



**DE&S**

**Contract Number:**  
ARTYSYS/00260

**Description:**  
ARTYSYS/00260 – DJFI (Dismounted Joint Fires Integrator)

## RECITALS

1. For the purposes of this Contract (ARTYSYS/00260) and its associated Annexes:
  - a. The abbreviation WD denotes Working Day. A Working Day is defined as Monday to Friday excluding any UK Public Holidays.
  - b. The abbreviation CA and use of the term Contract Award denotes the Contract Effective Date. The Contract Effective Date is the date agreed upon by both parties for beginning the period of performance under the Contract and will be defined as 18 January, 2021.
  - c. The Contract End Date is the date agreed upon by both parties for the end of the period of performance under the Contract and will be defined as 31 March, 2026.
  - d. All Defence Standards (DEFSTAN), NATO Standardization Agreements (STANAG), Allied Quality Assurance Publications (AQAP), British (European Harmonised) Standards (BS EN), Army Equipment Support Publications (AESP), United States Military Standard (MIL-STD) and any other defined standards set, or manuals listed, in this Contract that are within the public domain or to be provided by the Authority to the Contractor as Government Furnished Information (GFI) are agreed to be the extant versions and/or issue numbers at the Contract Effective Date.


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## 1. SCHEDULE OF REQUIREMENTS

<b>Elbit Systems UK Ltd</b> 	<b>MINISTRY OF DEFENCE</b>	<b>Contract No</b>  <b>ARTYSYS/00260</b>
	<b>Schedule of Requirements for</b> <b>ARTYSYS/00260 - Dismounted - Joint Fires</b> <b>Integrator (D-JFI)</b>	
<b>Issued With</b>  <b>ARTYSYS/00260</b>	<b>On</b>  <b>Contract Effective Date – 18 January, 2021</b>	<b>Previous Contract No</b>  <b>N/A</b>

### Requirements

Item Number	Reference	Description	Delivery Date	Consignee	FIRM Price £ (Ex-VAT)
1		Supply of quantity 434, as defined in Line Items 1a and 1b, of Dismounted-Joint Fires Integrator – Integrated System in accordance with the Systems Requirement Document at Annex A and the Statement of Work at Annex B to the Contract.	Main Equipment Delivery Date (MEDD)  of D-JFI system	See box 9 of DEFFORM 111	£ 

Item Number	Reference	Description	Delivery Date	Consignee	FIRM Price £ (Ex-VAT)
1a		<p>Supply of quantity 142 FST configurations of Dismounted-Joint Fires Integrator – Integrated System, in accordance with the Systems Requirement Document at Annex A and the Statement of Work at Annex B to the Contract.</p> <p>FST configurations include FST and FST(-) variants. Quantities for each configuration variant are specified in the Statement of Work Para 3 and configuration breakdowns are defined at Annex Z to the Contract. All pricing is defined at Annex L to the Contract.</p>	<p>Main Equipment Delivery Date (MEDD)</p> <p>██████████</p> <p>of D-JFI system</p>	<p>See box 9 of DEFFORM 111</p>	<p>£ ██████████</p>
1b		<p>Supply of quantity 292 JTAC configurations of Dismounted-Joint Fires Integrator – Integrated System, in accordance with the Systems Requirement Document at Annex A and the Statement of Work at Annex B to the Contract.</p> <p>JTAC configurations include JTAC, JTAC(L), JTAC(-) and HQ-TACP variants. Quantities for each configuration variant are specified in the Statement of Work Para 3 and configuration breakdowns are defined at Annex Z to the Contract. All pricing is defined at Annex L to the Contract.</p>	<p>Main Equipment Delivery Date (MEDD)</p> <p>██████████</p> <p>of D-JFI system</p>	<p>See box 9 of DEFFORM 111</p>	<p>£ ██████████</p>

Item Number	Reference	Description	Delivery Date	Consignee	FIRM Price £ (Ex-VAT)
2		<p>Provide in-service support in respect of Dismounted-Joint Fires Integrator.</p> <p>Support shall be in accordance with Work Package 3 of the Statement of Work at Annex B to the Contract.</p> <p>a. Spares Inclusive  1 – Year 1  2 – Year 2  3 – Year 3</p>	<p>Equipment Delivery Date (EDD)</p> <p>██████████</p> <p>of D-JFI system until the end of 3 complete years</p>		<p>████████████████████</p>
3		Travel and subsistence required in the performance of the Contract for delivery of the Dismounted-Joint Fires Integrator.	N/A		£ ██████████
4		Undertake ad hoc tasks in accordance with Condition 3.8 as and when requested by the Authority using the rates at Annex N.	██████████ ██████████ ██████████ ██████████ ██████████ ██████████ ██████████ ██████████		£ ██████████



Item Number	Reference	Description	Delivery Date	Consignee	FIRM Price £ (Ex-VAT)
<b>Contract Options</b>					
5		<p>OPTION 1 Provide in-service support for one year in respect of Dismounted-Joint Fires Integrator.</p> <p>Support shall be in accordance with Work Package 3 of the Statement of Requirement at Annex B and as outlined in a newly defined Work Package derived from historical data provided by the initial 3-year Support Contract. (This will be an Annex to the Contract if the option is taken up.)</p> <p>a. Spares Inclusive 1 – Year 4</p>	FF		£
6		<p>OPTION 2 Provide in-service support for one year in respect of Dismounted-Joint Fires Integrator.</p> <p>Support shall be in accordance with Work Package 3 of the Statement of Requirement at Annex B and as outlined in a newly defined Work Package derived from historical data provided by the initial 3-year Support Contract plus additional year as outlined in Option 1 above. (This will be an Annex to the Contract if the option is taken up.)</p> <p>a. Spares Inclusive 1 – Year 5</p>	FF		£

## **2. GENERAL CONDITIONS**

DEFCON 501 (Edn 11/17) - Definitions and Interpretations

DEFCON 503 (Edn 12/14) – Formal Amendments to Contract

DEFCON 515 (Edn 02/17) - Bankruptcy and Insolvency

DEFCON 516 (Edn 04/12) – Equality

DEFCON 518 (Edn 02/17) – Transfer

DEFCON 520 (Edn 05/18) - Corrupt Gifts and Payments of Commission

DEFCON 526 (Edn 08/02) – Notices

DEFCON 527 (Edn 09/97) – Waiver

DEFCON 528 (Edn 07/17) - Import and Export Licences

NOTE: The Contractor's attention is drawn to Clause 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 they have 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 Contracts Branch to this effect in the same timescale.

NOTE: For the purposes of Clause 16 of DEFCON 528, both free fields are agreed to be 30 working days.

DEFCON 529 (Edn 09/97) - Law (English)

DEFCON 530 (Edn 12/14) - Dispute Resolution (English Law)

DEFCON 531 (Edn 11/14) - Disclosure of Information

DEFCON 532B (Edn 04/20) - Protection of Personal Data

DEFCON 537 (Edn 06/02) - Rights of Third Parties

DEFCON 538 (Edn 06/02) – Severability

DEFCON 539 (Edn 08/13) – Transparency

DEFCON 550 (Edn 02/14) - Child Labour and Employment Law

DEFCON 566 (Edn 12/18) - Change of Control of Contractor

DEFCON 620 (Edn 05/17) – Contract Change Control Procedure

DEFCON 658 (Edn 10/17) – Cyber

Note: Further to DEFCON 658, the Cyber Risk Level of the Contract is MODERATE as defined in DEF STAN 05-138 Issue 2.

DEFCON 659A (Edn 02/17) - Security Measures

DEFCON 670 (Edn 02/17) – Tax Compliance

DEFCON 691 (Edn 03/15) – Timber and Wood-Derived Products

## **2.1. INTERPRETATION & PRECEDENCE**

- 2.1.1. In the event of any conflict in the Contract documentation, the precedence stated in DEFCON 501 (Edn 11/17) shall prevail.
- 2.1.2. In the event of any conflict in any document, or any conflict between documents with the same order of precedence, the parties will agree the method of dealing with the conflict. Should parties be unable to agree a resolution to the conflict, the Authority shall be entitled to give directions as to which part of the relevant document or which document shall take precedence over which other part or which another document.
- 2.1.3. The Authority's decisions in the matter shall be final and conclusive and the Contractor agrees that the Contract shall be construed accordingly.

