



Ministry
of Defence



**THE SECRETARY OF STATE FOR
DEFENCE**

and

SAFRAN Helicopter Engines UK Ltd

TERMS AND CONDITIONS

ENGINES FUTURE SUPPORT

**CONTRACT NUMBER
701580378**

TERMS AND CONDITIONS

THIS CONTRACT is made on 27 March 2024
BETWEEN:

(1) **THE SECRETARY OF STATE FOR DEFENCE** (the "Authority") acting through its authorised Ministry of Defence Commercial Manager within the Merlin Delivery Team hereinafter called the "Authority" and

(2) **SAFRAN HELICOPTER ENGINES UK LTD** ("The Contractor")

BACKGROUND:

- (A) The Authority operates a number of helicopters powered by various marks of the RTM322 gas turbine engine (as further described below) specifically the Merlin Helicopter fleet.
- (B) The Authority wishes to procure in-service support for the Authority's Merlin Helicopter fleet engines to meet its requirements as expressed in the Statement of Work at Schedule A of this Contract.
- (C) The Contractor wishes to provide such support in accordance with the terms of this Contract.

Signatures of Contract 701580378 Merlin Engines Future Support

For and on behalf of Safran Helicopter Engines UK:

Name, Title and Company Position	Redacted FOIA 2000 Section 40 Personal Information
Signature	Redacted FOIA 2000 Section 40 Personal Information
Date	Redacted FOIA 2000 Section 40 Personal Information

For and on behalf of the Secretary of State for Defence:

Name, Title	Redacted FOIA 2000 Section 40 Personal Information
Signature	Redacted FOIA 2000 Section 40 Personal Information
Date	Redacted FOIA 2000 Section 40 Personal Information

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REQUIREMENT

Contractor: SAFRAN HELICOPTER ENGINES UK LTD		MINISTRY OF DEFENCE SCHEDULE OF REQUIREMENTS <u>Engines Future Support</u>	CONTRACT NO. 701580378
			Previous Contract No. CB/JPT/0015
SCHEDULE OF REQUIREMENTS			
ITEM NO	DESCRIPTION	PRICE € (VAT Ex)	
1	The provision of the Core Services as set out in Schedule A, Statement of Work, in accordance with the terms of this Contract.	As detailed at Schedule F	
2	Additional Services in accordance with Schedule H	As detailed at Schedule H	

PART A: GENERAL CONDITIONS**1. DEFCONS AND DEFFORMS****1.1 DEFCONS:**

References in this Contract to any DEFCON shall be construed as a reference to that DEFCON as amended by the following provisions of this Condition 1.1.

The DEFCONS listed in this Condition 1.1, as amended by the same, are incorporated into and form part of this Contract.

DEFCON 5J (Edn 18/11/16)	Unique Identifiers
DEFCON 14 (Edn 11/22)	Inventions And Designs Crown Rights And Ownership of Patents and Registered Designs
DEFCON 15 (Edn 06/21)	Design Rights This DEFCON shall only apply to Additional Services contracted under Schedule H
DEFCON 16 (Edn 06/21)	Repair And Maintenance Information This DEFCON shall only apply to Additional Services contracted under Schedule H
DEFCON 21 (Edn 06/21)	Retention Of Records For the period of retention specified in clause 3 of this DefCon, the retention period for air safety records shall be defined as Platform out of service date plus 4 (four) years in accordance with RA4809(1) Acceptance of Components 3.a.(4)(a).
DEFCON 23 (Edn 06/21)	Special Jigs, Tooling And Test Equipment
DEFCON 68 (Edn 10/22)	Supply Of Data For Hazardous Articles, Materials And Substances
DEFCON 76 (Edn 11/22)	Contractor's Personnel At Government Establishments
DEFCON 82 (Edn 06/21)	Special Procedure For Initial Spares
DEFCON 90 (Edn 06/21)	Copyright This DEFCON shall only apply to Condition 40 Data Pack and Defform 315's
DEFCON 91 (Edn 06/21)	Intellectual Property Rights in Software This DEFCON shall only apply to Additional Services contracted under Schedule H
DEFCON 117 (Edn 07/21)	Supply of Documentation for NATO Codification and Defence Inventory Introduction

OFFICIAL-SENSITIVE COMMERCIAL

DEFCON 126 (Edn 06/21)	<p>International Collaboration</p> <p>For the purposes of Condition 4a to this DEFCON, all copyright material provided by the Contractor under this Contract shall be considered to be supplied under contract to the Authority and may not be issued outside United Kingdom Government Departments except in accordance with the conditions of the Contract</p>
DEFCON 129 (Edn 02/22)	Packaging (For Articles Other Than Munitions)
DEFCON 129J (Edn 18/11/16)	The Use of Electronic Business Delivery Form
DEFCON 501 (Edn 10/21)	Definitions And Interpretations
DEFCON 503 (Edn 07/21)	<p>Formal Amendments To Contract</p> <p>For the purposes of this DEFCON Clause 2 shall not apply</p>
DEFCON 507 (Edn 07/21)	Delivery
DEFCON 513 (Edn 04/21)	Value Added Tax
DEFCON 514 (Edn 08/15)	Material Breach
DEFCON 515 (Edn 06/21)	Bankruptcy and Insolvency
DEFCON 516 (Edn 04/12)	Equality
DEFCON 518 (Edn 02/17)	Transfer
DEFCON 520 (Edn 08/21)	Corrupt Gifts and Payment of Commission
DEFCON 522 (Edn 11/21)	Payment and Recovery of Sums Due
DEFCON 524 (Edn 12/21)	<p>Rejection</p> <p>This DEFCON shall only apply to Additional Services contracted under Schedule H</p>
DEFCON 525 (Edn 10/98)	<p>Acceptance</p> <p>This DEFCON shall only apply to Additional Services contracted under Schedule H</p>
DEFCON 526 (Edn 08/02)	Notices
DEFCON 527 (Edn 09/97)	Waiver
DEFCON 528 (Edn 07/21)	<p>Import and Export Licences</p> <p>For the purposes of Clause 16 of this DEFCON the period shall be 20 Business Days</p>

OFFICIAL-SENSITIVE COMMERCIAL

DEFCON 529 (Edn 09/97)	Law (English)
DEFCON 530 (Edn 12/14)	Dispute Resolution (English Law). The Parties agree, in respect of Clause 1 of DEFCON 530 to follow the procedures set out in Condition 34 (Dispute Resolution, Poor Performance and Termination) of this Contract
DEFCON 531 (Edn 09/21)	Disclosure of Information The Authority may not disclose the information to the OEM competitors
DEFCON 532B (Edn 12/22)	Protection of Personal Data
DEFCON 534 (Edn 06/21)	Subcontracting and Prompt Payments
DEFCON 537 (Edn 12/21)	Rights of Third Parties
DEFCON 538 (Edn 06/02)	Severability
DEFCON 539 (Edn 01/22)	Transparency
DEFCON 550 (Edn 02/14)	Child Labour and Employment Law
DEFCON 566 (Edn 10/20)	Change of Control of Contractor
DEFCON 601 (Edn 04/14)	Redundant Material
DEFCON 602A (Edn 12/17)	Quality Assurance (with deliverable Quality Plan)
DEFCON 604 (Edn 06/14)	Progress Reports
DEFCON 606 (Edn 07/21)	Change and Configuration Control Procedure All changes are a Formal Change
DEFCON 608 (Edn 07/21)	Access and Facilities to be Provided by the Contractor Authority Travel and Subsistence are not required to be provided under this DEFCON
DEFCON 609 (Edn 07/21)	Contractor's Records
DEFCON 611 (Edn 12/22)	Issued Property
DEFCON 612 (Edn 06/21)	Loss Of Or Damage To The Articles
DEFCON 620 (Edn 06/22)	Contract Change Control Procedure
DEFCON 624 (Edn 08/22)	Use Of Asbestos

