



DE&S

Contract Number :

FsASTC/00107

Description:

Defence Operational Training Capability (Air) Core System & Services (DCS&S)

Terms and Conditions of Contract

Owner: FsAST Delivery Team

Issue Record

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Core System & Services (DCS&S)

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Project Defence Operational Training Capability (Air) Core System &
Services (DCS&S)

Issue/Amendment List:

This page will be updated and re-issued with each amendment.

It provides an authorisation for the amendment and a checklist to the current amendment number.

No.	Reference	Issued By	Date

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1. SCHEDULE OF REQUIREMENTS

Name and Address of Tenderer Boeing Defence UK Limited Dakota House, Building 435 The Avenue Coldharbour Lane Bristol Business Park Bristol BS16 1EJ	MINISTRY OF DEFENCE	Contract No FsASTC/00107
	Schedule of Requirements for Defence Operational Training Capability (Air) Core System & Services (DCS&S)	
Issued With DEFFORM 10	On 31 March 2019	Previous Contract No Not Applicable

Requirements

Item Number	Reference	Description	Delivery Date	Deliver To	Quantity	UOM	Packaging Code	Notes to Contractor	Unit Price (£)	Price All £ (ex-VAT)
1		*Core System Design & Manufacture	CA + 2 years		1	Unit		Firm Price		[REDACTED]
2		*Core System Support & Service	(Post IOC) Month 1		1			Firm Price		[REDACTED]

		Delivery	- 12						
3		*Core System Support & Service Delivery	(Post IOC) Month 13-24		1			Firm Price	[REDACTED]
4		*Core System Support & Service Delivery	(Post IOC) Month 25-36		1			Firm Price	[REDACTED]
5		*Core System Support & Service Delivery	(Post IOC) Month 37-48		1			Fixed Price IAW Condition 7.4 VOP	[REDACTED]
6		*Core System Support & Service Delivery	(Post IOC) Month 49-60		1			Fixed Price IAW Condition 7.4 VOP	[REDACTED]
7		**Catalogue Amendments						Priced in accordance with Prices at Annex D Change Catalogue	[REDACTED]
8		***Ad Hoc Tasking						Priced in accordance with Post Design Service Rates at Annex D Change Catalogue	[REDACTED]

* To be delivered in accordance with the Statement of Work (SOW) at Annex A to these Terms and Conditions of Contract.

** To be agreed in accordance with Condition 4.1.4 and the Change Catalogue at Annex D.

*** To be agreed in accordance with Condition 4.1.5 and the Change Catalogue at Annex D.

2. GENERAL CONDITIONS

DEFCON68 (EDN.02/17) - SUPPLY OF DATA FOR HAZARDOUS ARTICLES, MATERIALS AND SUBSTANCES

DEFCON501 (EDN.05/17) - 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.02/17) - CORRUPT GIFTS AND PAYMENTS OF COMMISSION

DEFCON526 (EDN.08/02) - NOTICES

DEFCON527 (EDN.09/97) - WAIVER

DEFCON528 (EDN.07/12) – IMPORT AND EXPORT LICENCES

The Contractor's attention is drawn to condition 1 of DEFCON 528 requiring notification of overseas expenditure. In this connection, the Contractor shall, within one month of acceptance of the Contract, notify the contracts branch of details of any overseas sub-contract or order he has placed, or intends to place, in aid of the Contract. Details to be provided are: contract no; country in which sub-contract placed/to be placed; name, division and full postal address of Sub-Contractor; value of sub-contract as applicable to main contract; date placed/to be placed. If no overseas orders are to be placed, the Contractor shall advise the Authority's Commercial Branch to this effect in the same timescale.

DEFCON528APP (EDN.) - APPENDIX TO DEFCON 528 –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

DEFCON532A (EDN.06/10) - PROTECTION OF PERSONAL DATA (WHERE PERSONAL DATA IS NOT BEING PROCESSED ON BEHALF OF THE AUTHORITY)

DEFCON537 (EDN.06/02) - RIGHTS OF THIRD PARTIES

DEFCON538 (Edn.06/02) - SEVERABILITY

DEFCON539 (Edn.08/13) - TRANSPARENCY

DEFCON550 (Edn.02/14) - CHILD LABOUR AND EMPLOYMENT LAW

DEFCON566 (EDN.10/16) - CHANGE OF CONTROL OF CONTRACTOR

DEFCON620 (Edn.05/17) - CONTRACT CHANGE CONTROL PROCEDURE

DEFCON656B (Edn.08/16) - TERMINATION FOR CONVENIENCE

DEFCON658 (Edn.04/17) – CYBER

DEFCON659A (Edn.02/17) - SECURITY MEASURES

For the purpose of DEFCON659A, the Secret Matter of the Contract is defined in the Department's Security Aspects Letter (SAL) at Annex F.

DEFCON660 (Edn.12/15) - OFFICIAL-SENSITIVE SECURITY REQUIREMENTS

DEFCON670 (Edn.02/17) - TAX COMPLIANCE

2.1 DEFINITIONS

2.1.1. In this Contract, unless the context otherwise requires, capitalised words and terms in this Contract shall have the meaning ascribed to them in Annex B Definitions, at the prefix to individual Annexes to the Contract, or as defined in individual DEFCONs.

2.2. ORDER OF PRECEDENCE

2.2.1. In the event of any discrepancy, inconsistency, divergence or anomaly arising between the provisions of the Contract, the order of precedence shall be as follows, save where expressly provided to the contrary:

- 2.2.1.1. Contract Schedule of Requirement (SOR);
- 2.2.1.2. Contract Narrative Conditions and Annex J - Payment and Performance Mechanism;
- 2.2.1.3. Contract DEFCONs;
- 2.2.1.4. Annex A - Statement Of Work;
- 2.2.1.5. All other Contract Annexes;

2.3. ENTIRE AGREEMENT

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

2.4. DURATION OF CONTRACT

2.4.1 The Contract shall commence on the date the Contractor accepts the terms and conditions of the contract by signing and returning the DEFFORM 10 (Contract Commencement Date). The Contract shall comprise of a delivery phase including testing and commissioning up to the achievement of Initial Operating Capability (IOC) on 1 January 2021 (the "IOC Date") (and a five (5) year Service provision phase to 1 January 2026 (the "Contract Completion Date").

2.4.2 If the Contractor fails to achieve IOC on the IOC Date as specified in condition 2.4.1 above, the Contract Completion Date of 1 January 2026 will not Change and therefore the 5 year Service provision phase and the number of Service Availability Payments (as defined in Annex B) will be reduced proportionately to the period of delay in achieving IOC.

2.5. SCOPE OF CONTRACT

2.5.1. The Contractor shall undertake all work under the Contract to deliver Items 1 to 6 (and Items 7 and 8 as required) of the Schedule of Requirements in accordance with all of the obligations of the Contractor in the Contract, including those requirements contained within the Statement of Work at Annex A All work shall be carried out to the reasonable satisfaction of the Authority's Project Manager, in accordance with the agreed project management documentation at Annex A to the Contract.

2.5.2 The Contractor undertakes to the Authority that the Contractor shall perform all work and provide the Contract Deliverables:

- (a) in accordance with the terms and conditions of this Contract;
- (b) in accordance with Good Industry Practice;
- (c) in accordance with all relevant Laws;
- (d) in accordance with all Necessary Consents; and
- (e) to the Authority or the Authority's Representatives.

2.5.3 The Contractor shall at all times act in good faith towards and co-operate fully with the Authority, its agents, representatives, and contractors.

Contractor Warranties

2.5.5 The Contractor warrants to the Authority that as at the Contract Commencement Date:

- (a) it has the corporate power to enter into and to exercise its rights and perform its obligations under this Contract and any Sub-Contracts;
- (b) it is validly incorporated, organised and subsisting in accordance with the Laws of its place of incorporation;
- (c) it is not subject to any claim, litigation, arbitration, proceedings or any other obligation which shall or is likely to have a material adverse effect on the ability of the Contractor to perform its obligations under this Contract;
- (d) it has obtained and will maintain all Necessary Consents;
- (e) it has not committed or agreed to commit a Prohibited Act and has no knowledge that an agreement has been reached involving the committal by it or any of its Affiliates of a Prohibited Act, and has not been formally notified that it is subject to an investigation or prosecution which relates to an alleged Prohibited Act save where details of any such arrangement have been disclosed in writing to the Authority before the Contract Commencement Date; and
- (f) so far as it is aware, there is not, not has there been, any infringement or alleged infringement of any third party's IP rights in connection with this Contract and the Authority relies upon such warranties.

Contractor Undertakings

2.5.6 The Contractor undertakes that for so long as this Contract remains in full force:

- (a) it shall give the Authority notice of any litigation, arbitration, administrative or adjudication or mediation proceedings before or of any court, arbitrator, administrator or adjudicator or mediator (“Dispute Forum”) against itself or a Sub-contractor which would adversely affect, to an extent which is material in the context of this Contract, the Contractor’s ability to perform its obligations under this Contract, unless such notice is precluded by the rules of the Dispute Forum, provided that notice shall be given within 20 (twenty) Working Days of the Contractor becoming aware such proceedings may be threatened or pending, and immediately after the commencement thereof;
- (b) it shall not undertake the performance of its obligations under this Contract otherwise than through itself or a Sub-contractor; and
- (c) it shall not commit any Prohibited Act.

Status of Contractor Warranties and Undertakings

2.5.7 None of the warranties, undertakings, indemnities and other obligations made, given or undertaken by the Contractor in this Contract shall be given limited constructions by reference to another.