## **2.2. ENTIRE AGREEMENT**

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

## **2.3. SUB-CONTRACTS**

- 2.3.1. Without prejudice to the Contractor's entire obligation to the Authority to perform the Contract in all respects and to perform a service as contracted irrespective of any breach or default by any person other than the Authority with whom the Contractor has contracted whether by way of sub-contract or otherwise, the Contractor shall where specified include in any sub-contract the same conditions as are included in the Contract, modified if necessary to apply to the sub-contractor. If, in any particular case, the Contractor is unable to comply with this condition, it shall report the circumstances to the Authority's Commercial Branch (see Box 1 of Appendix to Contract) and await further instructions before placing the sub-contract or order.
- 2.3.2. In the event that design or development of any items is required under the Contract, the Contractor shall not enter into any design or development until the sub-contractor has entered into a Design Rights and Patents (Sub-Contracts Agreement) with the Authority, an example of which is set out in DEFFORM 177 at Annex E to the tender. Two copies of the Sub-Contracts Agreement shall be signed by the Sub-Contractor and the Authority and a copy shall be retained by both parties.

- 2.3.3. The Contractor shall notify the Authority's Commercial Branch in writing of any proposed change to the sub-contracting plans agreed at the time of contract award. The Contractor shall provide a full explanation of the reasons for such a change. Such notification shall not be taken as cause to vary other terms and conditions of the Contract. Any change in sub-contracting arrangements shall be subject to the prior approval of the Authority, whose approval shall not be unreasonably withheld or delayed.
- 2.3.4. The Contractor shall furnish the Authority's Commercial Branch with a copy of any sub-contract, if so requested and at no cost to the Authority.

## **2.4. LANGUAGE**

- 2.4.1. All notices, correspondence, documentation, meetings and inspections are to be provided under the Contract necessary for the management and administration of the Contract and the monitoring of the execution of the Contract shall be provided in the English language, text font Arial, font size 11.

## **2.5. EXPORT LICENSES**

- 2.5.1. The Contractor shall be responsible for securing all export licences necessary to enable it to meet all obligations and requirements of the Contract.
- 2.5.2. The Authority will apply for Technical Assistance Agreement(s) during the Tendering period for associated Government Furnished Assets.
- 2.5.3. The Contractor shall keep the DE&S Director Defence Supply Chain Operations and Movements (DSCOM) (see Box 10 of DEFFORM 111 – Appendix to Contract) informed on this matter and, in respect of purchases from the USA, the UKDPO Licence Administrator (British Defence Staff (Washington) BFPO 2, Tel. No. 001-202-588-6765).
- 2.5.4. The Contractor shall notify the Commercial Manager (see Box 1 of DEFFORM 111 – Appendix to Contract) and provide supporting evidence, if delay in delivery of any Item in the Schedule of Requirements is likely to arise because of delay in the issue of export documentation. In the event of delays being incurred due to a set-back in the issue of US Export Documentation the parties shall promptly meet to consider and select available options to mitigate such delays.

## **2.6. TECHNICAL ASSISTANCE AGREEMENT**

- 2.6.1. Where the Contractor is required to use a Technical Assistance Agreement (TAA) for work originating from the USA it shall promptly notify the Authority and seek comments on the contents of any TAA, where such comment shall be provided within ten (10) business days. Subject to timely comment from the Authority, the Contractor or its sub-Contractors shall apply for a TAA for all aspects of work to be performed under the Contract where possible prior to the placement of the Contract. A copy of the TAA, or any subsequent amendments, shall be provided to the Authority immediately it has been approved by the US State Department and signed by all the interested parties.

- 2.6.2. The Authority and the Contractor agree that in the unlikely event of rescission of existing licences/TAA by the US Government such rescission shall not constitute default or breach of this Contract, provided it is not as a result of any act or omission by the Contractor or its sub-contractors.

## **2.7. PUBLICITY AND COMMUNICATIONS WITH THE MEDIA**

- 2.7.1. The Contractor shall not and shall ensure that any employee or sub-contractor shall not communicate with representatives of the press, television, radio or other media or any matter concerning the Contract or unless the Authority has given its prior written consent or as otherwise required to comply with legislation.

## **2.8. INDEMNITY FOR SAFETY FAILURE LOSS**

- 2.8.1. Safety Failure Loss means any loss, damage, costs or expenses (including legal fees and court costs) of the Contractor arising out of or in connection with a failure by the Authority to comply with any of its responsibilities as set out in the latest agreed DEF STAN 00-056 Part 2 Issue 5 Compliance Matrix.
- 2.8.2. The Authority shall accept liability and indemnify the Contractor for any Safety Failure Loss resulting from all third-party claims against the Contractor, to the extent that the Authority is responsible for the failure.
- 2.8.3. The Contractor shall inform the Authority within five (5) business days of any written claim made against it for which it is indemnified by the Authority pursuant to condition 2.8.1 above. The Authority shall, at its discretion, be entitled to take control of the conduct of any such claim, which shall include the right to settle the claim. Where the Authority exercises this right, the Contractor shall do all that is reasonable to assist the Authority in its defence of the claim. The Authority will consult the Contractor throughout conduct of the claim and will give consideration of any representations which the Contractor may make. Consultation with the Contractor and settlement of claims shall not diminish the Contractor's obligations under this condition 2.8.3.
- 2.8.4. In the event that the Authority decides not to take control of the conduct of the claim, and without prejudice to the Authority's right to take control of the claim at a later stage, it shall promptly notify the Contractor of its decision.

## **2.9. SECURITY MEASURES**

- 2.9.1. For the purposes of DEFCON 659A (Edn 02/17), the "secret matter" of the Contract shall be as defined in the Security Aspects Letter (SAL) at Annex H to Contract. The Contractor shall confirm in writing to the Authority's Commercial Manager detailed in Box 1 of the Appendix to Contract (DEFFORM 111) that the definition of the "secret matter" has been brought to the attention of the person directly responsible for the security of the Contract, that the definition is understood, and that measures can and will be taken to safeguard the "secret matter" and it shall immediately refer any difficulties in these respects to the Authority.
- 2.9.2. The Contractor shall nominate a representative who shall be responsible for all security matters and shall carry out duties in accordance with this condition. The Authority shall be notified of the nominated representative within 10 business days of contract commencement.

## **2.10. RESPONSIBILITY OF CONTRACTOR**

- 2.10.1. The Contractor shall accept responsibility for all work performed under the Contract, whether by itself or by its sub-contractor(s).
- 2.10.2. The Contractor shall deliver all the Contract Deliverables (goods and services) in accordance with the procedures defined in Annex B and Annex F to the Contract, as approved by the Artillery Systems (Arty-Sys) Team Project Manager. (identified at Box 2 of DEFFORM 111 Appendix to Contract.)

## **2.11. CONTRACTOR'S PERSONNEL**

- 2.11.1. For the purpose of this Contract, the term "Contractor's Personnel" shall include:

- Systems Engineers and those involved in the technical development of the solution;
- ILS Managers and those involved in developing and delivering the support solution;
- Project Management personnel;
- Project Controls personnel;
- Security Managers/Officer – those responsible for developing the solution against the Authority's security requirements;
- Lead System Safety Practitioner;
- Quality Manager; and
- Environmental Manager

- 2.11.2. The Contractor shall bear full responsibility for the actions of Contractor's Personnel throughout the duration of the Contract. The Contractor agrees that it will provide suitable qualified personnel, and all other resources necessary, to complete the Contract.

- 2.11.3. The Contractor's Personnel employed under this Contract shall be suitably qualified and experienced personnel and use reasonable skill and care in the performance of the Contract.

- 2.11.4. The Contractor shall record the following details; job title, job specification, relevant qualifications and experience of all the Contractor Personnel at Clause 2.11.1 to be employed on the Contract.

- 2.11.5. The Contractor shall take all reasonable steps to avoid changes of Contractor Personnel assigned to and accepted for work under this Contract. Prior written agreement to substitute with similarly skilled personnel is to be sought from the Authority.