OFFICIAL-SENSITIVE COMMERCIAL

DEFCON 627 (Edn 11/21)	Quality Assurance – Requirement for a Certificate of Conformity
DEFCON 632 (Edn 11/21)	Third Party Intellectual Property – Rights and Restrictions The Contractor's liability in respect of this DEFCON shall be sought only for actual infringement and not alleged infringement
DEFCON 637 (Edn 05/17)	Defect Investigation And Liability
DEFCON 642 (Edn 07/21)	Progress Meetings
DEFCON 644 (Edn 07/18)	Marking Of Articles
DEFCON 647 (Edn 05/21)	Financial Management Information
DEFCON 649 (Edn 12/21)	Vesting This DEFCON shall only apply to Additional Services contracted under Schedule H
DEFCON 654 (Edn 10/98)	Government Reciprocal Audit Arrangements
DEFCON 656B (Edn 08/16)	Termination for Convenience For the purposes of Clause 1 of this DEFCON, the notice period shall be 90 calendar days
DEFCON 658 (Edn 10/22)	Cyber CIP – SCHEDULE T TO THIS CONTRACT
DEFCON 660 (Edn 12/15)	Official – Sensitive Security Requirements
DEFCON 661 (Edn 06/21)	War Risk Indemnity
DEFCON 670 (Edn 02/17)	Tax Compliance Termination under this DEFCON shall be in accordance with the Contract
DEFCON 671 (Edn 10/22)	Plastic Packagaing Tax
DEFCON 684 (Edn 01/04)	Limitation Upon Claims in Respect of Aviation Products
DEFCON 691 (Edn 03/15)	Timber and Wood Derived Products
DEFCON 694 (Edn 07/21)	Accounting For The Property Of The Authority
DEFCON 697 (Edn 11/22)	Contractors On Deployed Operations
DEFCON 800 (Edn 12/14)	Qualifying Defence Contract
DEFCON 801 (Edn 12/14)	Amendments to Qualifying Defence Contracts

OFFICIAL-SENSITIVE COMMERCIAL

DEFCON 802 (Edn 12/14)	QDC: Open book on Sub-Contracts that are not Qualifying Sub-Contracts
DEFCON 804 (Edn 03/15)	QDC: Confidentiality of Single Source Contract

1.2 DEFFORMS

The DEFFORMS listed in this Condition 1.2 are applicable to this Contract and the Contractor is required to complete these where appropriate in a timely fashion.

8 (04/22)	Contract Issue Letter
10B (12/22)	Acceptance of Offer of Amendment to Contract
68 (09/22)	Hazardous Articles, Materials or Substances Statement by the Contractor
111 (10/22)	Appendix – Addresses and Other Information
129A (02/16)	Application for Packaging Designs and Authorisation for Package Design Work.
129J (09/17)	The Use Of The Electronic Business Delivery Form
315 (12/19)	Contract Data Requirement
528 (02/21)	Import and Export Controls
532 (10/19)	Personal Data Particulars
539A (01/22)	Tenderer's Commercially Sensitive Information
539B (01/22)	Publishable Performance Information – KPI Data Report
691A (03/13)	Timber and Wood-Derived Products Supplied under the Contract–Data Requirements
701 (12/21)	Head Agreement for Licence Terms for Commercial Software Purchased By The Secretary Of State For Defence
711 (04/22)	Notification of Intellectual Property Rights (IPR) Restrictions

PART B: SPECIAL CONDITIONS

2. DEFINITIONS AND INTERPRETATION

2.1 Definitions

In addition to those detailed in DEFCON 501 the terms set out in Schedule Q (Definitions) shall apply.

2.2 Interpretation

In this agreement except where the context otherwise requires:

- i. the masculine includes the feminine and vice versa;
- ii. the singular includes the plural and vice versa;
- iii. any reference to any enactment, order, regulation, instrument, code, standard or other similar instrument shall be construed as a reference to the enactment, order, regulation, instrument (including any EU instrument), code, standard, or other similar instrument as amended, replaced, consolidated or re-enacted;
- iv. a reference to a person includes firms, partnerships, associations, corporations, other bodies corporate or Crown Bodies and their successors and permitted assignees or transferees;
- v. headings are for convenience of reference only and shall not be taken into consideration in the interpretation or construction of this Agreement;
- vi. words "include", "includes", "including" and "included" shall be construed as illustrative and without limitation to the words which follow (or in the case of "included" precede) those words;
- vii. any obligation not to do anything shall include an obligation not to suffer, permit or cause that thing to be done;
- viii. a reference to EUR or €, shall mean Euros;
- ix. the words "day", "month" and "year" mean calendar day, calendar month and calendar year unless otherwise stated;
- x. any references to time refer to GMT, unless otherwise stated.

3. PRECEDENCE

3.1 In the event of any conflict between the provisions of this Contract and/or between this Contract and any other document referred to in this Contract, then the following order of precedence shall apply:

- a. DEFCON 537
- b. Special Conditions of Contract
- c. 1.1 DEFCONS
- d. Statement of Work (Schedule A)

- e. Other Schedules (including all their attachments, appendices and annexes);
- f. any other document referred to in this Contract.

4. DISCREPANCIES, ERRORS AND OMISSIONS

- 4.1 If either Party identifies any discrepancy, error or omission in the provisions of this Contract it shall notify the other Party in writing of such discrepancy, error or omission as soon as reasonably practical.
- 4.2 The Parties shall seek to agree such amendments as may be necessary to resolve such discrepancy, error or omission as soon as reasonably practical.
- 4.3 Where the Parties fail to reach agreement on the amendments necessary to resolve such discrepancy, error or omission within 10 Business Days of a formal notification in writing and either Party considers that the discrepancy, error or omission to be material to its rights or obligations under this Contract, then the matter shall be referred to the dispute resolution procedure in accordance with the dispute resolution procedure set out in Condition 34.

5. ENTIRE AGREEMENT

- 5.1 This Contract sets out the entire agreement between the Parties to the Contract and supersedes all prior arrangements and understanding relating to its subject matter.
- 5.2 Notwithstanding Condition 5.1, nothing shall preclude either Party from bringing any claim or action against the other Party in the event of fraudulent misrepresentation.

6. CONTRACT PERIOD

- 6.1 This Contract and the rights and obligations of the Parties shall take effect on the 01 April 2024 and will expire 31st March 2030.
- 6.2 In respect of the outputs detailed within Schedule A (Statement of Work) the Contractor grants the Authority the irrevocable option to extend the Contract for 2 separate further consecutive periods of 5 years from the Contract end date (i.e. 6+5+5 years). The Authority shall exercise this option, by giving written confirmation of the Authority's requirements including updated Schedule E no later than 24 Months before Contract's expiration. Any variation of the Terms and Conditions of the extension shall be agreed between the Parties during the first 12 months of the 24 months' notice.