2.6. AMENDMENTS TO CONTRACT

2.6.1. In addition to the provisions of DEFCON 503 (Amendments to Contract) and DEFCON 620 (Contract Change Control Procedure), nothing said, done or written by any person, nor anything omitted to be said, done or written by any person, including, but without limitation, any servant or agent of the Authority, shall in any way affect the rights of the Authority, or modify, affect, reduce or extinguish the obligation and liabilities of the Contractor under the contract, or be deemed to be a waiver of the rights of the Authority, unless stated in writing and signed by the Authority’s Commercial Branch. The Authority cannot accept liability for any work relating to such amendments undertaken by the Contractor prior to the above agreements being concluded.

2.6.2. All Amendments to this Contract shall be serially numbered, in writing, issued only by the Authority’s Commercial Officer and agreed by both Parties.

2.6.3. Where the Authority or the Contractor wishes to introduce a Change which is likely to involve a Change to the Contract Price, the provisions of Annex D – Change, shall apply. The Contractor shall not carry out any work until any necessary Change to the Contract Price has been agreed and a written amendment in accordance with condition 2.6.2. above has been issued.

2.6.4. The Authority’s Commercial Officer may, by notice (following consultation with the Contractor as necessary), alter the Specification as from a date agreed by both Parties and to the extent specified by the Authority, provided that any such variations shall be limited to the extent that they do not alter the fit, form, function or characteristics of the Contractor Deliverables to be supplied under the Contract. The Contractor shall ensure that the Contractor Deliverables take account of any such variations. Such variations shall not require formal amendment of the Contract in accordance with the process set out in condition 2.6.2. and shall be implemented upon receipt, or at the date specified in the Authority’s notice, unless otherwise specified.

2.6.5. Any variations that cause a Change to:

- 2.6.5.1. fit, form, function or characteristics of the Contractor Deliverables;
- 2.6.5.2. the Price;
- 2.6.5.3. Delivery Dates;
- 2.6.5.4. the period required for the production or completion; or
- 2.6.5.5. other work caused by the alteration,

shall be the subject to Condition 2.6.2. Each amendment under condition 2.6.2 shall be classed as a formal Change.

2.8. APPOINTMENT OF PRIME CONTRACTOR AND PLACING OF SUB-CONTRACTS

2.8.1. For the purposes of this Contract and the work to be performed there under, the Contractor shall be designated as the Prime Contractor, and shall accordingly be responsible to the Authority, subject to the provisions of the Contract, for the timely, economic and proper execution of the Contract as described in the Schedule of Requirements and the Statement of Work at Annex A to the Terms and Conditions of Contract.

2.8.2. The Contractor shall be entirely responsible for undertaking the work detailed in this Contract and it's Annexes.

2.8.3. The Contractor's responsibilities under the Contract shall in respect of condition 2.8.2 include, but not be limited to:

2.8.3.1. carrying out all activities and producing the Contractor Deliverables, as described in the Statement of Work, to meet the Authority's requirement, in accordance with the Milestone Payment Plan, and the Conditions of this Contract;

2.8.3.2. the placing, administration, control and management of all Sub-Contracts, required to meet the requirements of the Contract;

2.8.3.3. planning, programming and progressing of the work, including preparation and delivery of appropriate documentation;

2.8.3.4. financial management of the work, including financial control and monitoring of all Sub-Contracts;

2.8.3.5. providing the Authority with the information reasonably required to satisfy the Authority on a continuing basis that the work is proceeding to time, cost and performance for the Contract and Sub-Contracts. This is without prejudice to the specific Contract reporting requirements outlined in this Contract.

2.8.4.1. The Contractor shall ensure that the Authority's Commercial Branch is notified at the earliest opportunity of all potential Sub-Contracts to be placed by the Contractor in the execution of this Contract.

2.8.4.2. The Contractor shall include in any Sub-Contract the same conditions as are included in the Contract, modified if necessary so as to apply to the Sub-Contractor.

2.8.5. The Contractor shall be responsible for the award, administration and performance of all Sub-Contracts in such a manner to ensure that the delivery and performance requirements of the Contract are met. The Authority shall not be responsible for any inconsistencies, incompatibilities or omissions in the Contractor's agreements with its Sub-Contractors.

2.8.6. The Contractor shall furnish the Authority with a copy of any Sub-Contract and any amendments to Sub-Contracts, on request within a locally agreed timescale, otherwise ten (10) Business Days.

2.9 FUTURE WORK

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

2.10 SECURITY MEASURES

2.10.1. Where it is a statutory requirement that any Contractor's Personnel be of a required clearance level before undertaking particular work as specified in the Security Aspects Letter (SAL) at Annex F to this Contract, the Contractor will need to ensure the validity of the clearance throughout the term of employment.

2.10.2. The Contractor shall ensure that all Contractor's Personnel are made aware of and comply with all the appropriate security measures, as directed by the Contract and the security policy, and with the security regulations (as set out in the Security Aspects Letter or otherwise directed by the Authority) pertaining to all work and documents relating to the project and the environments where the Contractor's activities may be undertaken.

2.10.3. The facilities in which the Contractor shall store/handle classified material in relation to this Contract shall be, and shall remain for the duration of and after expiry of the Contract, suitable for handling the information in accordance with the security requirements as defined in the SOW at Annex A and in the SAL at Annex F to this Contract.

2.10.4. The Contractor shall include in any relevant Sub-Contracts the provision, that should the Sub-Contractor intend to store/handle classified material in relation to the Contract, its facilities shall also be and remain for the duration of the Contract, suitable for handling the information in accordance with the security requirements as defined in the SOW at Annex A and in the SAL at Annex F to this Contract.

2.10.5. The Authority reserves the right to insist on increased levels of security clearance for specific duties and to refuse or withdraw security clearance under specific circumstances.

2.10.6. The Contractor shall ensure that its employees, agents or Sub-Contractors comply with relevant Authority security regulations when working at Government Establishments. This may include in the most exceptional circumstances a willingness to submit to a search of their person, personal belongings and transport when entering or leaving Government Establishments. The Contractor shall accept (without prejudice to any remedies the Authority may have) full responsibility for any loss or delay in performance of the Contract caused directly or indirectly by the expulsion of, or refusal to allow access to, a Contractor's employee, agent or Sub-Contractor who does not consent to being searched.

2.10.7. The site security regulations and procedures for Authority sites are available from the establishment security officer.

2.11. TRANSFER OF UNDERTAKINGS (PROTECTION OF EMPLOYMENT) - TUPE

2.11.1. The TUPE conditions relating to the provision of Employee Information at Contract Completion Date are specified at Annex C to the Contract terms and conditions.

2.12. TRANSPARENCY

2.12.1. Notwithstanding any other term of this Contract, including DEFCON 531 where applicable, the Contractor understands that the Authority may publish the Transparency Information to the general public. The Contractor shall assist and co-operate with the Authority to enable the Authority to publish the Transparency Information.

2.12.2. Before publishing the Transparency Information to the general public in accordance with this condition 2.12, the Authority shall redact any information that would be exempt from disclosure if it was the subject of a request for information under the Freedom of Information Act 2000 or the Environmental Information Regulations 2004 including the Contractor Commercially Sensitive Information.

2.12.3. The Authority shall redact any information that would be exempt from disclosure if it was the subject of a request for Information under the Freedom of Information Act 2000 or the Environmental Information Regulations 2004, and any Information which has been acknowledged by the Authority as Contractor's Commercially Sensitive Information.

2.12.4. The Authority may consult with the Contractor before redacting any Information from the Transparency Information in accordance with condition 2.12.2. The Contractor acknowledges and accepts that its representations on redactions during consultation may not be determinative and that the decision whether to redact Information is a matter in which the Authority shall exercise its own discretion, subject always to the provisions of the Freedom of Information Act 2000 or the Environmental Information Regulations 2004.

2.13. CONFIDENTIALITY

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

2.14. DISCLOSURE OF INFORMATION

2.14.1. In addition to the provision of DEFCON 531, the Contractor shall take every precaution to ensure that information arising from or connected with the Contract is divulged only to the minimum number of employees and then only to the extent essential to each person's action in carrying out the Contract. The Contractor shall not in any circumstances allow access by employees to general information such as lists of units or their locations and shall restrict the information given to each employee to that relating only to the establishment with which such employee is personally concerned.

2.14.2. No information regarding the services being provided under the Contract or facilities to photograph or film shall be given or permitted by the Contractor except with the prior written permission of the Authority to whom any press or other enquiry on any such matter should be referred, in the first instance.

2.14.3. Subject to conditions 2.14.6, 2.14.7, and 2.14.10 each Party:

2.14.3.1 shall treat in confidence all Information it receives from the other;

2.14.3.2 shall not disclose any of that Information to any Third Party without the prior written consent of the other Party, which consent shall not unreasonably be withheld, except that the Contractor may disclose Information in confidence, without prior consent, to such persons and to such extent as may be necessary for the performance of the Contract;

2.14.3.3 shall not use that Information otherwise than for the purpose of the Contract; and

2.14.3.4 shall not copy any of that Information except to the extent necessary for the purpose of exercising its rights of use and disclosure under the Contract.

2.14.4. The Contractor shall take all reasonable precautions necessary to ensure that all Information disclosed to the Contractor by or on behalf of the Authority under or in connection with the Contract:

2.14.4.1 is disclosed to its employees and SubContractors, only to the extent necessary for the performance of the Contract; and

2.14.4.2 is treated in confidence by them and not disclosed except with the prior written consent of the Authority or used otherwise than for the purpose of performing work or having work performed for the Authority under the Contract or any Sub-Contract.

2.14.5. The Contractor shall ensure that its employees are aware of the Contractor's arrangements for discharging the obligations at conditions 2.15.3 and 2.15.4 before receiving Information and shall take such steps as may be reasonably practical to enforce such arrangements.