- 2.11.6. Contractor Personnel employed under the Contract must have appropriate security clearances, qualifications and competence and in all reasonable respects be acceptable to the Authority.

- 2.11.7. The Contractor shall appoint a single point of contact responsible for the performance of this Contract (Contractor's Manager) and notify the Authority in writing.

2.11.8. The Contractor shall promptly inform the Authority of the absence (or anticipated absence) of the Contractor's Manager. If the Authority requires, the Contractor shall provide a suitably qualified replacement.

## **2.12. THE CONTRACTOR'S RECORDS**

2.12.1. The Contractor shall (and shall procure that its sub-contractors shall) at all times, and in accordance with good industry practice, maintain all records in the possession, custody or control of the Contractor (or the sub-contractor (as the case may be)) relating to this Contract and the provision of the Contractor Deliverables (without prejudice to any other express provisions in this Contract relating to such information):

2.12.1.1. of all incidents relating to health, safety, the environment and security which occur during the Contract period to the extent that the Authority is not legally obliged to do so as owner of the Authority sites;

2.12.1.2. of all claims made by a Third Party against either party that are submitted to the Contractor and/or a sub-contractor in connection with this Contract;

2.12.1.3. of all disputes dealt with pursuant to the dispute resolution procedure that arise during the Contract period

2.12.1.4. of all certification and/or authorised documentation relating to the attainment of necessary consents, Third party quality standards and/or evidence of compliance with any specified Def Stan requirements;

2.12.2. The Authority shall be entitled to disclose the records set out in condition 2.12.1. (*The Contractor's Records*) to potential follow-on contractors as the Authority may reasonably require.

2.12.3. The records shall be retained for a period of at least six (6) years from:

2.12.3.1. the end of the Contract period; or

2.12.3.2. the final payment, whichever occurs latest.

## **2.13. WARRANTY**

2.13.1. In the event that the Contractor obtains a warranty(s) with any of its sub-contractors, the Contractor shall pass the benefits of the relevant warranty to the Authority.

## **2.14. CONTROLLED INFORMATION**

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

2.14.2. 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.

2.14.3. The Contractor shall:

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

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

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

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

2.14.3.5. act diligently to ensure that:

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

2.14.3.5.2. employees to whom Controlled Information is disclosed are made aware of and required to comply with the terms of this Condition.

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

2.14.4.1. 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.

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

2.14.4.3. 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,

2.14.4.4. 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.



2.14.5. 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:

- 2.14.5.1. 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;
- 2.14.5.2. 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;
- 2.14.5.3. that the information concerned was lawfully provided by a third party without restriction on use or further disclosure; or
- 2.14.5.4. from its records, that the information was derived independently of the Controlled Information;

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

### **3. SPECIFICATIONS, PLANS, ETC**

DEFCON 68 (Edn 02/19) - Supply of Hazard Data for Articles, Materials and Substances

DEFCON 82 (EDN 11/16) - Special Procedures for Initial Spares

DEFCON 117 (Edn 10/13) - Supply of Information for NATO Codification Purposes

DEFCON 129 (Edn 07/19) - Packaging (For Articles Other Than Munitions)

DEFCON 502 (Edn 05/17) - Specifications Changes

DEFCON 524A (Edn 02/20) – Counterfeit Materiel

DEFCON 601 (Edn 04/14) - Redundant Materiel

DEFCON 602A (Edn.12/17) – Quality Assurance with Deliverable Quality Plan

DEFCON 606 (Edn. 06/14) – Change and Configuration Control Procedure

DEFCON 607 (Edn 05/08) - Radio Transmissions

DEFCON 608 (Edn 10/14) - Access and Facilities to Be Provided by the Contractor

DEFCON 624 (Edn 11/13) - Use of Asbestos

DEFCON 625 (Edn 10/98) – Co-operation on Expiry of Contract

NOTE: For the purposes of DEFCON 625, Clause 7.8.5 will take precedence only in as much as support for transition is to be provided for the stated period of up to twelve months from the date of termination of the Contract.

DEFCON 627 (Edn 12/10) - Requirement for a Certificate of Conformity

DEFCON 644 (Edn 07/18) - Marking of Articles

### **3.1. SPECIFICATIONS**

3.1.1. The Contractor shall provide the Contractor Deliverables in accordance with the System Requirement Document at Annex A, the Statement of Requirement at Annex B, good industry practice, all necessary consents, legislation and British standards that are appropriate to the provision of the Contractor Deliverables.

3.1.2. The parties to this Contract recognise that the Contractor shall provide a capability to undertake repairs and calibrations as per Item 2 of the Schedule of Requirements.

### **3.2. QUALITY ASSURANCE REQUIREMENTS**

3.2.1. The following quality assurance requirements shall apply:

AQAP 2110 Edition D Version 1 – NATO Quality Assurance Requirements for Design, Development and Production; and

AQAP 2105 Edition C Version 1 - NATO Requirements for Deliverable Quality Plans

AQAP 2210 Edition A Version 2 – NATO Supplementary Software Quality Assurance Requirements to AQAP 2110; and

DEF STAN 05-61 Part 1, Issue 6 – Quality Assurance Procedural Requirements – Concessions; and

DEF STAN 05-057 Issue 7 – Configuration Management of Defence Materiel; and

DEF STAN 05-61 Part 4, Issue 3 – Contractor Working Parties.

3.2.2. The Contractor shall implement, maintain and document an ISO 9001:2015, or equivalent i.e. AS9100, compliant Quality Management System (QMS), as certified by a UKAS accredited 3rd party certification body. The scope of the Certification shall be appropriate to the requirements of this Contract. Certification shall be maintained throughout the duration of the Contract.

3.2.3. The Contractor shall provide access to records and shall secure access to sub-contractor records through sub-contracts, for contract purposes, to enable the Authority-appointed Quality Assurance Representatives to carry out audits and other assessment activities.

3.2.4. A quality assurance plan to the requirements of AQAP 2105 shall be prepared prior to the start of activities specified by the Contractor and shall be submitted to the Authority for acceptance within three months of the date of Contract award.

3.2.5. If the Contractor proposes to meet the requirements of the Contract by supply of and incorporation of material which is second hand or has been previously used in any

application, the Contractor shall ensure that all Contractor Deliverables incorporating such material are capable of meeting the full requirements in terms of performance, life, wear, reparability, and all other characteristics of Contractor Deliverables which do not incorporate such material. No second-hand material shall be used unless the Contractor has first made available to the Authority documentary evidence showing the full history of manufacture, storage conditions, inspections, tests, use and modification of it. If the Contractor supplies material in breach of this sub-condition, the Authority's acceptance of, or lack of objection to such material shall not constitute a waiver of that breach except where agreed under the procedures specified in Def-Stan 05-61, Part 1, Issue 6.

### **3.3. SAFETY AND ENVIRONMENTAL MANAGEMENT**

- 3.3.1. Safety and environmental management shall be in accordance with Defence Standard 00-056 and Defence Standard 00-051, as tailored to this Contract by the agreed Safety Compliancy Matrix.
- 3.3.2. The Contractor shall provide access to records and shall secure access to sub-contractor records through sub-contracts, for contract purposes, to enable the Authority-appointed Independent Safety Advisor (ISA) to carry out safety audits and other assessment activities to meet the Authority's safety and environmental requirements.

### **3.4. RISK**

- 3.4.1. The Contractor acknowledges that any risk assessment that 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): -
  - 3.4.1.1 particular risks and their impact; or
  - 3.4.1.2 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. Where any risks identified as a result of any risk assessment questionnaire and risk assessment generally are agreed by the parties to be those of the Authority, these shall be subject to being accepted expressly and unequivocally in writing by the Authority.

### **3.5. ACCESS**

- 3.5.1. In addition to the provisions of DEFCON 608 (Edn 10/14), the Contractor shall grant the Authority access to all information relating to D-JFI comprising basic material data, and including software and licensed products. Where proprietary rights are claimed, information must be declared.

