in performing the Contract, adopt a sound proactive environmental approach that identifies, considers and where possible, mitigates the environmental impacts of its supply chain. The Contractor shall provide evidence of so doing to the Authority on demand.

b. The Contractor shall ensure that the system against which the Services or articles under the Contract are being supplied, is maintained against the latest accepted safety and environmental position.

c. In performing the work under the Contract, the Contractor shall comply with his statutory duties and obligations relating to safety and environmental protection.

d. If it appears that any specification agreed between the Contractor and the Authority may render the Contractor in breach of any statutory duty or obligation relating to safety or environmental protection the Contractor shall immediately draw that fact to the attention of the Authority's Project Manager in writing.

e. The Authority may, without prejudice to any of its rights which may have arisen under the Contract, require the Contractor to vary each such specification, in a manner acceptable to the Authority and which will not render the Contractor in breach of any statutory duty or obligation relating to safety.

f. Nothing in the Contract or in any other document created or signed on behalf of the Authority shall constitute a written undertaking for the purposes of Section 6 (8) of the Health and Safety at Work Act 1974 relieving the Contractor of any of his duties under Section 6 of the Act.

g. The Authority shall be entitled to reject any modification to the system and or Article if the acceptance criteria in relation to the safety requirements for the modification are not met.

h. The Contractor shall pass down Safety and Environmental requirements to his Sub-contractors, and they with theirs, to ensure that sub-contracted materiel is satisfactory.

i. Where Defence has exemptions, derogations or dis-applications from Health Safety and Environmental Protection Legislation, these should only be used with prior written consent from the Authority's Safety and Environmental representative.

12. SECURITY MEASURES

CONDITION NOT USED

13. TRANSFER OF UNDERTAKINGS (PROTECTION OF EMPLOYEES)

a. Transfer Regulations – Employee Transfer Arrangements on Exit is at Annex K to the Contract.

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14. CONTRACTOR AND AUTHORITY OBLIGATIONS IN RESPECT OF GOVERNMENT PROPERTY ISSUED TO THE CONTRACTOR

- a. A list of Government Furnished Assets (GFA) and the loan terms under which they shall be released to the Contractor, is at Annex L to the Contract.
- b. All GFA issued by the Authority to the Contractor shall be used by the Contractor solely for the purposes of the work called for under the Contract.
- c. For issues of additional GFA not listed in Annex L to the Contract, an application shall be made in writing by the Contractor to the Authority's Project Manager. The request shall include the details of the item(s) required, the purpose for which they are required, a benefit statement including the net reduction in time and cost, and the reasons why the GFA has been identified after the Effective Date (except where the GFA request forms part of a CMN).
- d. Whilst every effort will be made to accommodate the Contractor in respect of additional GFA requests, no guarantee can be given that any GFA additional to that listed at Annex L to the Contract will be available. Only GFA which can be available to the Contractor as required will be included in Annex L to the Contract (including GFA issued to the Contractor in support of a CMN). Any changes to the GFA listed in Annex L will be agreed between the Parties on an ad hoc/as required basis and confirmed by amendment to the Contract issued in accordance with the provisions of DEFCON 503. Notwithstanding the provisions of DEFCON 801 such amendment to the Contract will be made no more frequently than every two months.
- e. Where the Contractor's obligations under the Contract rely on GFA, only those obligations are conditional upon the timely release to the Contractor of the GFA that is needed specifically for the Contractor to meet those obligations and the Contractor shall not be held liable and shall be entitled to seek price adjustment or compensation in the event of any failure or delay by the Authority in the provision of the GFA, so long as the Contractor has notified the Authority in writing, immediately (in any event no later than 5 (five) Business Days after the date the GFA is due) of the non-availability of the GFA and the reasons why, and is in receipt of a written acknowledgement by the Authority's Project Manager of the issue, which for the avoidance of doubt will be no later than 5 (five) Business Days after receipt of the Contractor's Notice.
- f. The Contractor shall not be liable for any inaccuracies of the information supplied by the Authority, or any third party information obtained by the Authority and sent to the Contractor in relation to the outputs or deliverables during the Contract.
- g. The Authority shall not be liable for any inaccuracies of any information obtained by the Contractor directly from a third party in relation to the outputs or deliverables during the Contract.
- h. Acting reasonably, the Authority reserves the right to charge the Contractor for the loan of GFA, requested by the Contractor after the Effective Date or after a CMN under which GFA has been agreed by the Authority, is added to the Contract by an amendment.