2.14.6. Conditions 2.14.3 and 2.14.4 shall not apply to any Information to the extent that either Party:

2.14.6.1 exercises rights of use or disclosure granted otherwise than in consequence of, or under, the Contract;

2.14.6.2 has the right to use or disclose the Information in accordance with other Conditions of the Contract; or

2.14.6.3 can show:

2.14.6.3.1 that the Information was or has become published or publicly available for use otherwise than in breach of any provision of the Contract or any other agreement between the Parties;

- 2.14.6.3.2 that the Information was already known to it (without restrictions on disclosure or use) prior to receiving the Information under or in connection with the Contract;
- 2.14.6.3.3 that the Information was received without restriction on further disclosure from a Third Party which lawfully acquired the Information without any restriction on disclosure; or
- 2.14.6.3.4 from its records that the same Information was derived independently of that received under or in connection with the Contract; provided that the relationship to any other Information is not revealed.

2.14.7. Neither Party shall be in breach of this condition where it can show that any disclosure of Information was made solely and to the extent necessary to comply with a statutory, judicial or parliamentary obligation. Where such a disclosure is made, the Party making the disclosure shall ensure that the recipient of the Information is made aware of and asked to respect its confidentiality. Such disclosure shall in no way diminish the obligations of the Parties under this condition.

2.14.8. The Authority may disclose the Information:

- 2.14.8.1 on a confidential basis to any UK Government Department for any proper purpose of the Authority or of the relevant UK Government Department, which shall include, but not limited to: disclosure to the Cabinet Office and / or HM Treasury for the purpose of ensuring effective cross Government procurement processes, including value for money and related purposes;
- 2.14.8.2 to Parliament and Parliamentary Committees or if required by any Parliamentary reporting requirement;
- 2.14.8.3 to the extent that the Authority (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions;
- 2.14.8.4 on a confidential basis to a professional adviser, consultant or other person engaged by the Authority for any purpose relating to or connected with this Contract;
- 2.14.8.5 on a confidential basis for the purpose of the exercise of its rights under the Contract; or
- 2.14.8.6 on a confidential basis to a proposed body in connection with any assignment, novation or disposal of any of its rights, obligations or liabilities under the Contract; and for the purposes of the foregoing, references to disclosure on a confidential basis shall mean disclosure subject to a confidentiality agreement or arrangement containing terms no less stringent than those placed on the Authority under this condition.

2.14.9. Before sharing any Information in accordance with sub-condition 2.14.8 above, the Authority may redact the Information. Any decision to redact Information made by the Authority shall be final.

2.14.10. The Authority shall not be in breach of the Contract where disclosure of Information is made solely and to the extent necessary to comply with the Freedom of Information Act 2000 or the Environmental Information Regulations 2004. To the extent permitted by the time for compliance under the Act or the Regulations, the Authority shall consult the Contractor where the Authority is considering the disclosure of Information under the Act or the Regulations and, in any event, shall provide prior notification to the Contractor of any decision to disclose the Information. The Contractor acknowledges and accepts that its representations on disclosure during consultation may not be determinative and that the decision whether to disclose Information in order to comply with the Act or the Regulations is a matter in which the Authority shall exercise its own discretion, subject always to the provisions of the Act or the Regulations.

2.14.11. Nothing in this condition shall affect the Parties' obligations of confidentiality where Information is disclosed orally in confidence.

2.15. CONTROLLED INFORMATION

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

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

2.15.3. The Contractor shall:

2.15.3.1. Hold the Controlled Information and not to use it other than for the purpose of discharging its obligations under the Contract.

2.15.3.2. Not copy the Controlled Information except as strictly necessary for the purpose of discharging its obligations under the Contract.

2.15.3.3. Not disclose the Controlled Information to any Third Party unless so authorised in writing beforehand by the Authority.

2.15.3.4. Protect the Controlled Information diligently against unauthorised access and against loss; and,

2.15.3.5. Act diligently to ensure that:

2.15.3.5.1. Controlled Information is disclosed to its employees only to the extent necessary for the purpose of discharging its obligations under the Contract.

2.15.3.5.2. Employees to whom Controlled Information is disclosed are made aware of and required to comply with the terms of this Condition 2.15.

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

2.15.4.1. Compile a register of that Controlled Information, which shall include explicit description of the Controlled Information, a record of the number of copies made and a record of all access to the Controlled Information including access to any copies of the Controlled Information.

2.15.4.2. Maintain this register for the duration of the Contract and for two years following completion of the Contract.

2.15.4.3. Make the register of access available to the Authority upon reasonable notice for inspection and audit for so long as it is required to be maintained under this Condition; and,

2.15.4.4. At the completion of the Contract, return to the Authority all original and duplicate copies of the Controlled Information, or else at the Authority's option destroy these copies and provide a certificate of destruction to the Authority.

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

2.15.5.1. That the information concerned was or has become published or publicly available for use without breach of any provision of the Contract or any other agreement between the Parties.

2.15.5.2. That the information was already known to it (without restrictions on disclosure or use) prior to receiving it under or in connection with the Contract.

2.15.5.3. That the information concerned was lawfully provided by a Third Party without restriction on use or further disclosure; or

2.15.5.4. From its records, that the information was derived independently of the Controlled Information;

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

2.16. CONTINUING OBLIGATIONS

2.16.1. Save as otherwise expressly provided in this Contract or as already taken into account in the calculation of any payment on termination pursuant to this Contract, termination/expiry of this Contract shall be without prejudice to any accrued rights or obligations under this Contract prior to termination/expiry.

2.16.2. Termination/expiry of this Contract shall not affect the continuing rights and obligations of the Contractor and the Authority under:

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

2.16.2.2. DEFCON659A (Edn. 02/17) – Security Measures;

2.16.2.3. Condition 2.10, Security Measures;

2.16.2.4. Condition 2.13, Confidentiality;

2.16.2.5. Condition 2.15, Controlled Information;

2.16.2.6. Condition 2.19, Publicity;

2.16.2.7. Condition 5, Intellectual Property Rights;

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

2.17. SAFETY AND THE ENVIRONMENT

2.17.1. The Contractor shall ensure that the DCS&S Capability complies with the Health and Safety at Work Act 1974 and corresponding regulations, Environmental Protection Act 1990, the Environment Act 1995 and other relevant statutory provisions and any additional requirements arising from international treaties and protocols to which the UK is a signatory.

2.17.2. The Contractor shall ensure that its employees comply with relevant Authority regulations when working on Government Establishments.

2.17.3. In the interests of safety and environmental issues there should be a free flow of information. To the extent that the Contractor is in possession of, and is able to provide, such information, the Contractor shall immediately communicate directly to the Authority all information affecting safety and environmental issues.

2.18. CONFLICT OF INTEREST

2.18.1. Neither the Contractor nor any of the Contractor's Personnel shall engage in any personal, business or professional activity which conflicts or could conflict with any of their obligations in relation to this Contract (a '**Conflict of Interest**'). The Contractor will disclose to the Authority full particulars of any such actual or potential Conflicts of Interest, which may arise for the duration of the Contract.

2.18.2. The Contractor shall establish and maintain appropriate business standards, procedures and controls to ensure that no Conflict of Interest arises between Services undertaken for the Authority and that undertaken for other clients. The Contractor shall avoid knowingly committing any acts which are likely to result in any allegation of impropriety, including conflicts of interest which are likely to prejudice their independence and objectivity in performing the Contract, howsoever arising.

2.18.3. Where an actual Conflict of Interest (COI), or a potential COI, is identified, the Authority reserves the right to require an appropriate formal Compliance Regime (CR) agreement to be implemented between the Authority and the Contractor.

2.18.4. Where Compliance Regime principles are not explicitly stated within a Contractor's articles of association or within associated company legal documentation, these requirements will need to be effected by including them in the Contract.

2.18.5. If the Contractor has supplied the Authority with a Compliance Regime as part of the tendering process for this Contract, the provisions of that Compliance Regime shall be part of this Contract.

2.18.6. The Authority reserves the right to terminate the Contract immediately by notice in writing and/or to take such other steps it deems necessary where, in the reasonable opinion of the Authority, there is an actual COI, or a potential COI. The actions of the Authority pursuant to this condition shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Authority.

2.19 PUBLICITY

2.19.1. The Contractor shall not release any information associated with the project without first obtaining the prior written consent of the Authority, except as may be required by law or other government requirements. Prior to release, copies of the information to be released shall be forwarded to the Authority Commercial Branch (see Box 1 of Appendix to Contract – DEFFORM 111). If the publication is to be in a language other than English, an accurate and complete typewritten translation in English shall be provided with the request. It is agreed that neither party has the authority to communicate on behalf of the other.

2.19.2. Condition 2.19.1 is to be flowed down to all Sub-Contractors.

2.20 EXPORT LICENCES

2.20.1 It shall be the sole responsibility of the Contractor to obtain in a timely manner any export licences (U.S. or otherwise) required to perform any of its obligations under the Contract.

2.20.2. The Contractor shall inform the Authority at the earliest opportunity of the route by which it intends to obtain export licence approval from the U.S. Government in order to satisfy delivery requirements under the Contract in particular, where the Contractor chooses to use a technical assistance agreement or manufacturing licence agreement, it shall promptly notify the Authority and shall not seek U.S. Government approval for the agreement until first negotiating its contents with the Authority.

2.20.3. If, in the execution of the Contract, the Contractor needs to import material for which a foreign export licence is required, it shall be the Contractor's sole responsibility to apply for and obtain such a licence in a timely manner.

2.21. CYBER SECURITY

2.21.1 In accordance with DEFCON 658 the Cyber Risk Level of the Contract is Moderate as defined in DEFSTAN 05-138.

2.21.2 With regard to DEFSTAN 05-138, the Contractor shall confirm the validity of its cyber certification status to the Authority's Commercial Officer on Contract Commencement Date.