7. CO-OPERATION AND PARTNERING

- 7.1 The Contractor will be a participant within the Authority's Rotary Wing Enterprise (RWE) programme for Merlin, to contribute to improving the availability of the Merlin Helicopter fleet. The Rotary Wing Enterprise (RWE) creates a collective responsibility to work together across the Enterprise to achieve the Defence Strategic Outcomes, as defined in Defence Plan, through delivery of the Merlin capability. The Contractor will engage with the Enterprise stakeholders and will participate in meetings to determine the future direction of RWE, including considering opportunities for continuous improvement at the Merlin-engines and enterprise level.

If it is determined that there are changes to the Contract required by the Authority or the Contractor, then this will be evaluated as part of the Contract Change at Condition 31.

8. CONTRACTOR'S STATUS

- 8.1 Nothing in this Contract shall be construed as creating a partnership or as a contract of employment between the Authority and the Contractor.
- 8.2 Save as expressly provided otherwise in this Contract, the Contractor shall not be, nor deemed to be, an agent of the Authority and the Contractor shall not hold itself out as having authority or power to bind the Authority in any way.
- 8.3 Neither Party shall place or cause to be placed any order with suppliers or otherwise incur liabilities in the name of the other Party or any representative of the other Party.

PART C: NOT USED

9. NOT USED

PART D: OPERATIONS (CORE SERVICES)

10. BASELINE ASSUMPTIONS

- 10.1 The Parties acknowledge that the terms of this Contract have been agreed on the basis of the assumptions detailed in Schedule E (Baseline Assumptions).
- 10.2 Any actual or anticipated changes to any Baseline Assumptions detailed in Schedule E (Baseline Assumptions) during the Contract Period shall be notified in writing by the Authority to the Contractor as soon as reasonably practicable after the Authority becomes aware of any such changes or anticipated changes. Change due to the implementation of Surge or flying in Harsh shall be considered a change in Baseline Assumptions for the purposes of this Condition.
- 10.3 The effects of any Changes necessary as a consequence of a change in any of the Baseline Assumptions will be determined in accordance with Condition 31 (Contract Change), Schedule F (Pricing and Payment for Core Services), Schedule G (Performance for Core Services and (where applicable) Schedule H (Pricing for Additional Services), provided always that:
 - a. the Contractor shall only be entitled to propose any Changes where the Contractor has presented evidence to the satisfaction of the Authority, acting reasonably, that the changed Baseline Assumptions result in unavoidable additional costs which the Contractor has made all reasonable efforts to mitigate.
 - b. the Contractor's entitlement to any Change (and/or any other relief and/or compensation) to this Contract as the result of any change to the Baseline Assumptions will be reduced to the extent (if any) that any act or omission of the Contractor was the cause of or contributed to the change in the Baseline Assumptions. Such reduction shall be considered on a case-by-case basis.

11. PROJECT AND PROGRAMME MANAGEMENT RECORDS AND REPORTING

- 11.1 The Contractor shall provide project and programme management information in accordance with the detailed arrangements set out in Schedule L (Governance), and elsewhere in the Terms and Conditions of this Contract.

12. SURGE

- 12.1 Surge is flying hours in excess of the Planned EFH (ML) and which relates to specific circumstances of, state of emergency, period of tension, transition to war, hostilities as dealt with in this Condition 12 for a specific period of time.
- 12.2 Unless it experiences a Force Majeure event, the Contractor shall continue to provide the Services at Schedule A (Statement of Work) as required:
- a. during any state of emergency (whether or not involving hostilities), periods of tension, transition to war and during hostilities; and
 - b. during any period of Surge that is required by the Authority in the Contract Period.
- 12.3 In the circumstances of Condition 12.2, the Authority shall advise the Contractor of any changes or additions it requires to meet the increased level of support required and a change to the provisions of the Contract shall be sought if the period of time required for the Surge period is more than 30 calendar days, provided that until such agreement or determination of any change the Contractor shall continue to provide the Services.
- 12.4 During any period where the circumstances in this Condition 12 prevail, the Authority shall not be entitled to apply withholds in accordance with Schedule G (Performance for Core Services) in respect of the period relating to the performance of that part of the Services affected by the Contractor's compliance with Condition 12 together with such further period of time as evidenced and is reasonably necessary as agreed between the Authority and the Contractor, to allow the Contractor to fully recommence its affected obligations.

13. RETENTION OF ARTICLES

- 13.1 In the event that this Contract is terminated all engines and associated equipment (the "Retained Articles") that have been provided before the date of Termination by the Contractor in support of the Service (the Retained Articles) shall be retained by the Authority until the Authority has put in place alternative provisions of the same or similar Services. The Authority shall pay a reasonable price, determined as if under single source pricing arrangements (DEFCONS 801, 802 and 804) to compensate the Contractor in relation to the period for which the engines and associated equipment are retained.

14. TITLE, RISK AND TRANSPORT

- 14.1 The Authority shall throughout the Contract Period retain title to those assets that it has made available as GFA pursuant to Schedule D (GFA Obligations of the Authority).
- 14.2 Title to Parts and LRUs provided by the Contractor and incorporated in Repairable Articles during the course of the Services shall vest in the Authority at

the time when the Parts or LRUs are incorporated in the Repairable Articles (as the case may be).

- 14.3 Title to Parts and LRUs which have been removed and replaced during the course of the Services will, if not already vested in the Contractor, pass to the Contractor once such Parts and LRUs are removed from the Repairable Article by or on behalf of the Contractor.
- 14.4 Risk of Loss and damage to Articles that are returned to the Contractor pursuant to a Demand shall transfer to the Contractor at the time the item is Handed-Over. Unless otherwise specified in an order, Equipment deliveries by the Authority to the Contractor shall be made according to FCA Main Operating Base (Incoterm ICC issue 2010).
- 14.5 Risk of Loss and damage to Articles shall transfer to the Authority at the time the Article is Handed-Back or delivered to the Authority at a MOB or by exception at Purple Gate. Unless otherwise specified in an order, Equipment deliveries by the Contractor to the Authority shall be made according to DAP Main Operating Base (Incoterm ICC issue 2010).
- 14.6 Title and Risk to 1st and 2nd Line Parts provided by the Contractor will pass to the Authority at the time the Delivery Note 650s are signed by both Parties, prior to this the risk of Loss or damage to the Articles remains with the Contractor.
- 14.7 The Contractor shall be responsible for transporting the Articles supplied under the Contract from the point of origin to the consignee. The Authority shall be responsible for all loading and unloading of the Articles upon arrival at the site including, where necessary, the provision of special handling equipment.

15. ITEMS CONSIDERED BEYOND ECONOMIC REPAIR

- 15.1 The Contractor may, upon giving notice to the Authority, refer any Article submitted for repair under this Contract to the Authority for the determination of whether such Article is Beyond Economic Repair (BER). The Contractor's notice to the Authority will give details of the Article and why the Contractor believes that it is Beyond Economic Repair.
- 15.2 The Authority will, as soon as reasonably practicable following the Contractor's notice referred to in Condition 15.1, consider the Article which is the subject of the notice and determine whether such Article is Beyond Economic Repair.
- 15.3 If the Authority determines that the relevant Article is Beyond Economic Repair and should be repaired to meet the on-going fleet requirements, then the Contractor will repair the relevant Article as an Additional Service under Schedule H (Pricing for Additional Services)
- 15.4 If the Authority determines that the relevant Article is not Beyond Economic Repair, then the Contractor will repair and/or recondition such Repairable Article to the standards required by, and in accordance with, the provisions of this Contract.
- 15.5 Where the Contractor does not accept the determination of the Authority, then they may refer the matter for determination in accordance with the dispute resolution procedure set out at Condition 34.