15. SELF TO SELF DELIVERIES

- a. Where any Article(s) is/are purchased to support the provision of the Service contracted as part of a CMN and delivered by the Contractor to his own premises or to those of a Sub-contractor ('self-to-self delivery'), the risk of damage in such equipment shall (notwithstanding the provisions of DEFCON 612) remain vested in the Contractor until such time as the Article(s) is handed over to the Authority.

[REDACTED]

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b. Where any Article(s) called for under a CMN is delivered to the Contractor at his own premises (self-to-self delivery), for use in the Contractor owned test and reference system used by the Contractor in support of the Contract, the ownership in such Article(s) shall be vested in, and owned by the Authority and deemed GFA, and shall be managed by the Contractor accordingly.

16. TECHNICAL ASSISTANCE TO THE AUTHORITY

a. In pursuance of its responsibilities, the Authority may engage personnel from support Contractors to assist with managerial and technical support of related project activities. In such circumstances these parties shall be deemed to be approved representatives of the Authority to whom the Contractor shall make available such information and facilities as are necessary to enable them to fulfil their obligations to the Authority.

17. PERIOD OF THE CONTRACT

a. The Period of the Contract shall be from the Effective Date of Contract and shall remain in place for a maximum period of twenty three (23) months ("expiry date") unless:

- (1) extended by the Authority exercising an option in accordance with Condition 19 of the Contract; or
- (2) a Force Majeure event as described in Condition 18 of the Contract arises and the Parties agree an extension to the Period of the Contract; or
- (3) otherwise terminated by the Authority's Commercial Officer in accordance with the Authority's rights of termination specified within this Contract. Such notification of termination will be in writing.

b. Work called for under Item 2 in the Schedule of Requirements shall only be undertaken by the Contractor if the Authority to commence with the work has been given in writing by the Authority's Commercial Officer during the period referred to in clause a of this condition 17 or other period agreed between the Parties in writing.

c. Work under Item 2 of the Schedule of Requirements shall be completed within the timescales agreed between the Parties on the respective CMN.

d. Any work under Item 2 of the Schedule of Requirements that has commenced by the Contractor following written authorisation as described in clause b of this Condition 17, shall continue even in the event that the expiry date stated in clause a of this Condition 17, or as otherwise agreed between the Parties in writing, has passed, unless the Contractor is advised otherwise in writing by the Authority's Commercial Officer, or exceptionally where by mutual agreement between the Parties where the work under either Item 2 of the Schedule of Requirements is dependent on work called for by other Items shown in the Schedule of Requirements.

e. [REDACTED]



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18. FORCE MAJEURE

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

- (1) acts of nature;
- (2) war;
- (3) hostilities;
- (4) fire at any of the Contractor’s premises or those of its suppliers.
- (5) Any disaster or an industrial dispute affecting a third party for which a substitute third party is not reasonably available.

b. The Contractor shall immediately notify the Authority’s Commercial Officer 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 the Contract, and the actions proposed to mitigate its effect.

c. Subject to clause d 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’s Commercial Officer, all reasonable endeavours, both to mitigate the effects of the Force Majeure Event, and to facilitate the continued performance of its obligations under the Contract.

d. The maximum extension of time granted under this Condition shall be limited to 90 (ninety) Business Days after which time the Authority may, on giving written notice to the Contractor, terminate the Contract with immediate effect.

19. OPTIONS

a. In consideration of the award of the Contract and within the period of the Contract as set out in Condition 17 of the Contract, the Authority may at its discretion, extend the period of the Contract by a period of one year. A decision will be made by the Authority not less than six (6) months prior to the expiry date and communicated to the Contractor in accordance with the procedure described in Condition 21.

Option No	Description	Firm Price (£) (Ex VAT)
1	Deliver the Core Services as described in the Statement of the Services detailed in Annex B to the Contract.	
2	Implementation of a Change authorised on a Change Management Note (CMN), including changes to the Core Services called for under Item 1 of this Schedule of Requirements or the provision of a Non-Core Services. See Table 1 in the Appendix I to this Schedule of Requirement	To be agreed See Condition 21 of the Contract and Appendix I to this Schedule of Requirement

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b. The Authority undertakes to notify the Contractor in writing (by the Authority's Commercial Officer) of the intention to exercise the options requested in this Condition with at least three (3) months notice before expiry date. An amendment to the Contract will be issued in accordance with DEFCON 503 to update the details of the Contract to reflect any option exercised.