2.21.3. Where the Contractor does not hold a valid cyber certificate, which has been awarded by one of the government approved cyber accreditation bodies, it shall confirm in writing;

2.21.3.1. that it is working towards certification and shall keep the Authority informed of progress (as part of the DEFCON 604 (Progress Report)) of the anticipated date by when it shall achieve certification; or

2.21.3.2. that it is able to demonstrate that it meets the technical requirements prescribed by the cyber scheme and shall provide evidence of verification by a technically

competent and independent Third Party which has taken place in the last 12 months for review and approval by the Authority.

2.21.4. The Contractor shall require the same level of information from any Sub-Contractors regarding 2.21.1 and 2.21.2 above and provide such responses to the Authority's Commercial Officer for review and approval by the Authority.

3. SPECIFICATIONS AND PLANS

DEFCON82 (Edn.11/16) - Special Procedure For Initial Spares

DEFCON129 (Edn.11/16) – Packaging (For Articles other than Munitions)

DEFCON502 (Edn.05/17) - Specifications Changes

DEFCON601 (Edn.04/14) - Redundant Material

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

DEFCON637 (Edn. 05/17) - Defect Investigation And Liability

DEFCON644 (Edn.05/17) – Marking of Articles

DEFCON645 (Edn.07/99) – Export Potential

DEFCON687A (Edn.06/01) - Provision Of A Shared Data Environment Service

DEFCON687B (Edn.06/01) - Shared Data Environment System Transfer Arrangements

3.1. PARTS, EQUIPMENT AND DATA

3.1.1. The Contractor shall be responsible for obtaining all necessary data, parts and Articles and Equipment and for any liaison with the relevant Design Authority, or other sources.

3.3. INSTALLATION

3.3.1. The Contractor shall not install the Equipment without prior agreement by the Authority to ship the Equipment following Factory Acceptance Testing.

3.3.2. For Schedule of Requirements Item 1 the Authority shall give the Contractor access to the Site facilities including use of its storage, workshop and Communication Information Services (CIS). The Contractor shall be responsible for supplying all spares, tools and test equipment required for installing and commissioning the Equipment being supplied under the Contract. All such spares, tools and test equipment shall remain the property of the Contractor and shall be removed from the Site at the completion of the installation work.

3.4. INDEPENDENT SAFETY AUDITORS, ADVISORS, AND ASSESSORS

3.4.1. The Contractor shall provide access to records, including Sub-Contractor records, for contract purposes; to enable the Authority appointed an Independent Safety Auditor to carry out safety audits and other assessment activities to meet the Authority's safety requirements.

3.5. TECHNICAL INFORMATION AND DRAWINGS

3.5.1. The Contractor shall be entirely responsible for obtaining all necessary technical information, drawings and data, whether the source of the data is from the Authority or Industry. The Contractor shall bear all costs associated with this information, drawings and data.

3.6. COMMERCIAL RISK

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

- 3.6.1.1. particular risks and their impact; or
- 3.6.1.2. risk reduction measures, contingency plans and remedial actions;

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

3.7. COTS SOFTWARE PRODUCT QUALITY REQUIREMENTS AND EVALUATION

3.7.1. The rights accruing to the Authority under this COTS Software condition shall apply to those deliverables identified in the SOW at Annex A to this Contract.

3.7.2. COTS Software licences shall be procured by the Contractor for the Authority and with the agreement of the Authority at no additional charge to the Contract Price in accordance with the Authority's DEFFORM 701 Software Licence.

3.7.3. Where there is no express licence governing the Authority's use of any software (including but not limited to (Private Venture Software or firmware) which is contained in any private venture deliverable common law rights to use and transfer that software shall apply.

3.7.4. In the event of any conflict between the provisions of any express software licence granted directly by the Contractor (under either licence or sub-licence) to the Authority and any other provision of this Contract, the Contract shall take precedence

3.8. OBSOLESCENCE MANAGEMENT

3.8.1. The Contractor shall be responsible for managing Obsolescence over the entire period of the Contract and, notwithstanding any Obsolescence Issues; the Contractor remains responsible for meeting all performance and other requirements of this Contract.

3.8.2. The Contractor shall implement an Obsolescence Management strategy in accordance with IEC 62402:2007 (Obsolescence Management – Application Guide) and BS EN 62402:2007. This strategy shall include, but is not limited to, Obsolescence of components, assemblies, sub-assemblies, piece parts, and material (hereafter referred to for purposes of this section only as "parts and/or material"). This strategy shall include, as a minimum:

- 3.8.2.1. the on-going identification and review of Obsolescence Concerns and Obsolescence Issues over the duration of the Contract;
- 3.8.2.2. the identification of mitigation action for Obsolescence Concerns over the duration of the Contract;
- 3.8.2.3. the identification of resolution action for Obsolescence Issues.

3.8.3. The Contractor shall liaise with the Authority to ensure Obsolescence Management Plans and mitigation/resolution of Obsolescence Concerns and Obsolescence Issues are managed appropriately.

3.8.4. Any configuration Changes due to Obsolescence shall be approved in accordance with the Configuration Management process defined in the Contractor's Configuration Management Plan.

3.8.5. The Contractor shall provide the Authority with Obsolescence status briefs, as part of the project reviews as detailed in the Meetings Appendix 3 to SOW at Annex A.

4. PRICE

DEFCON127 (Edn.12/14) - - Price Fixing Condition for Contracts of Lesser Value

For the purposes of this Contract, DEFCON 127 (Edn.12/14) shall apply only to amendments to the Contract with a value up to and including £250,000 (two hundred and fifty thousand pounds Sterling).

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

DEFCON643 (Edn.12/14) - Price Fixing (Non-qualifying contracts)

DEFCON 643 (Edn. 12/14) shall apply only to amendments to the Contract with a value exceeding £250,000 (two hundred and fifty thousand pounds Sterling).

DEFCON654 (Edn 10/98) - Government Reciprocal Audit Arrangements

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

4.1. The prices stated for Schedule of Requirements items 1 to 4 are Firm Prices and not subject to variation and shall be:

- 4.1.1. the price of the Articles and Services provided in accordance with the terms of the Contract;
- 4.1.2. inclusive of all appropriate taxes (but not UK VAT), royalties, licence fees and the cost of complying with all Contract conditions; and
- 4.1.3. inclusive of all costs associated with importing any Equipment /software /data into the UK from overseas.

4.1.4. The prices stated for Schedule of Requirements items 5 and 6 are Fixed Prices and subject to the Variation of Price (VoP) Condition 7.4.

4.1.5. From the Contract Commencement Date award until month 36 post IOC the Prices stated for Schedule of Requirements item 7 shall be Firm Prices. From 37 months post IOC the Prices stated for Schedule of Requirements item 7 shall be Fixed Prices and subject to the Variation of Price (VoP) Condition 7.4. agreed on a case by case basis using the prices detailed in the Change Catalogue at Annex D. These shall be:

4.1.5.1 Catalogue amendments as identified by the Authority and notified to the Contractor using a Request for Quotation letter.

4.1.5.2 The Contractor shall provide a quotation for the activity identified in the Request for Quotation within 30 Business Days of receipt. Prices quoted shall be formulated in accordance with the Contractor's Change Catalogue, at Annex D.

4.1.5.3 The Contractor's quotation, raised in accordance with 4.1.5.1 and 4.1.5.2, shall be valid for acceptance by the Authority for 60 Business Days from receipt by the Authority.

4.1.5.4 Any agreed Changes shall be added to the Contract by a Contract Amendment.

4.1.6. The Prices for Schedule of Requirement item 8 shall be agreed on a case by case basis using the Post Design Service Charging Rates contained within the Change Catalogue at Annex D to Contract as and when ad hoc tasks are required by the Authority.

4.1.6.1 Ad hoc tasks shall be identified by the Authority and notified to the Contractor using a Request for Quotation letter.

4.1.6.2 The Contractor shall provide a quotation for the activity identified in the Request for Quotation within 30 Business Days of receipt. Prices quoted shall be formulated in

accordance with the Post Design Service Charging Rates contained in the Change Catalogue, at Annex D.

4.1.6.3 The Contractor's quotation, raised in accordance with 4.1.5.1 and 4.1.5.2, shall be valid for acceptance by the Authority for 60 Business Days from receipt by the Authority.

4.1.6.4 Any agreed Changes shall be added to the Contract by a Contract Amendment.

4.2. **IMPORT DUTY**

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

4.3. **PRICING OF CHANGE**

4.3.1 Any Changes raised under this Contract shall be undertaken in accordance with DEFCONs 503 and 620 and Condition 2.6 – Amendments to Contract.

5. **INTELLECTUAL PROPERTY RIGHTS**

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

For the purposes of this Contract DEFCON 14 shall apply with the following modification and clarification:

Where any invention or design to which the provisions of DEFCON 14 apply is created outside the UK and where local laws so require, any application may, notwithstanding the provisions of condition 2(c), be made under equivalent conditions of secrecy at the local patent office of the territory where the invention or the design was created. Where local laws so require, the supply of a copy of the application under condition 4(a) shall be subject to any necessary approval of the local patent office but the application number and date of filing shall be notified to the Authority in all cases.

DEFCON15 (Edn.02/98) - Design Rights and Rights to Use Design Information

The rights accruing to the Authority under DEFCON 15 shall apply to those deliverables identified in the listed Contract Data Requirement(s) (CDR) in the form of DEFFORM 315 (Edn 02/98) provided at Annex E

DEFCON16 (Edn.10/04) - Repair and Maintenance Information

For the purposes of this Contract DEFCON 16 shall apply with the following clarification:

The rights accruing to the Authority under DEFCON 16 shall apply to those deliverables identified in the listed Contract Data Requirement(s) (CDR) in the form of DEFFORM 315 (Edn 02/98) provided at Annex E.