- 15.6 Items declared BER shall be declared as scrap to the Authority for disposal advice.

16. SAFETY AND QUALITY ASSURANCE

- 16.1 The Contractor shall deliver the Services and its obligations under the Contract and in accordance with the Safety and Quality Requirements set out in Schedule C (Quality, Safety, Regulatory Articles and DEFSTANS). Third party assurance of compliance to ISO9001:2015 and ISO45001:2018 is a precondition for the rest of the contractual obligations set out at 16.2 to 16.11 below. The Contractor shall comply with MAA Regulations listed in Schedule C Paragraph 4.
- 16.2 The Contractor shall provide and maintain evidence to support the engine safety case required by the Authority.
- 16.3 The Contractor shall comply with the Regulations set out in Schedule C (Quality, Safety, Regulatory Articles and DEFSTANS) by following:
- a. the acceptable means of compliance ("AMC") prescribed therein;
 - b. where there is more than one AMC, an AMC or AMCs agreed by the Contractor with the Regulator; or
 - c. other alternative means as may be agreed by the Contractor with the Regulator.

Modifications:

- 16.4 The Contractor shall, where they seek to initiate or incorporate any modification to the engine(s) or ancillaries, follow the processes as described in the MAA Regulatory Articles identified in the Contract.
- 16.5 The Contractor shall also submit a proposal to the Authority for incorporating any such modification into the engine fleet(s).
- 16.6 Where the proposal cannot be accepted by the Authority the Contractor shall consult and revise their proposal to address and accommodate the Authority's identified concerns.
- 16.7 Where the proposal is accepted by the Authority it shall be formally incorporated within the Contract by the Contract Change Process under Condition 31 (Contract change mechanism and adjustments to Contract price and payment plan) of this Contract.

Safety and Environmental Management:

- 16.8 The Parties recognise and accept the Authority's roles and duties as Airworthiness Authority in relation to the Aircraft and the Engine and that the Contractor accepts an obligation to act in accordance with the Authority's instructions in this regard.
- 16.9 The Parties acknowledge the importance of the Authority maintaining unfettered leadership of matters in relation to the safe operation of the Aircraft Fleet in discharging its duties as set out above.

16.10 The Contractor shall maintain the Contractor safety management system as defined at Schedule A (Statement of Work) of the Contract. The Authority shall review the acceptability of the Contractor's safety management system from time to time as part of its continuing MAOS and DAOS audits.

16.11 The Contractor will advise the Authority of hazards that are processed through its hazard reporting procedure (known as the Notice To Operators procedure) where those Notice to Operators are relevant to the Authority's operation of Engines.

17. INTEGRATED LOGISTICS SUPPORT

17.1 The Contractor shall provide the Services under Item 1 of the Schedule of Requirements, and Item 2 when appropriate, to satisfy the requirements of Schedule M (Integrated Logistics Support).

PART E: OPERATIONS (ADDITIONAL SERVICES)

18. ADDITIONAL SERVICES

18.1 The Authority may procure Additional Services in accordance with the terms of Schedule H (Pricing for Additional Services).

PART F: OPERATIONS (EXIT)

19. DISPOSAL AND EXIT MANAGEMENT PLAN

19.1 In the event of termination, or on expiry of the Contract, the provisions of Schedule P (Disposal and Exit Management Plan) shall apply. The Contractor shall provide an initial draft plan to the Authority no later than 3 months of Contract Award, then to be agreed between the Authority and the Contractor in the following 3 months, the Contractor shall maintain, review and resubmit this plan annually for endorsement by the Authority.

20. TRANSFER OF ARTICLES ON EXPIRY OR TERMINATION OF THIS CONTRACT

20.1 The Contractor shall make available for collection at the Contractor's facility within 60 calendar days or as the Parties otherwise agree, of the expiry date or Termination date of the Service of this Contract:

- a. all GFA Repairable Articles, under this Contract in whatever state; and
- b. all other Issued Property (other than GFA Repairable Articles) in accordance with DEFCON 611.

20.2 Upon expiry of the Contract the Contractor agrees to co-operate with the Authority to such extent as they may be reasonably required to do so for a period of up to 6 months from the date of expiry, such period to be determined by the authority, to ensure an orderly and efficient transition from the management by the Contractor to the management by the Authority or some other person, excluding the Contractor's OEM competitors.

20.3 The Authority and the Contractor shall agree a fair and reasonable price for satisfying the provisions of this Condition.

21. CONTINUING OBLIGATIONS

21.1 Save as otherwise expressly provided in this Contract:

- a. termination of this Contract shall be without prejudice to any accrued rights or obligations under this Contract prior to termination; and
- b. termination of this Contract shall not affect the continuing rights and obligations of the Contractor and the Authority under;
 - i. any provision of this Contract which is expressed to survive termination or which is required to give effect to such termination or the consequences of such termination;
 - ii. any other provision of this Contract which is a continuing obligation or by implication is intended by the Parties to survive termination in order to give effect to its meaning.

PART G: SUPERVENING EVENTS

22. FORCE MAJEURE

22.1 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:

- a. acts of nature;
- b. war;
- c. hostilities;
- d. (accidental) 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;
- e. national strikes;
- f. foreign government policy;
- g. terrorism;
- h. biohazards;
- i. UK or French ban on trade with source country (permanent or temporary);
- j. sonic booms; and
- k. civil commotion

22.2 As soon as practicable the Contractor shall informally notify the Authority on the occurrence of a Force Majeure Event. Notwithstanding the informal notification, the Contractor shall formally notify within fifteen (15) Business Days 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, according to the

knowledge of the Contractor at that time. The Contractor shall provide updates to the Authority on a monthly basis or as shall be agreed between the Parties.

- 22.3 Subject to Condition 22.4 below and by agreement between the Parties acting reasonably the Contractor shall be entitled to an appropriate extension of time for performing such obligations provided always that the Contractor has used 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.
- 22.4. The maximum extension of time granted under this Condition shall be limited to 18 (eighteen) weeks after which time the Authority may, on giving written notice to the Contractor, terminate this Contract, without seeking compensation from the Contractor, with immediate effect. The Parties may agree on a longer extension of time on a case-by-case basis.
- 22.5 On the occurrence of a serious event, not included in the list above, that is outside the control of the Contractor, and that has a significant effect on the Contractor's obligations under this contract, the Contractor shall notify the Authority, detailing the effect of the event on the Contractor's obligations under this Contract and the actions proposed to mitigate its effect. The Authority will consider the notification, and may exceptionally agree to treat it in accordance with the processes in this Condition 22, where it considers reasonable the provision of an appropriate extension of time for performing such obligations, provided always that the Contractor has used all reasonable endeavours, both to mitigate the effects of the Event, and to facilitate the continued performance of its obligations under this Contract.

23. TRANSITION

- 23.1 The Contractor shall proceed with the agreed Transition detailed at Schedule B (Transition) to this Contract.

PART H: RELATIONSHIP MANAGEMENT, MONITORING AND SUPPLY CHAIN

24. EARNED VALUE MANAGEMENT

- 24.1 The Contractor shall operate and report against an Earned Value Management System (EVMS) in the form described in Schedule O (Earned Value Management System Reporting Requirements) to Contract.