20. PRICES

a. All prices shown in the Schedule of Requirements and Appendix I to the Schedule of Requirements are inclusive of all licence fees, taxes (excluding VAT) and all direct and indirect costs (including but not limited to profit, overheads travel, subsistence and expenses and labour), and include the assumptions at Annex Q to the Contract. The costs for the Contractor's attendance at meetings and delivery of all documentation and plans called for under the Contract are also included in the prices shown in the Schedule of Requirement, and Appendix I to the Schedule of Requirements.

21. PROCEDURE FOR CONTRACT CHANGES

a. Any change to the Core Services called for under Item 1 of the Schedule of Requirements shall be defined and authorised on a Change Management Note (a template "Form" of which is at Annex E to the Contract) in accordance with the following procedure:

(1) Either Party may request a change to the Core Services by completing Part A of the Form and forwarding it to the other Party for review. Within a reasonable period from receipt of a Form from the Authority, the Contractor shall either reject the Form or complete Part B to show the work proposed to be undertaken and the associated Firm Price to meet the requirement and return the Form to the Authority's Project Manager for further consideration.

(2) When the details of the CMN are agreed by the Authority's Project Manager and the associated Firm Price is agreed as being fair and reasonable by the Authority's Commercial Officer, a duly completed CMN, signed by the relevant representatives of the Authority as required on the Form, shall be returned to the Contractor. Once the Contractor is in receipt of a duly authorised CMN he shall proceed with the change to the Core Services or delivery of the Non Core Service called for there under.

(3) No work related to a change to the Core Services or delivery of a Non Core Service, other than that related to the preparation of an associated CMN, shall be undertaken by the Contractor prior to his receipt of a duly signed CMN from the Authority as prescribed in clause a (2) of this Condition. Any work undertaken by the Contractor on any change to the Core Services or delivery of a Non Core Service prior to receiving a duly signed CMN, shall be done so at the Contractor's own risk.

(4) For audit purposes, details of completed CMNs i.e. signed by all signatories in the relevant parts of the Form, for the delivery of Non Core Services shall be added to Appendix I to the Schedule of Requirements, by way of an amendment issued by the Authority's Commercial Officer in accordance with the provision in DEFCON 503. Any changes to the Contract resulting from a change to the Core Services affected by a CMN, including but not limited to the Firm Price as shown against Item 1 in the Schedule of Requirements, shall be the subject of an amendment to the Contract issued by the Authority's Commercial Officer in accordance with the provisions of DEFCON 503.

(5) Where the Authority has endorsed Part A of a CMN (whether raised by it or by the Contractor), in the event that the Authority does not thereafter proceed with the CMN, the



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- b. The monthly service charge due to the Contractor may be adjusted by Service Credits as set out in Annex C to the Contract and Conditions 29 of the Contract.
- c. Payment for work carried out against a CMN under Item 2 of the Schedule of Requirements may be claimed by the Contractor following satisfactory completion of all of the work called for under the respective CMN.
- d. Payment for work under Items 3 and 4 of the schedule of Requirements may be claimed by the Contractor following submission of the reports called for, to the Authority’s Project Manager.
- e. Where Service Credits are to be recovered by the Authority in accordance with Condition 29 of the Contract, then such sums to be recovered by the Authority shall be via an adjustment to the next prevailing monthly payment due against Item 1 of the Schedule of Requirements.

25. EXEMPT FROM BEING A QUALIFYING DEFENCE CONTRACT

a. The Parties have agreed that the Contract shall not be a Qualifying Defence Contract under the Defence Reform Act 2014 (the “Defence Reform Act”). Pursuant to subsection 14 (7) of the Defence Reform Act the Authority has directed that the Contract is not to be a Qualifying Defence Contract under subsection 14 (3) of the Defence Reform Act even though the Contract otherwise meets the requirements of subsection 14 (2) of the Defence Reform Act. This Condition will not set a precedence for any future contract.

26. GOVERNANCE

a. The Contractor shall follow the Governance as stated in Annex D to the Contract.