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

For the purposes of this Contract, DEFCON 21 shall apply with the following clarification: In accordance with condition 3 of DEFCON 21 the "Control Copy" shall be held for 10 years.

DEFCON90 (Edn.11/06) - Copyright

For the purposes of this contract DEFCON 90 shall apply with the following clarification:
The nations prescribed for the purposes of condition 4(c) of DEFCON 90 shall be the NATO nation states, and also Australia And New Zealand.

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

For the purposes of this Contract DEFCON 91 shall apply to all Deliverable Software not identified at Annex E with the following clarification.

(a) The nations prescribed for the purposes of condition 3(e) of DEFCON 91 shall be the NATO nation states, and also Australia and New Zealand.

(B) for the purposes of condition 3(c) of DEFCON 91, "fair and reasonable terms" shall be discharged by the contract price.

(c) For the avoidance of doubt, Private Venture Software (as defined below) shall be procured in accordance with the Private Venture Software narrative provision.

DEFCON126 (EDN.11/06) - INTERNATIONAL COLLABORATION

FOR THE PURPOSES OF THIS CONTRACT DEFCON 126 SHALL APPLY WITH THE FOLLOWING CLARIFICATION:

The period prescribed for the purposes of conditions 2 and 3 of DEFCON 126 shall be ten (10) years from the commencement date of the Contract.

DEFCON632 (EDN.08/12) - Third Party Intellectual Property - Rights And Restrictions

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

FOR THE PURPOSES OF THIS CONTRACT DEFCON 703 SHALL APPLY WITH THE FOLLOWING MODIFICATION AND CLARIFICATION.

(a) The presence of any Background Or Private Venture Funded, Contractor Owned Or Third Party Owned Intellectual Property (including without limitation any patents or design rights) or Confidential Information in the Results, or delivered with the Results, shall not fetter the exercise of The Authority's right under condition 1 of this condition to use or have used the items to which this condition applies for any UK Government Purpose (which includes the right to pass the said items to any other nation's government for that nation's use pursuant to the Terms and in accordance with the purposes of any Inter-Governmental Arrangement(s) and this shall be reflected in the Contract Price.

(b) the provisions of DEFCON 703 (intellectual property rights - vesting in the Authority) shall apply solely to those items listed in the Contract Data Requirement(s) at Annex E as well as any deliverables that have not been specifically allocated an ownership status in accordance with Annex E

(c) where Contractor or Third Party owned information is included, the Contractor shall notify the Authority as soon as the Contractor becomes aware of this fact.

5.1. TECHNICAL PUBLICATIONS AND DOCUMENTATION RIGHTS

5.1.1. In this condition the term Technical Publication shall be taken to mean any handbook, manual, user guide or any other document specified as a deliverable in a task under Item 7 of the Contract Schedule of Requirements. Subject only to the rights of any Third Party in relation to the Equipment to which the Technical Publication relates, copyright in any such publication shall vest in the Crown.

5.1.2. Where part of the Technical Publication is subject to Third Party rights, the Contractor shall ensure that the Authority has the right to a free licence to copy, amend, extend or have copies, amended or extended such Technical Publication 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.

5.1.3. 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 this Contract or any part thereof. This includes 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.

5.2. TECHNICAL SUPPORT

5.2.1. Without prejudice to the Authority's ownership and/or rights of use under any other condition of this intellectual property rights section, the Authority shall have in respect of all technical information comprised or contained within any technical deliverable to which this Contract applies a free licence:

5.2.1.1 To copy that technical information and to circulate it within any United Kingdom Government Department (which term includes the United Kingdom armed forces); and

5.2.2. to issue that technical information or any copy of the same or any part thereof to a technical support Contractor for the purposes of:

5.2.2.1. monitoring the work under the Contract,

5.2.2.2. certification, inspection, testing, modelling, analysis and evaluation of the deliverables and/or

5.2.2.3. evaluation with a view to procuring further Equipment for use with the System.

5.3. PRIVATE VENTURE SOFTWARE

5.3.1. Private Venture Software (PV Software): means Standalone commercially available software developed without the funding of the Authority.

5.3.2. Standalone Contractor or Sub-Contractor owned PV Software shall be identified in a Background IP list at Annex (to be inserted at contract award)

5.3.3. PV Software licences shall be procured for the Authority in accordance with either:

5.3.4.1. the Authority's DEFFORM 701 software licence,

5.3.4.2. any existing and applicable standard software licence agreement as agreed with the Authority, or

5.3.4.3. in the absence of any agreement referred to as 5.3.3.2., any other software licence agreement that may be agreed in the future as between the Authority and the Contractor or Sub-Contractor concerned, provided that such licence is transferable to any Third Party acting on behalf, or under contract to, the Authority.

5.3.4. Such licences shall be at no additional charge to the Contract Price save for where the software is unable to be identified.

5.3.5. Where there is no express licence governing the Authority's use of any software (including but not limited to PV Software or firmware) which is contained in any private venture deliverable common law rights to use and transfer that software shall apply.

5.3.6. In the event of any conflict between the provisions of any express software licence granted directly by the Contractor (under either licence or sub-licence) to the Authority and any other provision of this Contract, the Contract shall take precedence.

PRIVATE VENTURE INTERFACES

5.3.8 The Authority may use or have used the information contained within the DCS&S and its associated open architecture ICDs for any UK Government purpose (which includes the right to pass the information to any other nation's Government for that Government's use in accordance with the terms of any UK inter-Governmental arrangement or agreement) and the presence of any Background IPR in these deliverables shall not fetter the exercise of said use. For the avoidance of doubt use extends to any mode of use, including modification.

5.3.9 For the purposes of Condition 5.3.8. the definition of ICDs is as follows: "Interface Control Document(s) (ICD) establishes, defines and, in conjunction with Configuration Management Processes, controls the interface(s) of the DCS&S Equipment with the host platform and its systems. The term ICD is used in this document as a generic term to cover all documents used to describe an interface e.g. Interface Specification

5.4. TECHNICAL SUPPORT CONTRACTORS

5.4.1. Subject to condition 5.4.2 below, and without prejudice to the Authority's ownership and/or rights of use under any other Condition of this IPR Section, the Authority shall have in respect of all technical information which comprises or is contained within any technical deliverable to which this Contract applies a free licence:

- 5.4.1.1. to copy that technical information and to circulate it within any United Kingdom Government Department (which term includes the United Kingdom Armed Forces;
- 5.4.1.2. to issue that technical information or any copy of the same or any part thereof to a technical support Contractor for the purposes of:
 - 5.4.1.2.1. monitoring the work under the Contract:
 - 5.4.1.2.2. certification, inspection, testing, modelling, analysis and evaluation of the deliverables and/or
 - 5.4.1.2.3. evaluation with a view to procuring further equipment for use with the DCS&S capability, hereinafter the "permitted purposes".

5.4.2. The Authority shall ensure that:

- 5.4.2.1. access to the Information contained in the technical deliverable is confined to those employees of the Authority and its technical support Contractors who require access for the said Permitted Purposes, and
- 5.4.2.2. access by an employee of a technical support Contractor shall not be permitted until the technical support Contractor has entered into a non-disclosure agreement with the owner of the Information.

5.5. SUB-CONTRACTORS

5.5.1. The Contractor shall not place any Sub-Contract nor enter into any commitment involving the design or development of Equipment required under this Contract without the prior written consent of the Authority.

5.5.2. Unless otherwise agreed, and subject to condition 5.5.1. above, such consent will be conditional on the proposed Sub-Contractor concluding a direct agreement with the Authority in the form of the Agreement set out at Annex G. Wherever possible the request for approval should be accompanied by two copies of the agreement signed by the Subcontractor. If in any case the Contractor is unable to comply with this condition, they shall report the matter to the Authority and await further instructions before placing the Sub-Contract or order.

5.5.3. In addition to DEFCON 126 (International Collaboration), the Contractor shall ensure that the requirements and obligations set out in this IPR section are flowed down to and included in all Sub-Contracts where development work or Services are being provided and IPR is generated. The Authority shall be able to rely on this contract in determining its contractual rights and obligations with respect to IPR provided for under the Contract and subsisting in the Contract Deliverables irrespective of the existence of any collateral agreement as between the Authority and a Sub-Contractor placed in accordance with condition 5.5.5 below.

5.5.4. Unless otherwise agreed by the Authority in writing, the Authority's ownership and rights of use under DEFCON 703 shall be respectively assigned and licensed (or sub-licensed) by the Contractor through and by means of the Sub-Contractor supply chain.

5.5.5. The Contractor shall not place any Sub-Contract or order for any Standalone Private Venture Software without the prior written consent of the Authority. In circumstances where the Authority considers a direct licence or sub-licence is required, and unless otherwise notified in writing by the Authority, the Authority shall agree the terms and conditions of the direct licence or sub-licence with the Sub-Contractor concerned before the Sub-Contract or order is placed.

5.5.6. Articles and/or information developed at the Contractor's (or relevant Sub-Contractor's) expense shall be identified and notified by the Contractor to the Authority and may not be incorporated

into any deliverable or Service under the Contract without the express prior permission in writing from the Authority.

5.6. COMMERCIAL EXPLOITATION

5.6.1. The Contractor shall not, to persons other than the Authority, use, sell, dispose or otherwise exploit for commercial gain any work, design, or Service undertaken or produced under or in connection with the Contract without the prior written consent of the Authority. In the event of such consent, which shall not be unreasonably withheld, the Contractor shall first agree with the Authority, the sum or sums which shall reasonably be paid to the Authority having regard to the amounts paid or payable to the Contractor by the Authority under this Contract. The Contractor shall ensure that its supply chain shall also enter into similar agreements under their supply chain contracts in appropriate circumstances.