- 3.5.2. The Authority shall give the Contractor reasonable prior notice before access is required. This shall not apply to the Contractor's software source codes and access to information not funded under this Contract.

### **3.6. SUSTAINABLE PROCUREMENT - BEST PRACTICE**

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

### **3.7. OBSOLESCENCE MANAGEMENT**

- 3.7.1. The Contractor is responsible for managing obsolescence of D-JFI and all hardware/software elements contained within it, in accordance with the requirements for obsolescence management set out in the Statement of Requirement at Annex B. Notwithstanding any obsolescence issues or problems, the Contractor remains responsible for meeting all performance and other requirements relating to the supply of D-JFI under this contract. The Contractor is responsible for all costs associated with:

3.7.1.1 The ongoing identification and review of obsolescence concerns

3.7.1.2 Identification of mitigation action of obsolescence concerns.

3.7.1.3 Resolution of obsolescence issues, except as detailed in Clause 3.7.8 below.

- 3.7.2. The costs for which the Contractor is responsible include, but are not limited to, the costs of investigating alternative software components, vendor interface, engineering and redesign efforts, testing and qualification requirements, documentation changes, etc. The Contractor shall prevent any additional costs from being incurred by the Authority due to obsolescence.

- 3.7.3. Obsolescence shall be managed in accordance with the provisions of the Contractor's Obsolescence Management Plan to deliver the obsolescence management requirements of the SOR at Annex B. A copy of the latest available formal issue of the Obsolescence Management Plan shall be furnished to the Authority by the Contractor on request.

- 3.7.4. The Contractor shall ensure and be able to demonstrate that any mitigation of obsolescence concerns, or resolution of obsolescence issues, are implemented for the most cost effective through life solution, regardless of contract duration.

- 3.7.5. Any configuration changes due to obsolescence shall be approved in accordance with the configuration management process of this requirement.

- 3.7.6. The Contractor shall provide the Authority with a list of all software/hardware components, as part of its Functional Baseline and Version Description Document:

3.7.6.1 Version.

3.7.6.2 Original manufacturer/Vendor.

3.7.6.3 Description.

- 3.7.7. The Contractor shall ensure all known obsolescence issues and forecasted concerns have been identified and have mitigation plans. No less than 12 months before contract end, the Contractor shall transfer this data to the Authority at no additional cost. The Contractor is to ensure that the Authority shall have the right to use this data.
- 3.7.8. For the avoidance of doubt, resolution of obsolescence issues associated with the infrastructure upon which D-JFI is deployed, including the server and client operating environments, software and office automation products or related to interoperability with other systems and applications, are the Authority's responsibility, unless otherwise agreed under the Ad-Hoc Tasking Procedure in condition 3.8.

### **3.8. AD-HOC TASKING PROCEDURE**

- 3.8.1. Each task under Item 4 of the Schedule of Requirements shall be initiated and defined by the use of a Task Authorisation Form (TAF) as detailed at Annex O to the Contract and shall following agreement be added to Annex P by the next suitable Contract Amendment.
- 3.8.2. Tasks may be proposed by either the Authority or the Contractor by completion of Part 1 of the TAF, which shall be subject to authorisation by the Authority. Tasks shall be identified by the TAF sequential serial number allocated by the Authority. The Contractor shall use this reference number, where known, in all communications with the Authority, including any associated claims for payment. The Contractor may allocate additional reference numbers for the convenience of their own internal systems. In the case of an urgent task the TAF shall be prefixed with "URGENT" denoting the urgency.
- 3.8.3. The Contractor shall, upon receipt of a duly completed and authorised Part 1 of the TAF, submit at Part 2 a Firm Price quotation, valid for acceptance by the Authority ideally for 60 days, but for at least 30 days. This quotation shall be signed and submitted in a hard copy and/or PDF document, supplemented with MS Office files formatted to be capable of being easily printed. This shall contain:
- 3.8.3.1. A full price breakdown by both calendar year and the Authority's financial year of direct labour hours, materials, expenses, bought-out and sub-contract elements, identifying the applicable labour, overhead and profit rates in accordance with any promulgated rates in force or utilising the firm rates as detailed at Annex N of the Contract;
  - 3.8.3.2. An overall timescale/completion date, detailing dates of all deliverables required/proposed to be supplied which shall remain achievable during the validity of the quotations. Tasks are to be supported by a project schedule where appropriate; and
  - 3.8.3.3. a compliance matrix showing the extent of the Contractor's compliance with the requirements detailed at Part 1 or a suitable statement confirming full compliance; and

- 3.8.3.4. details of any assumptions or exclusions; and
- 3.8.3.5. details of any requirements for GFA detailing description of item, quantity required, start and finish dates required to be provided, location required, type of loan required, and any other information necessary to fully define the required dependency; and
- 3.8.3.6. a statement on whether Earned Value Management shall apply; and
- 3.8.3.7. a statement about any intellectual property rights restrictions applying to any deliverables; and
- 3.8.3.8. a statement confirming compliance with the terms and conditions of the contract or identifying any proposed changes for the Authority's consideration.
- 3.8.3.9. Milestone payments – Exceptionally, where a task is of a high value and/or long duration the Authority may consider the inclusion of a milestone payment plan against a specific task. Milestone payment(s) shall only be made against clearly defined milestones. The Contractor shall submit any proposed Milestone Payment Plan with the Firm Price quotation on the TAF Part 2 for the Authority's agreement, providing a description, success criteria, value in percentage terms and dates of each proposed milestone.
- 3.8.3.10. No work shall be undertaken on the proposed task until the order has been both authorised by the Authority at Parts 3, of the TAF and accepted in writing by the Contractor.

- 3.8.4. On completion of the task, the Contractor shall complete and return the TAF Part 4a to the Authority for approval at TAF Part 4b.

### **3.9. ACCIDENTAL MISUSE AND DAMAGE (AM&D) REPAIRS**

- 3.9.1. The Contractor shall undertake Accidental Misuse and Damage (AM&D) repairs of D-JFI line replaceable units (LRUs) which have been found, upon investigation, to be due to be AM&D as defined in Annex B to the Contract.
- 3.9.2. Items deemed to be AM&D shall be sentenced during the Quarterly Progress Meetings (QPM) in accordance with Annex B - SOR, or to the Contractor more frequently if required by the Authority or at the request of the Contractor.
- 3.9.3. Any issues which arise, during the QPM, that lead to the Authority not accepting that the faults are wholly attributable to an AM&D, shall be resolved in accordance with DEFCON 530.
- 3.9.4. On discovery that a repair is AM&D, the Contractor shall contact the Authority's Project Manager or their designated representative, with the following information:-

- 3.9.4.1. System LRU description and serial number;
- 3.9.4.2. Date received by the Contractor;
- 3.9.4.3. General description of the fault including photos of damage where possible. Photos shall enable clear identification of the item, in addition to the damage incurred.
- 3.9.4.4. Details of the damage which is deemed AM&D by the Contractor.
- 3.9.5. The Contractor shall provide the Authority with a full cost breakdown on the repair using the Task Authorisation Form (TAF) at Annex O to the Contract for those items where AM&D liability is agreed.
- 3.9.6. Should it be decided not to proceed with the repair, the cost of the survey together with any rebuild costs shall be authorised by the issue of a fully completed AM&D Repair TAF in accordance with the Task Authorisation Form (TAF) at Annex O.
- 3.9.7. Authorisation for repair by the Authority as detailed above shall not exceed 30 days from receipt of the Task Authorisation Form (TAF) Annex O to the Contract.
- 3.9.8. Any LRU passed from the Authority to the Contractor shall be held on contract loan terms (see Def Stan 05-99 Part 1), and recorded by the Contractor accordingly, until it is repaired and returned to the Authority.
- 3.9.9. The Contractor shall maintain a record of actual costs incurred for repair of items deemed AM&D.

### **3.10. REPAIR OF AM&D ITEMS**

- 3.10.1. The Contractor shall provide turn-around times for all AM&D items in accordance with or better than those listed at the Integrated Support Plan at WP3a (h) & (i) to Annex B to the Contract.
- 3.10.2. The Authority will agree a new repair date with the Contractor for any AM&D items which cannot be repaired by the Contractor within the indicative turn-around time. quoting the identity of the item, including NATO stock number (NSN), if appropriate and reasons why the timescales cannot be met.