27. DISPUTE RESOLUTION

- a. The Parties agree to try and resolve any dispute arising under the Contract by discussion during the next available meeting called for in Annex D to the Contract. In the event that a meeting is not due within one month of a dispute arising, an ad hoc meeting shall be convened for the purposes of attempting to resolve the dispute. Any such meeting shall be held at a venue agreed between the Parties and the Contractor shall be liable for all cost incurred by them.
- b. In the event that the dispute remains unresolved, it shall be referred to the Authority’s Senior Commercial Officer in the team responsible for the Contract and the Authority’s Senior Project Manager, for consideration. A meeting between the Authority’s Senior Commercial Officer responsible for the Contract and the Authority’s Senior Project Manager and their counterparts in the Contractor's organisation may be held for further clarification on the dispute.
- c. If after a meeting set out in clause b of this Condition 27, the dispute remains unresolved, the dispute shall be referred to a mutually acceptable independent third party for resolution in accordance with DEFCON 530.

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28. PERFORMANCE MEASUREMENT AND SERVICE LEVELS

- a. The Contractor's performance under item 1 of the Schedule of Requirements shall be measured by the Authority's Project manager and Commercial Officer over a quarterly period (hereinafter referred to as Period of Performance) against the Service Levels detailed at Annex C to the Contract.
- b. The measurement of achievement will be in accordance with the metrics and scores set out in Annex C to the Contract.
- c. The Contractor shall not be held responsible for non-achievement of a Service levels where such non-achievement is attributable to a failure by the Authority to meet its contractual obligations or one or more of the exclusions identified in Annex C apply. In these circumstances, or in the event that the Authority has instructed the Contractor in writing that an urgent activity (such as a security investigation) is required to be undertaken by the Contractor, and this urgent activity deviates the Contractor's resource from work being undertaken under Item 1 of the Schedule of Requirements, the measurement of the Contractor's performance to fulfil the Service levels shall be suspended for the period of time from the Contractor being in receipt of either the written acknowledgement from the Authority's Project Manager that an Authority obligation has not been met, or written confirmation from the Authority to proceed with the urgent activity, until such time that the Authority's contractual obligation is met or the urgent activity has been completed and the Contractor is in receipt of written confirmation from the Authority to this effect.

29. SERVICE CREDITS

- a. Where the Service Levels fall below the threshold identified in Annex C to the Contract, Service Credits will be recovered from the Contractor by the Authority in the manner prescribed in Condition 24 of the Contract, at the rates identified in Annex C to the Contract.
- b. The Contractor will be notified in writing by the Authority's Commercial Officer of the sum of the Service Credits to be paid to the Authority. Such notification shall be given at least 30 (thirty) days prior to recovery action being taken by the Authority.
- c. Nothing in this Condition 29 shall affect the Authority's rights of remedies as expressly set out in Condition 31 of the Contract or other rights in law.
- d. [REDACTED]

30. INTELLECTUAL PROPERTY RIGHTS (IPR)

The IPR provisions are at Annex J to the Contract.

31. CONSEQUENCES OF TERMINATION

- a. The termination of the Contract, however arising, shall be without prejudice to the rights and duties of either Party accrued prior to termination. The Conditions that expressly or by implication have effect after termination shall continue to be enforceable even after termination.
- b. With respect to Contractor Pre-Existing Specially Written Software and Specially Written Software and Third Party Software, in the event of the termination or expiry of this Contract;

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- (1) Given the essential requirement of the Authority to retain the potential to seamlessly recomplete the service, notwithstanding anything else that is set out in this contract, the Contractor hereby grants, or shall procure that the owner of the Intellectual Property Rights in the Contractor Pre-Existing Specially Written Software and Specially Written Software grants, to the Authority to take effect on the termination or expiry of this Contract a non exclusive, perpetual and irrevocable licence to Use, reproduce, modify, adapt and enhance the Contractor Pre-Existing Specially Written Software and Specially Written Software, and the Contractor shall supply the Authority with a copy of the Source Code of the Contractor Pre-Existing Specially Written Software and Specially Written Software, provided that such licence shall be restricted to the performance of services which replace the Services provided hereunder either by the Authority or a replacement contractor;
- (2) For the avoidance of doubt, the Authority shall not be entitled to commercially exploit the Intellectual Property Rights in the Contractor Pre-Existing Specially Written Software and the Specially Written Software granted under paragraph b(1).
- (3) The payment conditions governing paragraph b(1) shall be as follows:
- (i) In the event of expiry of the Contract the Authority shall be granted all the rights under 1b(1) for both Contractor Pre-Existing Specially Written Software and Specially Written Software at no additional charge.
 - (ii) In the event of early termination of the Contract, the Authority shall be granted all the rights under b(1) in relation to the Contractor Pre-Existing Specially Written Software and any amendments, additions and modification to the Contractor Pre-Existing Specially Written Software that would otherwise be considered Specially Written Software at no additional charge.
 - (iii) In the event of early termination of the Contract, the Authority shall be granted all the rights under b(1) in relation to the Specially Written Software for payment of fair market value following good faith negotiations.
- (4) In the event of expiry or early termination of the Contract, the Third Party Software shall be transferred in accordance with Appendix 3 of Annex J and the Contractor will use reasonable endeavours to ensure that there is no cost to transfer the licences to the Customer.