6. LOANS

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

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

For the purposes of this Contract, the Contractor's liability under Conditions 3 and 4 of DEFCON 76 will be £25M.

DEFCON611 (Edn.02/16) - Issued Property

DEFCON694 (Edn.03/16) - Accounting For Property of the Authority

6.1. ACCESS TO AUTHORITY SITES

6.1.1. The Authority will assist in arranging access to Authority site(s) and to the Authority's personnel required to undertake the work required under this Contract. Requests for access/visits shall be made in a timely manner to allow any necessary arrangements to be made and clearances to be approved/authorised.

6.1.2. No access will be granted unless such approval has been given. This shall be co-ordinated through the Authority's Project Manager, as detailed in the DEFFORM 111, Appendix to these terms and conditions of Contract.

6.1.3. In respect of visits to Authority sites or personnel, the Authority shall have no liability to the Contractor if the opportunity to visit the Authority Sites or personnel is given to the Contractor and the Contractor fails to take up any such offer. In such circumstances the liability of the Authority shall cease with effect from the time the opportunities are offered.

6.1.4. Whilst at any Authority Site, the Contractor's Personnel shall at all times comply with appropriate site / Station Standing Orders.

6.1.5. Where required to perform the Contract, the Authority will assist the Contractor in arranging access to Authority Sites.

6.2. ACCESS TO CONTRACTOR/SUB-CONTRACTOR SITES

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

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

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

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

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

6.2.6. If the Contractor or any of its Sub-Contractors consider that actions or requests made by such personnel are not covered by the scope of this condition, the Contractor shall notify the Authority of its concerns. The Authority shall use reasonable endeavours to resolve the issue.

6.2.7. Such Third Party personnel shall enjoy the same rights as the Authority's own personnel and shall be subject to the same obligations as the Authority's Personnel in similar circumstances.

6.2.8. Whenever access is granted to any of the bodies or personnel mentioned above, including Authority's staff, such access shall be restricted to the specific purpose for which that access was granted.

6.2.9. No-one granted access on the Authority's behalf by the Contractor shall impede the progress of any work. They shall not give, and the Contractor shall not accept, any instruction or re-direction to the Contractor or to any of the Contractor's Sub-Contractors.

6.2.10. The Authority shall give the Contractor reasonable notice when access to the premises of the Contractor or of any Sub-Contractor is required.

6.2.11. The Authority shall ensure that all representatives requiring access to the premises of the Contractor or of any Sub-Contractors have the appropriate security clearance.

6.3. GOVERNMENT FURNISHED ASSETS (GFA)

6.3.1. The Authority shall make available those items of Government Furnished Assets (GFA) as listed at Annex L to the Contract.

6.3.2. All GFA issued by the Authority to the Contractor shall be managed in accordance with the requirements of DEFCON 611 (Issued Property) (Edn 2/16) and DEFCON 694 (Accounting For Property Of The Authority) (Edn 3/16).

6.3.3. The list of GFA items at Annex L to the Contract, shall be reviewed at each Quarterly Progress Meeting.

6.3.4. The Authority shall have no liability to the Contractor if the GFA detailed at Annex L is offered to the Contractor and the Contractor fails to take up any such offer. In such circumstances the liability of the Authority shall cease with effect from the first time the GFA is offered.

6.3.5. All GFA issued under the Contract shall be issued as Issued Property as defined in DEF-STAN 05-99 Issue 4 Amendment 2.

6.3.6. Save for the applicability of DEFCON 632 (Third Party Intellectual Property - Rights and Restrictions) (Edn.08/12) any information of a technical nature that has been provided to the Contractor by the Authority under the Contract is provided, subject to Condition 6.3.7 without any potential liability to the Authority; the Contractor is responsible for and remains completely liable for any use he may make of such information in the execution of the Contract, and that the information is for purpose and accurate.

6.3.7. All Changes to the GFA list shall be undertaken by a formal Contract Amendment in accordance with DEFCON 503 (Formal Amendments To Contract) (Edn.12/14) and the process in DEFCON 620 (Contract Change Control Procedure) (05/17).

6.3.8. In the event that the Authority fails to make an item of GFA available by the agreed date, and as a direct result, the Contractor is unable to achieve the delivery date as stipulated in the agreed Delivery Schedule, then the Contractor shall be entitled to apply for an extension of time to the delivery date.

6.3.9. The Contractor must as soon as practicable, and in any event within five (5) Business Days, of the Authority having failed to provide the GFA at the agreed time notify the Authority's Commercial Branch of its claim for an extension in time to the delivery date. As part of that claim, the Contractor must demonstrate to the reasonable satisfaction of the Authority's Commercial Branch that it has used all reasonable endeavours to mitigate and recover any delay.

6.3.10. If the Contractor has complied with its obligations under Condition 6.3.9 the Authority shall postpone the delivery date by such time as shall be reasonable for the Authority's failure to provide the GFA by the agreed date, taking into account the likely effect of the delay.

6.3.11. The Contractor shall take any steps as may be reasonably necessary to ensure that it has brought to the notice of all Sub-Contractors and any other persons dealing with any GFA that the Authority is the owner, the handling requirements associated and that obligations to flow down conditions of this Contract are met. The Contractor shall notify the Authority immediately of any attempts by a Third Party to secure a lien or rights of a similar kind on any GFA. At the same time the Contractor shall notify the Third Party that the Authority is the owner of the GFA. This shall not relieve the Contractor of his obligations under DEFCON 611 (Edn.02/16).

6.3.12 Where the Authority provides Government Furnished Assets (GFA) in support of this Contract it shall be treated in accordance with Def Stan 05-099.

6.4. PROPERTY OF THE CONTRACTOR

6.4.1. All property of the Contractor held at the Government Establishments or Authority's premises where the work under the Contract is being undertaken shall be at the risk of the Contractor. The Authority shall accept no liability for any loss or damage to such property or caused by that property except where any such loss or damage was caused or contributed to by any act, neglect or default of any Crown Servant at the Government Establishments or Authority's premises acting in the course of their employment. The Authority shall accept liability only to the extent to which such loss or damage is so caused or contributed.

7. DELIVERY/PERFORMANCE

DEFCON5J (Edn.11/16) - Unique Identifiers

Condition 2 of the DEFCON shall not apply.

DEFCON507 (Edn.10/98) - 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)

7.1. DELIVERY

7.1.1. The Contractor shall complete the work detailed in the Statement Of Work (SOW) at Annex A to the Contract by the Delivery Dates specified in the Schedule of Requirements. The cost of delivery to the Site is to be included in the Contract Price.

7.2. ACCEPTANCE

7.2.1. Upon completion of any Schedule of Requirements item, the Contractor shall conduct testing and inspection in accordance with the Integrated Test, Evaluation and Acceptance Plan (ITEAP) at Annex A Appendix 4.

7.2.2. Acceptance of the DCS&S System shall occur following the successful completion by the Contractor of the final systems acceptance events described in Section 10 of the SOW and in accordance with the ITEAP at Annex A Appendix 4.

7.3. DOCUMENT DELIVERABLES

7.3.1. For the purposes of DEFCON525 (Edn.10/98), Acceptance and DEFCON524 (Edn.10/98), Rejection, all document deliverables shall be accepted once the Authority has reviewed the document and the Authority's Project Manager is satisfied that the deliverable meets the requisite quality. The Authority shall review the document and provide any comments to the Contractor within twenty Business Days of confirming receipt of the document. The Contractor shall then incorporate those comments within a revised document (subject to any further agreement that may be required) which shall be issued to the Authority within ten Business Days of receiving the Authority's comments.

7.3.2. Following receipt of the revised document the Authority shall notify the Contractor of any errors or omissions within ten Business Days. The Contractor shall correct these errors and/or omissions and submit the corrected document to the Authority within five Business Days.

7.3.3. Document deliverables that address or arise from safety or security requirements are not subject to an automatic acceptance. The Contractor shall give the Authority notice of at least twenty Business Days prior to the submission of such deliverable documents.

7.3.4. The Parties shall adopt the following receipting process for document deliverables. If the Party issuing the document or providing comments does not receive confirmation of the receipt of such document or comments from the other Party within two Business Days of having issued such document or comments, the issuing Party shall be responsible for contacting the other Party to establish the whereabouts of such documents or comments.

7.4. VARIATION OF PRICE

7.4.1 The prices stated for items 5 and 6 are Fixed at 2017/2018 price levels. With effect from the [TBA at contract award], the price for Items 5 and 6, and the figures detailed in Annex J Payment and Performance Mechanism shall be adjusted (annually with effect from the [TBA] in each year) in accordance with the following formula:

$$V = P (a+b(O_i/O_0)) - P$$

Where:

V represents the variation of price

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

O represents the index Top – Level Services Producer Price Index (SPPI) – All Services GSO (SIC 2007)s – Output. The associated unique identifier is K8ZU.

O₀ represents the average annual OUTPUT Price Index figure for the base period (2017/2018).

O_i represents the average annual OUTPUT Price Index figure for the preceding year; where 'i' is the relevant Year.

a represents the Non Variable Element (NVE) 10% (0.1)

b represents the Variable Element 90% (0.9) a + b = 1

7.4.2 The prices stated for Item 7, from month 37 post IOC, are fixed at 2017/2018 price levels. Should the Authority task the Contractor to carry out work under Schedule of Requirements Item 7, from month 37 post IOC onwards, the prices shall be adjusted in accordance with Condition 7.4.1 above, using the relevant index from the following list :

- Site Connectivity Package(s) - K388
- Validation Test(s) & Report(s) - K8ZU
- Concurrent Training Event(s) - K388
- Service Level Uplift Package(s) - K8ZU
- Non-Core Hours - K8ZU
- Software User Package(s) - K8ZU
- White Force Training Package(s) - K8ZU
- Capability Enhancement Package(s) - K388

Should any further indexes be required, the Authority shall provide details of the index to be used.