PART I: PRICING, PAYMENT & PERFORMANCE

25. PRICING AND PAYMENT

- 25.1 The Authority shall pay the Contractor for services provided under this Contract in accordance with Schedule F (Pricing and Payment for Core Services) and Schedule H (Pricing and Payment for Additional Services). Payment for Core Services will be subject to performance and failure to meet performance may result in deferred or withheld payments in accordance with Schedule G (Performance for Core Services).
- 25.2 In the event of termination of this Contract, the Authority shall pay the Contractor for all legitimate costs incurred to the date of termination. This may include, but is not limited to, commitments, liabilities and expenditure which shall be demonstrated to be reasonable and properly chargeable in accordance with the Single Source Contract Regulations 2015 and must be supported by evidence to

demonstrate that these costs were incurred by reason of the termination of this Contract.

25.3 VARIATION OF PRICE (VOP)

Redacted FOIA 2000 Section 43

26. KEY PERFORMANCE INDICATORS, PERFORMANCE MONITORING AND AUDIT

26.1 The Contractor shall:

- a. Comply with the provisions of Schedule G (Performance for Core Services) in respect of performance reporting and monitoring; including EVMS reporting (Schedule O).
- b. Deliver the Services in such a way as to meet or exceed the required performance level for each Key Performance Indicator as set out in Schedule G (Performance for Core Services); and
- c. Where the Contractor fails to meet the Required Performance Level for any one or more KPIs, the Authority shall implement payment withholds in accordance with Schedule G (Performance for Core Services).

26.2 The Authority's Representative may at any time and with reasonable prior notice (of no less than 20 Business Days, or 5 Business Days for urgent quality issues) undertake inspection of and/or audit the performance by the Contractor of any of the Services and/or the performance by the Contractor of any of the Contractor's other obligations under this Contract. The Contractor will cooperate in relation to any inspection and/or audit.

27. COMMERCIAL SALES EXPLOITATION

- 27.1 In the event of a prospective sale of Articles developed and funded by the Authority under an Additional Services Task to this Contract, the Contractor and the Authority shall determine the sums due in respect of such a sale in accordance with the specimen Commercial Exploitation Agreement at Schedule J (Specimen Commercial Exploitation Agreement) before authority for the sale to proceed is given.
- 27.2 Additional Service will be agreed on a case-by-case basis whether or not a Commercial Exploitation Levy will apply.

28. ROYALTIES AND LICENCES

- 28.1 In the event that royalty payments or licences to manufacture are required to enable performance of the Contract, the Contractor shall be responsible for making whatever arrangements are necessary to obtain such agreements and pay any fees levied. The cost of any such fees or agreements shall be included within the Contract price. The Authority will not become involved in any dispute or negotiation over the settling of royalty payments or manufacturing licences.
- 28.2 Where items delivered to the Authority include proprietary software (including third party proprietary software) which requires a licence or licences to enable the Authority to use the item, the Contractor shall ensure and has ensured prior to Contract Start Date that it has obtained from the supplier the appropriate rights to

allow the Authority to copy and use the third party software for the peaceful enjoyment of the items.

- 28.3 It is highlighted by the Parties that no royalty payments nor licences are identified in the frame of this Contract at the Start Date of this Contract.

PART J: CHANGE

29. REPRESENTATIVES

References to Authority and Contractor:

- 29.1 Except as provided otherwise under this Contract, any reference to the Authority and the Contractor in respect of:

- a. the giving of consent;
- b. the delivering of any notices; or
- c. the doing of any other thing that may reasonably be undertaken by an individual acting on behalf of the relevant Party, shall be deemed to be references to the Authority's Representatives and the Contractor's Representatives (respectively) in accordance with this Condition 29.

Contractor's Representatives:

- 29.2 The Contractor's Representatives shall be those persons detailed in the Parties' Representatives Contact List. The Contractor shall ensure that the Contractor's Representatives shall have the appropriate training, skills and delegated authority to fulfil the responsibilities of the Contractor's Representatives and to co-ordinate and ensure the Contractor's proper discharge of its obligations under this Contract.

Authority of Contractor's Representatives:

- 29.3 Each of the Contractor's Representatives shall have the full authority to act on behalf of the Contractor for those purposes for which that Contractor's Representative is appointed. The Authority and the Authority's Representative shall be entitled to treat any act of the relevant Contractor's Representative in connection with those aspects of this Contract for which that Contractor's Representative is appointed, as being expressly authorised by the Contractor and the Authority shall not be required to determine whether any express authority has in fact been given.

Authority's Representatives:

- 29.4 The Authority's Representatives shall be those persons referenced in DEFFORM 111 and detailed in the Parties' Representatives Contact List.

Authority of Authority's Representatives:

- 29.5 Each of the Authority's Representatives shall have full authority to act on behalf of the Authority for those purposes for which that Authority's Representatives is appointed as referenced in DEFFORM 111. The Contractor and the Contractor's Representative shall be entitled to treat any act of the relevant Authority's Representative in connection with those aspects of this Contract for which that

Authority's Representative is appointed as referenced in DEFFORM 111 as being expressly authorised by the Authority (save where the Authority has notified the Contractor in writing that such authority has been revoked) and the Contractor shall not be required to determine whether any express authority has in fact been given.

30. AUTHORISATION OF ADDITIONAL SERVICES

30.1 All Additional Services agreed under this Contract shall be in accordance with Schedule H (Pricing for Additional Services).

31. CONTRACT CHANGE MECHANISM AND ADJUSTMENTS TO CONTRACT PRICE AND PAYMENT PLAN

31.1 The Contract price and Payment Profile shall be subject to adjustment:

- a. where there is a Change to the terms of this Contract pursuant to Schedule F, Paragraph 3 (Pricing and Payment for Core Services) and DEFCON 620 and that Change affects the Contract price and/or the Payment Profile;
- b. where an equitable adjustment is agreed pursuant to Schedule F, Paragraph 3 (Pricing and Payment for Core Services), DEFCON 620 and Schedule H (Pricing for Additional Services).

31.2 For the purposes of this Contract, any change made under DEFCON 620 shall be considered a Formal Change and subject to the process specified at DEFCON 503.

32. LEGISLATIVE RISK

32.1 The Contractor shall comply with all Legislation applicable to the provision of the Services and the Contractor's other obligations under this Contract.

32.2 If the Contractor believes a Discriminatory Legislation Change has occurred or is likely to occur, it shall notify the Authority in writing as soon as practicable and such notice shall stipulate:

- a. the nature of such Discriminatory Legislation Change;
- b. the date such Discriminatory Legislation Change will come into force and;
- c. any change which in the Contractor's opinion is necessary to this Contract;

32.3 Following receipt of the notification identified in Condition 32.2, the Parties shall negotiate a Contract change to address the Discriminatory Legislation Change.

32.4 In the event of any dispute as to whether a Discriminatory Legislation Change has occurred, or where no appropriate Contract change can be implemented, the Parties shall submit to the dispute resolution procedure set out in DEFCON 530 and Condition 34.

PART K: EMPLOYMENT

33. TRANSFER OF UNDERTAKINGS (PROTECTION OF EMPLOYMENT) TUPE

33.1 The Parties acknowledge and agree that carrying out the Services in accordance with the terms of this Contract is not intended to constitute a relevant transfer for

the purposes of TUPE and accordingly that such provisions are not intended to operate so as to terminate or transfer any of the contracts of employment of employees of the Authority.