32. AUTHORITY'S REMEDIES FOR BREACH OF CONTRACT BY THE CONTRACTOR

- a. In addition to its rights of termination and remedies as expressly set out elsewhere in the Contract, if the Contractor:
- (1) fails to provide the Services (or any part thereof) or Articles called for under Item 1 of the Schedule of Requirements or a CMN (Item 2 of the Schedule of Requirement refers) by the relevant dates specified in the Contract;
 - (2) other than in relation to performance measurements as set out in Condition 28 of the Contract and Annex C to the Contract, provides Services (or any part thereof) or Articles that are not in accordance with, or the Contractor fails to comply with, any terms of the Contract;
 - (3) supplies Services or Articles that do not comply with Condition 7b of the Contract;

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- (4) commits a persistent failure;
- (5) otherwise commits a material breach of its obligations under the Contract;

the Authority shall give the Contractor, 20 (twenty) Business Days, or any other period as may be agreed in writing between the Parties, from the date of such Notice, to carry out such remedial services at the Contractor's expense as is necessary to correct the Contractor's failure or otherwise to rectify the breach. In the event that the Contractor fails to correct the failure or rectify the breach within the 20 (twenty) Business Days, or any other period as may be agreed in writing between the Parties, the Authority shall have the right to exercise one or more of the following remedies:

- (i) where the Contractor commits a persistent failure in accordance with clause a(4) or where the breach is material in accordance with a(5), to terminate the Contract or the relevant part thereof, with immediate effect and without liability to the Authority, by giving written Notice to the Contractor;
- (ii) refuse to accept the provision of any further Services or Articles by the Contractor and where acceptance in accordance with Condition 8 of the Contract, has not occurred, the Contractor shall refund to the Authority any sums paid in respect of Services or Articles that fail to comply with the terms of the Contract;
- (iii) purchase substitute Services or Articles from elsewhere;
- (iv) claim such damages as may have been sustained as a result of the Contractor's breach or breaches of the Contract, including but not limited to any costs and expenses incurred by the Authority in:
 - (a) carrying out any work that may be required to make the Services or Articles comply with the Contract; or
 - (b) obtaining the Services or Articles in substitution from another supplier.

b. In the event that the Authority terminates the Contract in whole or in part pursuant to clause 32a(i), or for any other lawful reason, then the Authority shall also have the right to require the Contractor to transfer any or all of the assets, including Infrastructure, to the Authority, wherever they are located, upon the payment of a sum representing the market value of those assets which the Contractor has purchased but not recovered the cost of from the Authority.

c. The Authority's rights and remedies under this Condition are in addition to its rights and remedies implied by statute and common law, and the rights and remedies expressly set out in the Contract.

d. Where the Contractor fails to meet the Performance Measurement set out in Condition 28 of the Contract, in addition to the Authority's rights in clauses a. (i), (ii), (iii) and (iv) of this Condition 32, the Authority shall also have the right to reduce the amount of payment due to the Contractor, subject to the limit set out in Condition 29d.

33. STANDARDS

a. The Contractor shall ensure that the Services and supporting Technical Infrastructure continue to comply with the standards as set out in Annex P.

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b. The Contractor shall deliver and maintain proof of compliance against the standards, indicating where appropriate how they are being met, and updated as required to reflect all significant changes in standards or the Services during the term of the agreement and for review by HQ ARTD from time to time. The Contractor shall advise the Authority on recommendations for additional infrastructure and infrastructure changes required to comply with standards.

34. EXIT

a. At the expiry date of the Contract as set out in Condition 17 or upon notification by the Authority of termination of the the Contract, the Contractor shall work with the Authority on the closure of the Contract as detailed in Annex G to the Contract.