### **3.11. RECTIFICATION**

- 3.11.1. If the Authority decides that there is a Contractor Default, the Authority, shall, acting reasonably and proportionately having regard to the nature of the specific breach and its impact, by written notice ("the Rectification Notice"), in accordance with DEFCON 526, specify the circumstances of the Contractor Default and require the Contractor to make a Rectification proposal ("the Rectification Proposal") in relation to the Contractor Default.
- 3.11.2. The Contractor shall within twenty (20) Business Days (or such longer period as the Parties may agree) of the receipt of the Rectification Notice, make a Rectification Proposal to the satisfaction of the Authority which shall, as a minimum, specify:

- 3.11.2.1. details of the measures the Contractor proposes to take to rectify the Contractor Default; and
  - 3.11.2.2. the timescale within which the Contractor proposes to rectify the Contractor Default.
- 3.11.3. If the Authority receives the Rectification Proposal within twenty (20) business days (or such longer period as the Parties agree) of the receipt by the Contractor of the Rectification Notice, the Authority shall consider the Rectification Proposal and may, within twenty (20) Business Days, accept, reject or amend the Rectification Proposal.
- 3.11.4. If the Authority accepts or amends the Rectification Proposal, the Contractor shall rectify the Contractor Default in accordance with the Rectification Proposal as accepted, or as amended by agreement between the Contractor and the Authority. Notwithstanding DEFCON 502 and DEFCON 606 (Contract Change Procedure) the Contractor shall take such action without imposing any additional charge on the Authority.
- 3.11.5. The Authority shall have the right acting reasonably and proportionately to terminate the Contract by providing notice in writing (Notice of Termination), if:
  - 3.11.5.1. the Contractor fails to make a Rectification Proposal in accordance with DEFCON 502 and DEFCON 606 or fails to implement its Rectification Proposal (as accepted or as amended by agreement between the Contractor and the Authority under DEFCON 502 and DEFCON 606 to the extent, within the timescale and in the manner specified in the Rectification Proposal; or
  - 3.11.5.2. the Authority and the Contractor cannot agree a mutually acceptable Rectification Proposal.
- 3.11.6. The termination of the Contract shall be without prejudice to the rights, obligations and liabilities of the Parties which have accrued or become due prior to the date of termination.
- 3.11.7. No reasonable delay or any other act or omission (including making payments) by the Authority in exercising any entitlement to terminate the Contract nor anything said by any representative of the Authority shall amount to a waiver of the Authority's right to terminate the Contract except where such waiver is confirmed by written notice by the Authority's Commercial Manager (Box 1 DEFFORM 111 Appendix to Contract).
- 3.11.8. Where the Authority terminates the Contract under Clause 3.12 (Rectification) and 7.6 (Termination) the Contractor shall be entitled to receive appropriate payment for any work which it has completed in accordance with the Contract and which has been accepted by the Authority in accordance with Clause 7.2 (Acceptance), but shall not be entitled to receive payment for any work which has not been completed in accordance with the Contract and where Authority acceptance in accordance with the Contract has not occurred, unless otherwise agreed.
- 3.11.9. If the Authority terminates the Contract in full or in part in accordance with this Clause 3.12 the Authority shall be entitled:
  - 3.11.9.1. to make any alternative arrangements for the carrying out of what were, prior to termination, the Authority's requirements under the Contract, or the part which has been terminated; and



- 3.11.9.2. to recover from the Contractor any reasonable costs so incurred to the extent that it exceeds the amount which would have been incurred by the Authority in the event of proper contractual performance.
- 3.11.10. Subject to the provisions of the Clause above, the Contractor shall, if and to the extent it is able and required, assign to the Authority (or to a nominated and agreed third party contractor) without further payment, the benefit of any sub-contracts which the Contractor may have entered into for the supply of any Articles or Items or for the execution of any work under the Contract.

### **3.12. RECTIFICATION PROPOSAL FOR PERSISTENT BREACH**

- 3.12.1. Prior to the Authority determining whether to exercise any right of termination under Clause 7.6 shall apply. The provisions of Clauses 3.12.1 to 3.12.5 (*Rectification Proposal for Persistent Breach*) shall apply.
- 3.12.2. In the event that either the Authority by notice in writing to the Contractor, or the Contractor, determines that a Persistent Breach has occurred, the Contractor shall submit a Rectification Plan in writing to the Authority's Commercial Officer within twenty (20) Business Days (or such longer period as the Authority may specify) of the date of the Persistent Breach.
- 3.12.3. The Contractor's Rectification Plan shall, as a minimum, specify:
- a. details of the measures that the Contractor proposes to take to rectify the Persistent Breach; and
  - b. the timescale in which the Contractor proposes to rectify the Persistent Breach; and
  - c. the extent to which the measures proposed will affect any other Contractor Deliverables and details of any proposed mitigation actions to reduce the impact on the delivery of any other Contractor Deliverables.
- 3.12.4. On receipt of the Contractor's Rectification Plan, the Authority's Commercial Officer shall within ten (10) Business Days either:
- a. confirm (in writing) it's acceptance of the Rectification Plan; or
  - b. reasonably amend the Rectification Plan.
- 3.12.5. If the Authority accepts or amends the Rectification Plan, the Contractor shall rectify the Persistent Breach in accordance with the Rectification Plan. The Contractor shall take such action at no additional cost to the Authority

## **4. PRICE**

DEFCON 643 (Edn 12/14) Price Fixing (Non-qualifying contracts)

Note: This shall apply to Contract amendments only

#### **4.1. CONTRACT PRICE**

- 4.1.1. The Firm Price for Item 2 and Option Items 5 and 6 of the Schedule of Requirements shall be the price for the Contractor Deliverables set out in the Schedule of Requirements inclusive of all royalties, licence fees and taxes with the exception of Value Added tax (See DEFCON 513 (Edn 11/16)) and import Duty. The Contract Price shall include the cost of packaging and transportation (where applicable) and handling and cost of compliance with all terms and conditions of the Contract.
- 4.1.2. Prices for all system hardware components, listed in Line Item 1 of the Statement of Requirements, shall include any cabling or other connectivity required to enable the capability.
- 4.1.3. The overall price of Schedule of Requirement Item 4 shall be the combined total price(s) of any TAF(s) agreed under the Contract.

#### **4.2. OPTIONS**

- 4.2.1. The Authority shall have the irrevocable right to exercise any of the options at the option prices defined in the Schedule of Requirements at any time during the Contract period and by giving written notice of 12 months to the Contractor,
- 4.2.2. This condition shall not in any way place the Authority under any obligation whatsoever to exercise any of the options.

#### **4.3. GAINSHARE**

- 4.3.1. Changes in scope of D-JFI work proposed by the Contractor
  - 4.3.1.1. During the term of the Contract the Contractor shall keep under review and report to the Authority any opportunities it has identified for changes in the Contractor's scope of work for all items under the Schedule of Requirements which could result in improvements to Contract delivery and/or reductions in cost.
  - 4.3.1.2. Should the Contractor identify any such opportunity it shall provide full details of the proposed change to the Authority. Should the Authority be satisfied in principle with the changes in scope of work proposed by the Contractor, then the Authority and the Contractor shall seek to negotiate in good faith an appropriate contract amendment to reflect the agreed changes in scope of work proposed by the Contractor, and its effect on existing Contract Price and delivery dates. The Authority proposes a 60:40 split in the Contractor's favour where the Contractor identifies the opportunity.
- 4.3.2. Changes in Scope of D-JFI Work Proposed by the Authority
  - 4.3.2.1. During the term of the Contract the Authority shall keep under review and report to the Contractor any opportunities he has identified for changes in the Contractor's scope of work which could result in improvements to D-JFI systems, delivery and/or reductions in cost.