- 33.2 The Authority therefore agrees subject to Condition 33.3, to indemnify, and keep the Contractor indemnified, against all losses which the Contractor may suffer or incur arising out of or in connection with the employment, termination of employment or other obligations in respect of any employee or former employee of the Authority including for compensation for loss of office, redundancy, unfair dismissal, or breach of Contract in tort or otherwise, in respect of or arising out of his/her being or ceasing to be an employee of the Authority, or arising out of any failure by the Authority to provide information or engage in consultation.
- 33.3 The indemnity in Condition 33.2 will not apply to any such claims by any former employee of the Authority who the Contractor takes active steps to hire in connection with the Contract after the Start Date of this Contract.
- 33.4 The Contractor therefore agrees, subject to Conditions 33.5 and 33.6, to indemnify and keep the Authority indemnified, against all Losses which the Authority may suffer or incur arising out of or in connection with the employment, termination of employment or other obligations in respect of any employee or former employee of the Contractor including for compensation for loss of office, redundancy, unfair dismissal, or breach of Contract in tort or otherwise, in respect of or arising out of his/her being or ceasing to be an employee of the Contractor, or arising out of any failure by the Contractor to provide information or engage in consultation.
- 33.5 The indemnity in Condition 33.4 will not apply to any former employee of the Contractor who the Authority takes active steps to hire after the Start Date of this Contract.
- 33.6 Schedule R (TUPE) contains the agreement between the Parties with respect to any subsequent relevant transfer (as defined in Schedule R (TUPE)). The indemnities in Condition 33 will not apply in addition to the indemnities in Schedule R (TUPE).

PART L: TERMINATION AND POOR PERFORMANCE

34. DISPUTE RESOLUTION, POOR PERFORMANCE AND TERMINATION

Poor Performance or Breach

- 34.1 Where the Authority considers the Contractor:
- a. failing to meet the KPI performance thresholds identified in Schedule G (Performance for Core Services) and in doing so incurring withholds under the arrangements in Schedule F (Pricing and Payment for Core Services);
 - b. fails to provide management information under this Contract;
 - c. withholds information concerning hazardous Articles, Mixtures or Substances under DEFCON 68;
 - d. commits a relevant breach under DEFCON 520;
 - e. breaches the requirements of DEFCON 566;

- f. breaches the requirements of DEFCON 670;
- g. suffers a Force Majeure event that cannot be recovered in the timescales specified at Condition 22;
- h. fails to meet other Contract deliverables that would lead to termination as defined in the Contract and by mutual agreement of the Parties that the Contractor has breached these other deliverables;

the Authority shall notify the Contractor in writing in accordance with the flow diagram shown below at Figure 1. For the purposes of this process and any timescales associated, this notification shall serve as the trigger.

The Contractor shall submit a Remediation Plan within 20 Business days of the other Authority's written notice or provide advice that they will not submit a Remediation Plan within 10 Business Days of such notice.

Remediation

34.2 Where a Remediation Plan has been provided by the Contractor, the other Authority may within 20 Business Days;

- a. accept the Remediation Plan in writing and require the Contractor to enact the plan;
- b. request in writing that amendments are made to the Remediation Plan and specify the date by which the revised Remediation Plan must be provided to the Authority (and on receipt of such revised Remediation Plan this Condition 34.2 shall apply to the Remediation Plan as amended).
- c. inform the Contractor in writing that it does not consider that the Remediation Plan or revised Remediation Plan will be sufficient to rectify the Default, in which case an urgent joint review to reach a mutually agreed Remediation Plan will take place; each Party acting reasonably.

In the event that the Parties fail to agree on a Remediation Plan after 34.2.c, or in the event that the Contractor fails to comply with the Remediation Plan, the Authority may refer to the Dispute Resolution Procedure at Condition 34.8 below or terminate the Contract for material breach under the terms of this Condition 34 and DEFCON 514.

34.3 Where the Authority reasonably considers the Remediation Plan has failed or will fail to return performance to the contracted levels or compliance with the Contractor's obligation or where a Remediation Plan has not been submitted, it may, require a further Remediation Plan to be submitted. In case the Parties fail to agree on a Remediation Plan or in case the Contractor fails to comply with the Remediation Plan, the Authority may refer to the Dispute Resolution procedure at Condition 34.8 below and/or serve a termination notice under this Condition 34 and DEFCON 514 if the underperformance or breach shall be deemed to be a material breach.

34.4 The Authority's rights under Conditions 34.1 to 34.3 are a prior step to its rights under DEFCON 514 to terminate for material breach.

Contract Performance

- 34.5 For the purposes of this Contract the Parties shall follow the material breach process at Figure 1 above when considering a failure of performance under this Contract. The material breach process shall be followed by both Parties prior to any termination notice being issued.

Other Arrangement Further to a Termination for Breach

- 34.6 In the event of a Termination for Default, pursuant to Condition 40, the Contractor commits to provide ML1 and ML2 maintenance data to the Authority and ML4 repair and spares services to the Authority on a time and material basis to enable the Authority to maintain the Merlin RTM322 Engines fleet.

Partial Termination

- 34.7 In the event that the parties agree to terminate a part of this service, under DEFCON 514 or 656B, the Parties shall negotiate the new scope of the service, the prices and the performance in good faith and in accordance with DEFCON 503 and Condition 31.

Dispute Resolution

- 34.8 Either Party may raise a dispute relating to the Contract by issuing a written notice to the other Party.
- 34.9 The Parties will attempt in good faith to resolve any dispute or claim arising out of or relating to this Contract by negotiation in accordance with DEFCON 530 through the use of the dispute resolution procedure detailed below.
- 34.10 Both Parties agree in this respect that, in the first instance, any dispute should be addressed and resolved at the lowest working level possible.
- 34.11 If it is not possible to resolve the issue within one (1) calendar month then the issue shall be escalated to the managers identified below, by notice in writing by one Party to the other ("date of escalation"):

Authority's Project Manager: Merlin Service Delivery Manager
Contractor's Project Manager: Head of Military Business

- 34.12 Should it not be possible to resolve the issue within one (1) calendar month of the date of escalation then the senior representatives as defined below shall meet as soon as practicable but no later than one (1) calendar month from the date of escalation and endeavour to resolve the dispute between them:

For the Authority: Merlin Delivery Team Leader
For the Contractor: Commercial & Customer Support Director

- 34.13 Either Party may, by giving reasonable notice in writing to the other, nominate any other person or persons to be the senior representative of that Party in place of any person or persons currently acting as its senior representative.
- 34.14 In the event that the Parties' senior representatives cannot reach an agreement within two (2) calendar months from the date of escalation, then the remaining

provisions of DEFCON 530 shall apply and the parties may use any alternative dispute resolution procedure on which they agree, or refer it to arbitration.

PART M: NOT USED

35. NOT USED

PART N: OTHER

36. SUBSTANCES THAT DEplete THE OZONE LAYER

- 36.1 The Contractor acknowledges that, as a signatory to the Montreal Protocol on substances that Deplete the Ozone Layer, the Authority is committed to the reduction and consumption of the substances controlled under the Montreal Protocol.
- 36.2 No controlled substances shall be introduced by the Contractor (or any of its Sub-Contractors) by any modifications or changes to the Articles or to any GFA without the prior consent of the Authority.
- 36.3 Should any modifications or changes be required to the Articles or to any GFA the Contractor shall (and shall procure that its Sub-Contractors shall) seek to eliminate any controlled substances, which are currently utilised in the manufacture and production of the Articles or any GFA, provided that the Contractor shall (and shall procure that its Sub-Contractors shall), prior to taking any action in respect of such elimination, seek the prior approval of the Authority to take such proposed action.