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

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

7.4.5 In the event the agreed index or indices cease to be published (e.g. because of a change in the Standard Industrial Classification), the Authority and the Contractor shall agree an appropriate replacement index or indices, which shall cover to the maximum extent possible the same economic activities as the original index or indices. The methodology outlined by the Office for National Statistics used for rebasing indices (as in condition 7.4.2 above) shall then be applied.

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

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

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

7.4.9 Claims under this Condition shall be submitted to the Bill Paying Branch, certified to the effect that the requirements of this Condition 7.4 have been met.

7.5. LIQUIDATED DAMAGES

7.5.1 It is recognised by the Parties that if the Contractor fails to achieve Initial Operating Capability (IOC) to the satisfaction of the Authority by the contracted IOC Date the Authority will suffer loss and damage.

7.5.2 Accordingly, for each day's delay (including bank holidays and weekends) in achieving IOC pasted the IOC Date the Contractor shall pay the Authority [REDACTED] up to a maximum of [REDACTED] as Liquidated Damages.

7.5.3 The provisions of this condition are without prejudice to any other rights of the Authority under the Contract, including but not limited to those under condition 7.6 of the Contract (Termination). Accordingly, in the event that the Authority terminates the Contract, Liquidated Damages shall be payable under this condition 7 until the date of such termination.

7.5.4 Unless expressly stated by the Authority in writing, the provisions of DEFCON 527 (Waiver) shall apply to the Authority's right to recover Liquidated Damages under this Condition.

7.6. TERMINATION

7.6.1. Without prejudice to the Authorities rights in DEFCON 514 or elsewhere in this Contract, the Authority may terminate the Contract where:

7.6.1.1 the Contractor accumulates Service Credits for six (6) consecutive payment periods above a threshold amount of twenty five (25) or more Service Credits per payment period representing continual poor performance;

7.6.1.2 the Contractor accumulates Service Credits in a single payment period above a threshold amount of one hundred and fifty (150) service credits, representing continual poor performance;

7.6.1.3 the Contractor fails to achieve four (4) consecutive Milestones in the Milestone Payment Plan at Table A – (Pre Operational Phase Milestone Payments) of Annex J to the Contract;

7.6.1.4 the Contractor has paid to the Authority Liquidated Damages (as set out in Condition 7.5 above) of [REDACTED].

7.6.2. If the Authority decides to terminate the Contract under any of the circumstances in Condition 7.6.1 above, the Authority shall inform the Contractor, in a one month's written notification, of its intention to terminate subject to Conditions 7.6.3 and 7.6.4;

7.6.3. On the receipt of written confirmation from the Authority of its intention to terminate the Contract under Condition 7.6.1, the Contractor shall a) where production has not commenced refrain from commencing production and b) where Service provision has commenced only continue the provision of such Service if specifically instructed, in writing, to do so, by the Authority. The Contractor may respond to the notice within ten (10) Business Days of receipt of it, detailing the reasons for failure and including a plan for recovery (the "Recovery Plan") to rectify said failure(s).

7.6.4. The Authority shall review the proposed Recovery Plan and the reasons for failure within ten (10) Business Days of receipt and shall either:

7.7.4.1. instruct the Contractor to commence with the Recovery Plan; or

7.7.4.2. notify the Contractor of immediate Contract termination.

7.6.5. The notices above shall be given in writing by the Authority's Commercial Branch.

7.6.6. Where the Authority has instructed the Contractor to commence the Recovery Plan, the Contractor shall immediately implement the Recovery Plan at its own expense and provide the Authority with weekly updates on its progress until such a time that the Authority is satisfied that the Delivery Schedule and/or the provision of the Services is back on schedule or the agreed revised delivery plan. The Authority shall confirm in writing once this has been achieved.

7.6.7. If the Authority is not satisfied at any time with the progress made during the implementation of the Recovery Plan, or is not confident that the Contractor will be able to fully rectify the failures, then the Authority shall notify the Contractor in writing of the immediate termination of the Contract.

7.6.8. Upon the Authority notifying the Contractor of Contract termination:

- 7.6.8.1. the Contractor shall cease all activity under this Contract and determine all Sub-Contracts; and
- 7.6.8.2. the Authority shall have the right to claim from the Contractor such damages as may have been sustained as a direct result of the Contractor's breach or breaches of the Contract, including but not limited to any costs and expenses reasonably incurred by the Authority in obtaining the Equipment and Services in substitution from another supplier.

7.6.9. The Authority shall not be responsible for any additional costs to the Contractor as a result of Contract termination.

7.6.10. On notice of determination to terminate, the Contractor shall continue to submit monthly invoices up until the date of determination. Should the day of determination fall between monthly periods the Contractor shall include in the final monthly invoice a pro rata calculation for the period from the last monthly adjustment.

7.6.11. In the event that the Contract is terminated or upon expiry, the Contractor agrees to take all reasonable steps to assist the Authority in the necessary training for a replacement contractor and to make available to a replacement contractor copies of all documentation that are necessary for the continuation of the Equipment support as required by the Contract.

7.7. FORCE MAJEURE

7.7.1. 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:

- 7.7.1.1. acts of nature;
- 7.7.1.2. war;
- 7.7.1.3. hostilities;
- 7.7.1.4. fire at any of the Contractor's premises or those of its suppliers except to the extent that the fire was caused by their own negligence.

7.7.2. 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.

7.7.3. Subject to Condition 7.8.4 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.

7.7.4. The maximum extension of time granted under this condition shall be limited to six (6) months after which time the Authority may, on giving written notice to the Contractor, terminate this Contract with immediate effect.

7.8. SELF-TO-SELF DELIVERY

7.8.1. Where any Article to be supplied under the Contract is to be delivered otherwise than being handed over by the Contractor to the Authority, as where an Article is to be delivered by the Contractor to its own premises or to those of a Sub-Contractor ('self-to-self delivery'), the risk in such Article shall (notwithstanding the provisions of DEFCON 612 (Edn. 10/98)) remain vested in the Contractor until such time as the Article is handed over to the Authority.

7.9. INDEMNITY

7.9.1. Subject to Condition 7.9.2, the Contractor shall indemnify the Authority in respect of any loss, damage or claim howsoever arising out of or in consequence of negligent acts or omissions by the Contractor or the Contractor's Personnel or any claims made against the Authority by third Parties in respect thereof and in relation to this Contract.

7.9.2. The Contractor shall not be responsible for any injury, loss, damage, cost or expense if and to the extent that it is caused by the negligence or wilful misconduct of the Authority or the Authority's employees, or by breach by the Authority of its obligations under the Contract.

8. PAYMENTS/RECEIPTS

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

DEFCON522 (Edn.11/16) - Payment

DEFCON534 (Edn.06/17) – Sub-Contracting and Prompt Payment

DEFCON649 (EDN.12/16) – Vesting

8.1. PAYMENT

8.1.1. Payment shall be in accordance with the Payment and Performance Mechanism Terms and Conditions at Annex J.

8.2. BILLING AND PAYMENTS

8.2.1. Claims for payment against Items 2-6 of the Contract shall be submitted on a monthly in arrears basis at a pro rata value of the Firm or Fixed Price for the respective year in accordance with the relevant form details at Annex H.

8.2.2. Claims for payment against Items 7 and 8 of the Contract shall be on satisfactory completion of the task, unless the Authority agrees to render stage payments, and shall be submitted in accordance with the relevant form details at Annex H.

8.3. DISPUTED AMOUNTS

8.3.1. The Authority may withhold payment of any amount it believes the Contractor is not entitled to pursuant to this Contract (a '**Disputed Amount**') pending agreement or determination of the Contractor's entitlement in relation to the Disputed Amount, but shall pay any undisputed amounts on or before the Relevant Day.

8.3.2. The Authority's Commercial Officer will inform the Contractor's Representative in writing if a decision is made to withhold payment of any amount.

8.3.3. Within 5 (five) Business Days following receipt by the Contractor's Representative of any notice served by the Authority's Project Manager pursuant to Condition 8.3.1 and 8.3.2 above, the Contractor's Representative shall respond by notifying the Authority's Commercial Officer as to whether or not it agrees with the statements made in that notice and the grounds for such agreement or disagreement. If the Contractor indicates that it does agree, or if the Contractor's Representative fails to make such a response within that time limit, the Authority shall be entitled:

8.3.3.1. to retain on a permanent basis any amounts withheld pursuant to Condition 8.3.1 above; and

8.3.3.2. to reclaim from the Contractor the amount of any over-payment which may have been made to the Contractor together with interest on any such amount at the rate calculated on a daily basis and compounded quarterly from the date on which the over-payment was made until that amount has been paid in full and whether before or after judgement.

8.3.4. If the Contractor's Representative responds pursuant to Condition 8.3.2 above that it does not agree with all or any of the statements made in any notice served by the Authority pursuant to the Condition 8.2, the matter or matters in question shall be determined under the Dispute Resolution Procedure.

8.3.5. If the determination of any Dispute conducted pursuant to Condition 8.3.4 shows that:

8.3.5.1. the Authority has withheld any amount which the Contractor was entitled to be paid;
or

8.3.5.2. the Contractor has claimed any amount which it was not entitled to be paid,

the Authority shall pay such withheld amount to the Contractor or the Contractor shall repay such wrongly claimed amount to the Authority (as the case may be) with interest in each case on that amount at the determination's rate. This is calculated on a daily basis and compounded quarterly from the date on which payment should have been made (in the case of failure to pay by the Authority), or from the date on which over payment was made (in the case of excessive claims by the Contractor), until all relevant monies have been paid in full and whether before or after judgement.