- 4.3.2.2. Should the Authority identify any such opportunity he shall provide full details of the proposed change to the Contractor, if it is agreed then the Contractor shall provide to the Authority a contract change proposal setting out the effects of the proposed change to the current Contract.
- 4.3.2.3. Should the Authority be satisfied with the Contractor's proposed change then the Authority and the Contractor shall negotiate in good faith an appropriate Contract Amendment to reflect the agreed changes in scope proposed by the Authority and its effect on the existing Contract prices and delivery dates. The Authority proposes a 60:40 split in the Authority's favour where the Authority identifies the opportunity.

## **5. INTELLECTUAL PROPERTY RIGHTS**

DEFCON 14 (Edn 11/05) – Inventions and Designs Crown Rights and Ownerships of Patents and Registered Designs

DEFCON 90 (Edn 11/06) - Copyright

DEFCON 91 (Edn 11/06) - Intellectual Property Rights in Software

Note: For the purposes of DEFCON 91, considering that Clause 1. a) iv. refers to anything further specified as Software in the Schedule of Requirements, both the Authority and the Contractor agree that the software deliverables under this Contract are made in Annex A (Systems Requirement Document) and Annex B (Statement of Work) to the Contract.

DEFCON 126 (Edn 11/06) – International Collaboration

DEFCON 632 (Edn 08/12) – Third Party Intellectual Property - Rights and Restrictions

### **5.1. RIGHTS IN TECHNICAL DATA (DEFINITIONS)**

- 5.1.1. "Technical Data" means information of a scientific or technical nature which is recorded or documented in any medium and whether or not in human readable format, but excluding unrecorded information communicated solely by oral communications and excluding software subject to the provisions of DEFCON 91, DEFFORM 701 or as otherwise licensed to the Authority.
- 5.1.2. "Article" means, for the purposes of this Condition, part or the whole of any item, component or process which the Contractor is required under the Contract to supply or in connection with which it is required under the Contract to carry out any service and any other article or part thereof to the same design as that article.
- 5.1.3. "Commercially-available Off-The-Shelf Item", or "COTS Item" means an item that is freely available on the open market and is provided with sufficient information to enable it to be installed, operated and replaced, without reference to the Contractor or any sub-contractor.
- 5.1.4. "Interface Data" means Technical Data that describes the overall physical, functional and performance characteristics (for example, "form, fit and function" information) of an Article to the extent necessary to operationally replace the Article with interchangeable items, components or processes, or to interoperate with other items, components or processes.

- 5.1.5. "Intellectual Property Rights" or "IPR" means all patents, utility models, or rights (registered and unregistered) in any designs; applications for any of the foregoing; copyright; database rights; semiconductor chip topography rights; confidential information and trade secrets; and all rights and forms of protection of a similar nature to these or having equivalent effect anywhere in the world.
- 5.1.6. "HMG" means Her Majesty's Government of the United Kingdom of Great Britain and Northern Ireland.
- 5.1.7. "Unlimited Rights" means rights to copy, use, modify, reproduce, perform, display, release, or disclose Technical Data in whole or in part, and to authorise third parties to do so, in any manner, and for any purpose; but such purposes shall not extend to commercial sales of Articles except for disposal of outworn or surplus items, nor to licensing of Contractor-owned IPR for revenue generation.
- 5.1.8. "Unlimited Rights Technical Data" means Technical Data in which the Authority has Unlimited Rights.
- 5.1.9. "Limited Rights" means rights to copy, use, modify, reproduce, release, perform, display, or disclose Technical Data, in whole or in part, within HMG for any purpose.
- 5.1.10. "Limited Rights Technical Data" means Technical Data in which the Authority has Limited Rights.

## **5.2. OWNERSHIP OF IPR**

- 5.2.1. Subject to any existing rights of the Authority or any third party, the ownership of IPR in Technical Data and any other IPR generated by the Contractor in the course of work under the Contract shall, as between the Authority and the Contractor, belong to the Contractor.

## **5.3. RIGHTS IN TECHNICAL DATA**

### **5.3.1. Unlimited Rights**

- 5.3.1.1. The Authority shall have a royalty-free, worldwide, non-exclusive, perpetual and irrevocable Unlimited Rights licence for all Technical Data, and all IPR in respect of that Technical Data, which has been generated under the Contract.
- 5.3.1.2. Notwithstanding the provisions of clause 5.3.1.1 or any other provisions of this condition, the Authority shall have Unlimited Rights in the following Technical Data:
  - 5.3.1.2.a. Interface Data;
  - 5.3.1.2.b. corrections or minor amendments to Technical Data supplied as Government Furnished Assets;
  - 5.3.1.2.c. Technical Data in which the Authority has obtained Unlimited Rights under another Contract;

5.3.1.2.d. Technical Data that has been made publicly available otherwise than in breach of obligations of confidence or that the Contractor has released or disclosed without restrictions on further release, use or disclosure; and

5.3.1.2.e. any other Technical Data stated in the Contract to be Unlimited Rights Technical Data, or as otherwise agreed between the Contractor and the Authority to be Unlimited Rights Technical Data;

5.3.1.3. The Authority shall have Unlimited Rights of use in the following Technical Data, including any Limited Rights Technical Data included in or associated with it, notwithstanding the provisions of clause 5.4:

5.3.1.3.a. studies, analyses, test data or similar data generated for the Contract, or for a response by the Contractor to an invitation to tender for the Contract, when the study, analysis, test or similar work is a Contractor Deliverable, but excluding test methodology to the extent that it consists of Limited Rights Technical Data;

5.3.1.3.b. Technical Data in data packs which are Contractor Deliverables; and

5.3.1.3.c. Technical Data for installation, operation, routine maintenance or training purposes;

but the Authority's Unlimited Rights of use in any such Limited Rights Technical Data shall only be to the extent necessary to exercise its Unlimited Rights of use in the Unlimited Rights Technical Data. The provisions of this clause 5.3.1.3 shall not apply to any Limited Rights Technical Data in self-standing proprietary background products, processes and materials that have been notified to the Authority in accordance with the provisions of clause 5.11.1 of this condition and identified in an attachment (hereinafter "the Attachment") to the Contract.

#### **5.4. LIMITED RIGHTS**

5.4.1. The Authority shall have a royalty-free, worldwide, non-exclusive, perpetual and irrevocable Limited Rights licence for all Technical Data that is a Contractor Deliverable, and all IPR in respect of that Technical Data, where the Technical Data has not been generated under the Contract.

5.4.2. The Authority shall retain any rights that it has obtained in Technical Data by virtue of the provisions of another Contract or other arrangement.

5.4.3. Except as may be required or permitted by law or as otherwise permitted by the provisions of another Contract or other arrangement, the Authority shall not release or disclose Limited Rights Technical Data outside of HMG unless it has obtained the written permission of the Contractor or as permitted by the provisions of clause 5.6.

#### **5.5. SPECIFIC DISCLOSURE RIGHTS OF THE AUTHORITY IN LIMITED RIGHTS TECHNICAL DATA**

- 5.5.1. Notwithstanding any restrictions on disclosure in clause 5.4, the Authority shall be permitted to release or disclose, and authorise the use of, Technical Data with Limited Rights, but only under obligations of confidence:
- 5.5.1.1. (a) to an independent support Contractor, solely for the purposes of the provision of a service to the Authority which, unless otherwise identified in the Contract, shall be limited to managing, monitoring, evaluating, assessing or auditing the work under the Contract;
  - 5.5.1.2. (b) where the Contract is for the supply of Services and the Limited Rights Technical Data concerns the processes and procedures concerned with the delivery of the Services, to a follow-on Contractor only for the continued supply of the Services following termination or expiry of the Contract, or during any transitional period as may be specified in the Contract, and only to the extent necessary for the delivery of the follow-on Services; and
  - 5.5.1.3. (c) where the Technical Data is necessary for repair, maintenance or overhaul where necessary for urgent operational or safety reasons, subject to the recipient agreeing that the Technical Data may only be used, copied or reproduced for those purposes, and the recipient being required to return the Technical Data to the Authority immediately on completion of the urgent operational or safety need.
- 5.5.2. The Authority will have the right to disclose Limited Rights Technical Data to a foreign government only with the permission of the Contractor, which permission shall not be unreasonably withheld.
- 5.5.3. The Authority shall not release or disclose Technical Data properly marked under clause 5.12 as being Limited Rights under clauses 5.5.1.1. (a) or 5.5.1.2. (b) unless it has first provided the Contractor or other party asserting Limited Rights with the opportunity to enter into a direct confidentiality agreement in the form of DEFFORM 94 with the intended recipient. The Authority shall not be restricted from disclosing the Technical Data to the recipient if the Contractor or other party asserting Limited Rights has not signed a confidentiality agreement in the form of DEFFORM 94 within 30 calendar days of receipt; however, in such circumstances the Authority shall place the recipient under an obligation to keep the Technical Data confidential and to use it only for the purposes for which it was disclosed.