37. OBSOLESCENCE

- 37.1 The Contractor will provide an obsolescence service in compliance with SR118 (Proactive Obsolescence Management) and SR119 (Resolution of Obsolescence issues).
- 37.2 Obsolescence means :
- Any supplier to the Contractor, or the Contractor, ceasing the supply of any item required by the Contractor in the performance of its obligations under the Contract with the customer; such as
- a. Equipment that has been superseded by new technology of higher specification or functionality; or
 - b. Equipment that is no longer in production, or
 - c. Equipment for which the method of manufacture is no longer available; or
 - d. Equipment for which a material from which it is manufactured is no longer available.
- 37.3 In respect of this Condition 37, the Contractor shall bear all obsolescence costs with the exception of the circumstance identified at 37.4 below for the duration of the Contract (including any option years taken up by the Authority in accordance with Condition 6.2 above) subject to the Limit of Liability cap at Condition 39.

- 37.4 The Contractor shall not bear obsolescence costs related to (i) Regulatory changes or (ii) specific obsolescence requirements defined by the Authority.

38. WARRANTIES

- 38.1 The Contractor warrants that it will perform the Services under this Contract in a workmanship manner according to Good Industry Practice.
- 38.2 The Authority accepts and agrees that the only warranty provided by the Contractor as to the Equipment and Services covered and supplied under this Contract shall be to provide the Services for the duration of this Contract.
- 38.3 Upon termination or expiry of this Contract, the warranty provisions, as granted by the Contractor on the Equipment under the corresponding sale thereof and as included in Schedule K of the Contract, shall apply for the remaining period of warranty if any.
- 38.4 It is expressly agreed between the Authority and the Contractor that the benefits of the warranties granted by the Contractor to the Authority pursuant to this Condition in relation to the Services and Equipment provided pursuant to this Contract are (to the extent permitted by law) exclusive and sole warranties and remedies and granted in lieu of any and all warranties, conditions and other terms whatsoever expressed or implied by statute or common law including, without limitation, merchantability or fitness, or quality, or against hidden, concealed or latent defect).

39 LIMITATIONS ON LIABILITY

Definitions

- 39.1. In this Condition 39 the following words and expressions shall have the meanings given to them, except where the context requires a different meaning:

“Charges” means any of the charges for the provision of the Services, Contractor Deliverables and the performance of any of the Contractor’s other obligations under this Contract, as determined in accordance with this Contract;

“Data Protection Legislation” means all applicable Law in force from time to time in the UK relating to the processing of personal data and privacy, including but not limited to:

(1) UK GDPR;

(2) DPA 2018; and

(3) the Privacy and Electronic Communications (EC Directive) Regulations 2003 (SI 2003/2426) as amended, each to the extent that it relates to the processing of personal data and privacy;

“Default” means any breach of the obligations of the relevant Party (including fundamental breach or breach of a fundamental term) or any other default, act, omission, negligence or statement of the relevant Party, its employees, servants, agents or subcontractors in connection with or in relation to the subject matter of this Contract and in respect of which such Party is liable to the other. In no event shall a failure or delay in the delivery of an Authority responsibility or an activity to

be carried out by the Authority or its representatives in accordance with the Contract be considered a Default;

‘DPA 2018’ means the Data Protection Act 2018;

“Law” means any applicable law, subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978, regulation, order, regulatory policy, mandatory guidance or code of practice judgment of a relevant court of law, or directives or requirements of any regulatory body, delegated or subordinate legislation or notice of any regulatory body;

“Term” means the period commencing on the date on which this Contract takes effect and ending on the date in accordance with Condition 6 above or on earlier termination of this Contract.

“Withhold” means the amount that shall be deducted from the monthly service charge in the event of a failure by the Contractor to meet the agreed Service Levels as set out/referred to in Schedule G (Performance for Core Services);

‘UK GDPR’ means the General Data Protection Regulation (Regulation (EU) 2016/679) as retained in UK law by the EU (Withdrawal) Act 2018 and the Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019;

Unlimited liabilities

39.2. Neither Party limits its liability for:

39.2.1 death or personal injury caused by its negligence, or that of its employees, agents or sub-contractors (as applicable);

39.2.2 fraud or fraudulent misrepresentation by it or its employees;

39.2.3 breach of any obligation as to title implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982; or

39.2.4 any liability to the extent it cannot be limited or excluded by law.

39.3 The financial caps on liability set out in Conditions 39.4 and 39.5 below shall not apply to the following:

39.3.1 for any indemnity given by the Contractor to the Authority under this Contract, including but not limited to:

39.3.1.1 the Contractor's indemnity in relation to DEFCON 91 (Intellectual Property in Software) and DEFCON 632 (Third Party IP - Rights and Restrictions);

39.3.1.2 the Contractor's indemnity in relation to TUPE at Schedule R;

39.3.2 for any indemnity given by the Authority to the Contractor under this Contract, including but not limited to:

39.3.2.1 NOT USED;

39.3.2.2 the Authority's indemnity in relation to TUPE under Schedule R

39.3.3 breach by the Contractor of the Commercial Officer to include as appropriate DEFCON 532B and Data Protection Legislation; and

39.3.4 to the extent it arises as a result of a Default by either Party, any fine or penalty incurred by the other Party pursuant to Law and any costs incurred by such other Party in defending any proceedings which result in such fine or penalty.

39.3.5 For the avoidance of doubt any payments due from either of the Parties to the other in accordance with DEFCON 811 or the Defence Reform Act 2014 and/or the Single Source Contract Regulations 2014, as amended from time to time, shall not be excluded or limited under the provisions of Clause 1.4 and/or 1.5 below.

Financial limits

39.4 Subject to Clauses 39.2 and 39.3 and to the maximum extent permitted by Law:

39.4.1 Throughout the Term the Contractor's total liability in respect of losses that are caused by Defaults of the Contractor shall in no event exceed:

39.4.1.1 in respect of DEFCON 76 £ pounds [Redacted FOIA 2000 Section 43] in aggregate;

39.4.1.2 in respect of DEFCON 514 £ pounds [Redacted FOIA 2000 Section 43] in aggregate;

39.4.1.3 in respect of DEFCON 611 £ [Redacted FOIA 2000 Section 43] in aggregate; and

39.4.1.4 NOT USED;

39.4.2 without limiting Condition 39.4.1 and subject always to Conditions 39.2, 39.3 and 39.4.3, the Contractor's total liability throughout the Term in respect of all other liabilities (but excluding any withhold paid or payable in accordance with Schedule G, whether in contract, in tort (including negligence), arising under warranty, under statute or otherwise under or in connection with this Contract shall be £ pounds [Redacted FOIA 2000 Section 43] in aggregate;

39.4.3 on the exercise of any and, where more than one, each option period or agreed extension to the Term, the limitation of the Contractor's total liability (in aggregate) set out in Conditions 39.4.1 and 39.4.2 above shall be fully replenished such that on and from each such exercise or extension of the Term, the Authority shall be able to claim up to the full value of the limitation set out in Conditions 39.4.1 and 39.4.2 of this Contract.

39.5 Subject to Conditions 39.2, 39.3 and 39.6, and to the maximum extent permitted by Law the Authority's total liability (in aggregate) whether in contract, in tort (including negligence), under warranty, under statute or otherwise under or in connection with this Contract shall in respect of all liabilities (taken together) be

limited to the Charges paid by the Authority in the relevant Contract Year in respect of any and all claims in that Contract Year.