9. CONTRACT ADMINISTRATION

DEFCON604 (Edn.06/14) - Progress Reports

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

DEFCON605 (Edn.09/14) - Financial Reports *For the purposes of the Contract, the frequency of reports shall be Quarterly.*

DEFCON609 (Edn.06/14) - Contractor's Records

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

DEFCON642 (Edn.06/14) - Progress Meetings

The Contractor shall also comply with the provisions of Appendix 3 to Contract Annex A, SOW.

DEFCON647 (Edn.09/13) - Financial Management Information

9.1. HEALTH AND SAFETY MANAGEMENT

9.1.1. The Contractor shall:

9.1.1.1. comply with the requirements of JSP 375: The MoD Health and Safety Handbook.

9.1.1.3. comply with any other local site health and safety regulations in addition to statutory regulations where the system is sited, as directed by the head of establishment or their authorised representative.

9.1.2. Accidents occurring to the Contractor's representatives or agents in connection with the Contract which are required to be reported in accordance with the Health and Safety at Work Act 1974, and Reporting of Injuries Disease and Dangerous Occurrences Regulations 1995, shall be reported to the Authority. The Contractor will supply such other information as the Authority may request.

9.1.3. The Contractor shall be responsible for the observance by himself, the Contractor's Personnel and any other Contractor's work people of all safety precautions necessary for the protection of himself, his work people and any other persons, including all precautions required to be taken by any Act of Parliament, or of any regulation, or by-law of any local or other authority.

9.2. CONTRACT MANAGEMENT

9.2.1. Each Party shall appoint and retain a contract manager who shall be the primary point of contact for the other Party in relation to matters arising from this Contract. Should the contract manager be replaced, the Party replacing the contract manager shall promptly inform the other Party in writing of the name and contact details for the new contract manager. Any contract manager appointed shall be of

sufficient seniority and experience to be able to make decisions on the day to day operation of the Contract. The Contractor confirms and agrees that it will be expected to work closely and cooperate fully with the Authority's Commercial Officer.

9.2.2. Each Party shall ensure that its representatives (to include, without limitation, its contract manager and, the Contractor's Representative) shall attend review meetings on a regular basis to review the performance of the Contractor under this Contract and to discuss matters arising generally under this Contract. Each Party shall ensure that those attending such meetings have the authority to make decisions regarding the day to day operation of the Contract. Reviews meetings shall take place during the Quarterly Progress Meeting as detailed in Appendix 3, Meetings, of SOW at Annex A to this Contract.

9.2.3. Two weeks prior to each review meeting the Contractor shall provide a written contract management report to the Authority regarding the provision of the Services and the operation of this Contract. Unless otherwise agreed by the Parties in writing, such contract management report shall contain:

- 9.2.3.1. details of the performance of the Contractor when assessed in accordance with the Key Performance Indicators (KPIs), detailed in Annex J to Contract, since the last such performance report;
- 9.2.3.2. details of any complaints from or on behalf of trainees or other Service users, their nature and the way in which the Contractor has responded to such complaints since the last review meeting written report;
- 9.2.3.3. the information specified in the SOW at Annex A.
- 9.6.3.4. a status report in relation to the implementation of any current Remedial Proposals by either Party; and
- 9.6.3.5. such other information as reasonably required by the Authority.

9.2.4. Unless specified otherwise in the Specification and Tender Response Document, the Contractor shall take minutes of each review meeting and shall circulate draft minutes to the Authority within a reasonable time following such review meeting. The Authority shall inform the Contractor in writing of any suggested amendments to the minutes within ten (10) Business Days of receipt of the draft minutes. If the Contractor does not respond to the Authority within such ten (10) Business Days the minutes will be deemed to be approved.

9.2.5. The Contractor shall provide such management information as the Authority may request from time to time within ten (10) Business Days of the date of the request.

9.2.6. The Authority may make changes to the type of management information the Contractor is required to supply and shall give the Contractor at least one (1) month's written notice of any changes.

9.3. **GAINSHARE**

9.3.1. Gainsharing is an approach to the review and adjustment of an existing contract where the adjustment provides benefits to both Parties. It is a mutual activity requiring the agreement of both Parties to the Contract adjustment. The potential for mutual advantage is the key to gainsharing. The gain, benefit or advantage to be shared is not necessarily financial, though financial benefits are likely to feature strongly. Any financial benefits will be shared between the Parties and, where applicable, through the Contractor's supply chain. As a minimum, gainshare reviews shall take place annually during an appropriate Quarterly Progress Meeting, as agreed between the Parties.

9.3.2. During the period of the Contract, the Parties shall endeavor to identify and notify the other Party of any areas of improvement which could be of significant mutual benefit to both Parties, including through collaborative processes. Such gainsharing opportunities shall be listed within the Contractor's Quarterly Progress Reports. Gainshare principles will not affect either the Contractor's freedom to manage as set out in the terms and conditions of the Contract or to rely on the Authority's reasonable approvals as required under the Contract to ensure the smooth and efficient operation of the Contract.

9.3.3. Both Parties acknowledge that there is an agreed baseline for the prices/pricing arrangements in respect of the work to be undertaken under the Contract and that significant Changes to that baseline which lead to cost reductions could form part of any gainshare arrangement.

9.3.4. Each gainshare proposal will be considered on its merits and the Parties shall agree any amendments to the Contract and the Contract Price based on a sharing of the net effect of all identified and quantified costs and benefits for each proposal. The procedure for submission/ approval of gainshare proposals set out at Conditions 9.3.6 to 9.3.8 below shall apply.

9.3.5. Nothing in this Condition shall obligate either Party to agree to any proposal raised by the other Party under this Condition.

9.3.6. If the Authority and/or the Contractor identify a significant process change that could potentially lead to an improvement, then a Cost Benefit Analysis (CBA) shall be undertaken by the organization generating that improvement for agreement by the other Party.

9.3.7. The CBA shall identify the benefits to be gained from such a change both in terms of cost, technical and process improvement. In the event both Parties agree the CBA then the proposed improvement shall be implemented through formal Contract Amendment.

9.3.8. The share of any gains will be defined as part of the activity of the CBA.

9.4. **CONTRACT TRANSITION**

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

9.4.2. To provide for the possibility of a handover to either a successor Contractor or the Authority on termination of the Contract, the Contractor shall make available, in a format which it would expect were it the successor Contractor, the following:

9.4.2.1. All relevant support documentation including repair Specification and hardware that has not yet been provided to the Authority;

9.4.2.2. All Authority holdings;

9.4.2.3. All reports, databases, software produced over the period of the Contract that would be required to continue the provision of Services;

9.4.3. The Contractor shall provide the Authority with all information identified in sub-conditions 9.4.2. above in accordance with the SOW at Annex A, and shall thereafter provide the Authority with an updated version on a rolling 12 month basis up until Contract expiration or termination, unless otherwise stated in the SOW at Annex A.

9.4.4. The Contractor shall comply with the requirements of Annex C - Transfer of Undertakings (Protection of Employment) –TUPE.

9.5.5. For a six (6) month period from termination of the Contract, the Contractor shall co-operate with and give explanation advice and guidance to any successor Contractor or the Authority in all matters that the successor Contractor or Authority may raise as relevant to the past and/or future performance of the Contract.

9.5.6. At the end point of this Contract, The Authority intends to re-compete the Contract in order to meet the requirements described in the Contract. This shall occur once the initial period of Service delivery is complete.

9.5.7. At such time as the support contract is re-competed to ensure fair and reasonable competition the Contractor shall:

9.5.7.1. Make available all Equipment manuals and Service delivery documentation reasonably requested by the Authority;

9.5.7.2. Ensure that all facilities and GFA held is returned to the Authority in a serviceable state;

9.5.7.3. Make available all warranty and licences held;

9.5.7.4. Facilitate inspections and surveys of the facility.

9.5 EARNED VALUE MANAGEMENT

The Contractor shall develop, deliver and update as needed over the term of the Contract, an Earned Value Management Plan (EVMP) in accordance with the requirements stated in Annex A, Appendix 2, DID 17 and DEFCON 647 (Edn 09/13).

Appendix - Addresses and Other Information

1. Commercial Officer

Name: FsAST Comrcl

Address:

Walnut 3a #1317, MOD Abbey Wood, Bristol, BS34 8JH

Email: [REDACTED]

☎ [REDACTED]

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: FsAST 6

Address:

Walnut 3a #1317, MOD Abbey Wood, Bristol, BS34 8JH

Email: [REDACTED]

☎ [REDACTED]

9. Consignment Instructions

The items are to be consigned as follows:

See Schedule of Requirement

3. Packaging Design Authority

Organisation and point of contact:

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

☎

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 Tel 01869 256052 (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

DESFSAST-6b@mod.uk

11. The Invoice Paying Authority (see Note 1)

Ministry of Defence

☎ 0151-242-2000

DBS Finance

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

Liverpool, L2 3YL

Website is:

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

6. For contracts containing DEFCON 5, mauve Copies of MOD Form 640 are to be sent to

DESFAST-6b@mod.uk

(where no address is shown the mauve copy should be destroyed)

12. Forms and Documentation are available through *:

Ministry of Defence, Forms and Pubs Commodity Management

PO Box 2, Building C16, C Site

Lower Arncott

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

Applications via fax or email: DESLCLS-OpsFormsandPubs@mod.uk.

7. Quality Assurance Representative:

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]

NOTES

1. Forms. Hard copies, including MOD Form 640 are available from address in Box 12. , All other invoicing forms e.g. AG Forms 169 and 173, are available from the website address shown at Box 11.

2.* Many DEFCONs and DEFFORMs can be obtained from the MOD Internet Website;

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