## **5.6. MODIFICATIONS**

- 5.6.1. The Contractor shall be entitled, on request, to a licence from the Authority, on willing licensor/willing licensee terms, to use Technical Data that is a modification of the design of an Article produced under the Contract, where such Technical Data has been generated by a third party under an Authority Contract and the IPR in the Technical Data vests in the Authority, for the purposes of manufacture, sales and support of items made to the modified design for customers other than the Authority.

## **5.7. CONTRACTOR BACKGROUND PATENTS**

- 5.7.1. Subject to the rights of the Crown arising otherwise than under this Condition, and provided that the Contractor has met in a timely manner any obligations included in the Contract to inform the Authority of the existence of any relevant United Kingdom

patent or registered design, the Contractor shall be entitled to claim payment under the provisions of Sections 55-59 of the Patents Act 1977 or the First Schedule to the Registered Designs Act 1949 in respect of any patented invention or registered design owned or controlled by the Contractor, with respect to use by third parties in the exercise of the rights granted to the Authority under condition 5 of this Condition. The terms to be agreed or settled for the use of any such patented invention or registered design shall not include payment of compensation under Section 57A of the Patents Act 1977 or paragraph 2A of the First Schedule to the Registered Designs Act 1949 in respect of any invention or design covering the Articles, or described in any Technical Data that is a Contractor Deliverable, and is subject to this Condition.

## **5.8. AUTHORITY'S QUIET ENJOYMENT; AND EMBEDDED SOFTWARE**

- 5.8.1. Nothing in this condition shall act to prevent the Authority's quiet enjoyment of any Articles delivered to it under the Contract, including the right to operate, maintain, use and dispose of the Articles, and the Contractor shall not act to enforce rights in relation to any software that is provided as an integral part of such Articles to prevent the Authority's quiet enjoyment of the Articles. Nothing in this condition shall prevent the Authority from exercising its statutory rights, currently in force or hereinafter enacted, in respect of such software. This clause 5.8.1 shall not require the Contractor to deliver software to the Authority separate from the Article beyond other provisions or requirements of the Contract. No trade mark right or right against passing off shall be exercised against any deliverable Article, or any article made to a design incorporating a trade mark, recorded in deliverable Technical Data or embodied within any deliverable model, die or mould.

## **5.9. COTS ITEMS**

- 5.9.1. Where the Contractor has, consistent with its obligations under the Contract, utilised a COTS Item supplied by a third party in its Contractor Deliverables, the Contractor shall not be required to secure licence rights in accordance with condition 5 from the third party in Technical Data concerning the COTS Item, provided the Contractor notifies the Authority of the source of the COTS Item (including Original Manufacturer Part Numbers, NATO Stock Numbers or NCAGE Codes, as appropriate). The Contractor shall secure for the Authority any standard licence rights that the supplier of the COTS Item provides in relation to Technical Data concerning the COTS Item.

## **5.10. RESTRICTIONS ON AUTHORITY'S USE, RELEASE AND DISCLOSURE OF TECHNICAL DATA – PRIOR IDENTIFICATION BY THE CONTRACTOR**

- 5.10.1. All Technical Data to be delivered to the Authority under the Contract with restrictions on use, release or disclosure that are more restrictive than Unlimited Rights, shall be identified in the Attachment at Annex F to the Tender.
- 5.10.2. The Contractor shall not deliver to the Authority any Technical Data with any restrictive marking if that Technical Data is not identified in the Attachment. Any Technical Data delivered to the Authority without first being identified in the Attachment may be used by the Authority as if it was Unlimited Rights Technical Data, in accordance with the provisions of clause 5.3.1.1., but subject to the provisions of clause 5.6.

- 5.10.3. The Contractor may notify the Authority of restrictions on the use or disclosure of Technical Data, supplied by a third party other than a sub-contractor, after its delivery to the Authority where the identification of any such restrictions is based on information not available to the Contractor at the date of delivery, or where the Technical Data is identified in the Attachment and the omission of any restrictive marking was inadvertent. The Authority shall give prompt and reasonable consideration to any such notification and shall allow the Contractor to apply the appropriate restrictive marking to the Technical Data retrospectively if it is clear, in the circumstances, that the restrictive marking correctly reflects the Authority's rights in the relevant Technical Data as detailed in condition 5 of this condition. The Authority may continue any use of the Technical Data begun prior to the notification made in accordance with this clause 5.10.3 notwithstanding that any such use may be contrary to any restrictive marking retrospectively applied to the Technical Data.

## **5.11. MARKING OF TECHNICAL DATA**

- 5.11.1. The Contractor shall mark any covering, packaging or cover page of Technical Data delivered to the Authority with Unlimited Rights with the following legend:

"This Technical Data is delivered to the Authority by Elbit Systems UK Ltd under Contract ARTYSYS/00260. The Authority has Unlimited Rights of Use in the Technical Data in accordance with the provisions of this Condition 5."

- 5.11.2. The Contractor shall mark any covering, packaging or cover page of Technical Data delivered with Limited Rights with the following legend:

"This Technical Data is delivered to the Authority by Elbit Systems UK Ltd under Contract ARTYSYS/00260. The Authority has Limited Rights of Use in the Technical Data as marked in accordance with the provisions of DEFCON XYZ."

- 5.11.3. Any pages of documents including Technical Data subject to Limited Rights shall include the legend from clause 5.11.2 at the top of the page and shall be clearly marked by the Contractor to identify the portions of those pages that are subject to those rights. The Technical Data shall be identified by marking, underlining, shading or another appropriate identifier. The Authority shall have the right to remove any Technical Data subject to Limited Rights from a document and copy, use or disclose the edited document in accordance with the resulting restrictions on use.

- 5.11.4. The Contractor may apply a copyright mark to any Technical Data delivered to the Authority to identify the owner of the copyright, but shall not apply any markings to the Technical Data in relation to the Authority's rights other than those set out in this condition 5.

## **5.12. EFFECT AND REMOVAL OF NONCONFORMING AND INCORRECT MARKINGS**

- 5.12.1. The Authority shall notify the Contractor in writing of any incorrect markings on Technical Data and any markings that do not conform to the provisions of condition 5. The Contractor shall remove or correct the markings within Thirty 30 calendar days of notification. Failure to remove or correct the markings may be a ground for non-acceptance of the Technical Data and withholding of Contract payment until resolved.



- 5.12.2. If the Contractor fails to remove or correct a marking within Thirty 30 calendar days of notification, the Authority shall be entitled to ignore the marking and use the Technical Data as if it had an Unlimited Rights licence in accordance with clause 5.3.1.1. and, if the Authority considers it appropriate, remove or correct the marking.