39.6 Condition 39.5 shall not exclude or limit the Contractor's right under this Contract to claim for the Charges.

Consequential loss

39.7 Subject to Conditions 39.2, 39.3 and 39.8, neither Party shall be liable to the other Party or to any third party, whether in contract (including under any warranty), in tort (including negligence), under statute or otherwise for or in respect of:

39.7.1 indirect loss or damage;

39.7.2 special loss or damage;

39.7.3 consequential loss or damage;

39.7.4 loss of profits (whether direct or indirect);

39.7.5 loss of turnover (whether direct or indirect);

39.7.6 loss of business opportunities (whether direct or indirect); or

39.7.7 damage to goodwill (whether direct or indirect),

even if that Party was aware of the possibility of such loss or damage to the other Party.

39.8 The provisions of Condition 39.7 shall not restrict the Authority's ability to recover any of the following losses incurred by the Authority to the extent that they arise as a result of a Default by the Contractor:

39.8.1 any additional operational and administrative costs and expenses arising from the Contractor's Default, including any costs paid or payable by the Authority:

39.8.1.1 to any third party;

39.8.1.2 for putting in place workarounds for the Contractor Deliverables and other deliverables that are reliant on the Contractor Deliverables; and

39.8.1.3 relating to time spent by or on behalf of the Authority in dealing with the consequences of the Default;

39.8.2 any or all wasted expenditure and losses incurred by the Authority arising from the Contractor's Default, including wasted management time;

39.8.3 the additional cost of procuring and maintaining in place transitional assistance and replacement deliverables for the remainder of the Term and any option period or agreed extension to the Term (including legal and other consultants' fees, re-procurement project costs, other expenses associated with such exercise and any increase in the fees for the replacement services over and above the Contract price that would have been payable for the relevant Contractor Deliverables);

- 39.8.4 any losses arising in connection with the loss, destruction, corruption, inaccuracy or degradation of Authority data, or other data or software, including, to the extent the Authority data, other data or software can be recovered or reconstituted, the fees, costs and expenses of reconstituting such Authority data, data or software;
- 39.8.5 damage to the Authority's physical property and tangible assets, including damage under DEFCON 76 and 611;
- 39.8.6 costs, expenses and charges arising from, or any damages, account of profits or other award made for, infringement of any third-party Intellectual Property Rights or breach of any obligations of confidence;
- 39.8.7 any additional costs incurred by the Authority in relation to the Authority's contracts with a third party (including any compensation or interest paid to a third party by the Authority) as a result of the Default (including the extension or replacement of such contracts);
- 39.8.8 any fine or penalty incurred by the Authority pursuant to Law and any costs incurred by the Authority in defending any proceedings which result in such fine or penalty; or
- 39.8.9 any savings, discounts or price reductions during the Term and any option period or agreed extension to the Term committed to by the Contractor pursuant to this Contract.

Invalidity

- 39.9 If any limitation or provision contained or expressly referred to in this Condition 39 is held to be invalid under any Law, it will be deemed to be omitted to that extent, and if any Party becomes liable for loss or damage to which that limitation or provision applied, that liability will be subject to the remaining limitations and provisions set out in this Condition 39.

Third party claims or losses

- 39.10 Without prejudice to any other rights or remedies the Authority may have under this Contract (including but not limited to any indemnity claim under DEFCONs 91 and 632 or at Law), the Authority shall be entitled to make a claim under this Contract against the Contractor in respect of any losses incurred by the Authority which arise out of a claim made against the Authority by a third party under any contract with that third party provided that such third party claim:
 - 39.10.1 arises naturally and ordinarily as a result of the Contractor's failure to provide the Contractor Deliverables or failure to perform any of its obligations under this Contract; and
 - 39.10.2 is a type of claim or loss that would have been recoverable under this Contract if the third party were a party to this Contract (whether as the Authority or the Contractor), such claim to be construed as direct losses for the purpose of this Contract.

No double recovery

39.11 Neither Party shall be entitled to employ such rights and remedies available to it so as to seek to recover more than once in respect of the same loss, but the Authority shall be entitled to use (singly or together) such rights and remedies available to the Authority so as to recover the full extent of any recoverable losses suffered or incurred, including any remedies the Authority may have against any guarantor.

40. PROVISION OF DATA PACK

40.1 The Contractor will produce, maintain and update a Data Pack which will enable the Authority or some other persons, excluding the Contractor's OEM competitors to continue the repair and maintenance services carried out at ML1 and ML2 for the Merlin Engines fleets covered by this Contract.

40.3 The Data Pack shall include but is not limited to the following:

- Maintenance Manual
- Illustrated Parts Data
- Service Bulletin Index
- Modification Index
- Service Letter Index
- Index Notice to Operators

This list could be completed by other documents produced by the Contractor and that the Parties commonly consider as mandatory to perform the repair and maintenance services carried out at ML1 and ML2 and shall be supplied at no additional cost for the Authority, even if this request is received after the expiry or termination of this Contract up to a maximum of five (5) years further to expiry or termination.

40.3.1 In that respect and where required, information shall include the appropriate authorisation for use so that the Authority or some other persons excluding the Contractor's OEM competitors, does not infringe on any Intellectual Property Rights.

40.4 The Data Pack shall be available to the Authority on request and the Contractor shall provide access within 90 Business Days. If this Contract should Expire or Terminate the Contractor shall provide the Data Pack to the Authority (i) within 90 Business Days of Expiry or 90 Business Days upon receiving notification that this Contract shall be Terminated and (ii) that the Data Pack is required.

40.5 It is recognised by both Parties that the provision of the Data Pack is to allow the Authority to continue to support the Merlin aircraft fleets upon termination or expiry of this Contract. The Contractor accepts that the Data Pack may be shared with other persons excluding the Contractor's OEM competitors. The Data Pack shall not be used by the Authority nor other persons, for any other purpose than carrying out ML1 and ML2 repair and maintenance services for the Authority's RTM322 Engines embodied in the Authority's Merlin fleets.

41. SOCIAL VALUE

41.1 The Cabinet Office Social Value Model ensures that all procurement decisions fully consider UK Social Value, as required by HM Treasury Green Book. It sets out the Government's social value priorities for procurement.

41.2 Social Value is the consideration of the social, economic and environmental impact of HM Government projects and programmes. It has a lasting impact on individuals, communities and the environment and the Government has significant opportunity and responsibility to maximise Social Value benefits effectively and comprehensively through its commercial activity.

41.3 The Social Value of a project can be considered to be its legacy. The Social Value of a project could be the impact it has on its local community through providing access to training for those from a disadvantaged background or through employing people from the local area.

41.4 Social Value is also one of the ways in which the Government can achieve the United Nations Sustainable Development Goals.

41.5 The three priority Social Value themes most relevant for Defence are:

- a. tackling economic inequality;
- b. fighting climate change; and
- c. equal opportunity

These three priority Social value themes give a clear focus for Defence and its suppliers in the application and delivery of the Model.

41.6 The Contractor, by accepting this Contract, agrees to consider these themes as part of their usual business and to work with the Authority to seek ways to benefit social value when required to do so.

41.7 The Contractor shall update annually on its progress following the below key Social Value streams.

- a) Participation in the Armed Forces Covenant
- b) Equality and Diversity strategy deployed in the company
- c) Progress on Carbon Reduction achievement
- d) Strategy of working with our major subcontractor to encourage Social Value actions