### **5.13. TECHNICAL DATA PROVIDED BY SUBCONTRACTORS**

- 5.13.1. The Contractor shall ensure that the Authority's rights in Technical Data which is supplied by the Contractor's subcontractors, and which will be included in Technical Data that is a Contractor Deliverable, shall be in accordance with those set out in condition 5, and any other rights of the Authority as set out in this condition. The Contractor and sub-contractor shall determine between them the appropriate contractual arrangements, as between the Contractor and sub-contractor, to provide the required Authority user rights in such Technical Data.
- 5.13.2. If the Contractor becomes aware that it will be unable to meet its clause 5.13.1 obligations to the Authority in respect of Technical Data that will be generated or delivered by a potential sub-contractor to the Authority (regardless of whether that delivery is directly from the sub-contractor to the Authority or through the Contractor to the Authority), then the Contractor shall immediately notify the Authority, providing a clear demonstration that the sub-contractor is unwilling to provide the necessary rights to the Authority, and instruct the potential sub-contractor to negotiate directly with the Authority regarding the Authority's user rights in Technical Data arising from a potential sub-contract. The Contractor shall not enter into a sub-contract with that the potential sub-contractor in respect of that Contract requirement of the Authority unless the Authority notifies the Contractor that the potential sub-contractor has entered into a direct agreement with the Authority to provide the necessary rights for the Authority in Technical Data generated or delivered by the sub-contractor.
- 5.13.3. If the Contractor enters into a sub-contract that fails to secure the rights for the Authority as required by the provisions of clause 5.13.1, and has not received prior written authorisation from the Authority to place the sub-contract in accordance with the provisions of clause 5.13.2, the Authority shall be entitled, using such powers as allowed by law and without prejudice to any other contractual remedy, to use the Technical Data as if the Contractor had secured such rights for the Authority and obligations from the sub-contractor; and the Contractor shall indemnify the Authority and be liable for any damages or costs incurred by the Authority.

### **5.14. CONTRACTOR RETENTION OF RECORDS**

- 5.14.1. The Contractor shall retain, for the duration of the Contract and for a period of six years thereafter, or such alternative period as may be specified in the Schedule of Requirements, a record of the work performed under the Contract and of the results obtained, and the Technical Data generated, delivered or to be delivered to the Authority.
- 5.14.2. The Authority shall have the right to inspect the records maintained by the Contractor in accordance with clause 5.14.1, within the period specified in that sub-clause and on reasonable notice. The Authority shall further have the right to require additional deliveries, within 45 calendar days, of any Technical Data that was generated in the performance of work under the Contract whether or not contained in the Contractor

Deliverables for so long as this Technical Data exists. This right shall be exercisable by separate order and on agreement of a fair and reasonable price based solely on the costs of compiling and delivering the Technical Data.

- 5.14.3. Subject to the availability of the relevant expertise and on a request made by the Authority within the period specified in clause 5.14.1, the Contractor shall provide assistance in understanding any Technical Data to the Authority or any other person to whom the Authority may provide it in accordance with its rights under clause 3. The degree of assistance shall be limited to that required for a person competent in the relevant area of technology to interpret the results of the Contract. The assistance shall be made available within Sixty 60 calendar days of the request and on fair and reasonable terms and conditions, including the costs of providing the assistance, but shall not require any payment in respect of the use of Technical Data.
- 5.14.4. The Contractor shall maintain one copy of all Technical Data that is a Contractor Deliverable (hereinafter called the "Control Copy"). The Control Copy shall be the property of the Authority, and shall be marked accordingly, and the Authority may take possession of it notwithstanding any administration, receivership, winding-up or liquidation of the Contractor or any transfer of its assets to any third party; and copies of any Technical Data from the Control Copy shall be supplied as required by the Authority from time to time and also annually on the anniversary of Contract award at the Authority's expense, the cost of which shall be based solely on the cost of delivering the Control Copy.

## **5.15. LIABILITY**

- 5.15.1. In the event that Technical Data to which this Condition applies is used by or for the Authority otherwise than for the purpose for which it was supplied in accordance with the relevant Contract, the Contractor shall have no liability whatsoever for any direct or indirect consequences, including losses, damages or injuries caused to the Authority or any third party, arising from its use.

## **5.16. GENERAL**

- 5.16.1. For the avoidance of doubt, nothing in this Condition shall:

- 5.16.1.1. restrict the entitlement of either party to make use of Technical Data once it enters the public domain otherwise than as a result of the Authority or any person supplied with the Technical Data by the Authority disclosing it in breach of any obligations of confidence relating to such Technical Data; or
- 5.16.1.2. extinguish or diminish any statutory rights or common law rights of the Authority to use any Technical Data that is a Contractor Deliverable or any IPR covering such Technical Data or any rights of the Authority acquired under any separate Contract or agreement.

- 5.16.2. Nothing in this Condition shall affect the Authority's rights under Section 48(2) of the Copyright, Designs and Patents Act 1988.

- 5.16.3. The terms of this Condition shall survive the termination or expiry of the Contract.

## **5.17. COMMERCIAL EXPLOITATION LEVY**

- 5.17.1. The provisions for commercial exploitation shall be agreed between the Contractor and the Authority on an ad hoc basis, as and when an opportunity for commercial exploitation has been identified. Such provisions shall only apply to software which has been designed and/or developed for the Authority and funded by the Authority. The sale or licensing of any articles or software embodying any such result shall be subject to the terms of Annex Q to the Tender.
- 5.17.2. The Contractor shall not make any offer or enter into any negotiation in respect of items subject to the provisions of this Condition without first having agreed with the Authority detailed terms and conditions within the framework of the forms of the MOD standard commercial exploitation agreement. Should the Parties not be able to agree on the terms of such agreement the matter shall be resolved under the provisions of DEFCON 530.

## **5.18. AUTHORISATION BY THE CROWN FOR USE OF THIRD PARTY INTELLECTUAL PROPERTY RIGHTS**

- 5.18.1. Notwithstanding any other provisions of the Contract and for the avoidance of doubt, award of the Contract by the Authority and placement of any contract task under it does not constitute an authorisation by the Crown under Sections 55 and 56 of the Patents Act 1977 or Section 12 of the Registered Designs Act 1949. The Contractor acknowledges that any such authorisation by the Authority under its statutory powers must be expressly provided in writing, with reference to the acts authorised and the specific intellectual property involved.

## **6. LOANS**

DEFCON 76 (Edn 12/06) - Contractor's Personnel at Government Establishments

DEFCON 611 (Edn 02/16) - Issued Property

DEFCON 694 (Edn 07/18) - Accounting for Property of the Authority

### **6.1. GOVERNMENT FURNISHED ASSETS**

- 6.1.1. The Authority will record in Annex I and J to the Contract all Government Furnished Assets (GFA) supplied or to be supplied to the Contractor. The GFA shall be listed and specifically defined by description, quantity, dates, loan periods and loan terms in Annex I and J.
- 6.1.2. The Authority shall have no liability to the Contractor if, when the GFA is made available on the agreed dates, the Contractor fails to make use of it.
- 6.1.3. The Contractor shall record all items issued on loan in accordance with DEFCON 694. Where GFA is issued to the Contractor and is not retained at Government establishments, the requirements of DEFCON 611 shall apply. Any information issued shall be under the terms of DEFCON 531.

- 6.1.4. While, during the course of the Contract, the Contractor identifies new requirements for GFA, these shall be subject to negotiations with the Authority.
- 6.1.5. If the Contractor no longer has a requirement to hold any GFA or otherwise on completion of all work under the Contract it shall seek instructions from the Authority's Commercial Officer.

## **7. DELIVERY/PERFORMANCE**

DEFCON 113 (Edn 02/17) - Diversion Orders

DEFCON 507 (Edn 10/18) – Delivery

DEFCON 514 (Edn 08/15) - Material Breach

DEFCON 524 (Edn 02/20)- Rejection

DEFCON 525 (Edn 10/98) - Acceptance

DEFCON 612 (Edn 10/98) - Loss of or Damage to the Articles

DEFCON 621A (Edn.06/97) - Transport (If the Authority is Responsible for Transport)

DEFCON 656B (Edn 08/16) - Termination for Convenience – £5m and Over

### **7.1. DELIVERY REQUIREMENTS**

- 7.1.1. All Contractor Deliverables under the Contract shall be stated in the Core Deliverables Register Annex F and Statement of Requirement at Annex B to the Contract.
- 7.1.2. The duration of the provision of in-service support shall be stated in Work Package 3 of the Statement of Requirement at Annex B.

### **7.2. ACCEPTANCE**

- 7.2.1. For the purposes of DEFCON 525, the acceptance process and criteria for all Contractor Deliverables shall be in accordance with Annex D to the Contract.

### **7.3. DOCUMENTATION**

- 7.3.1. The Contractor shall provide documentation as defined in the Statement of Requirements at Annex B and delivered in accordance with Annex F to the Contract.

### **7.4. LIQUIDATED DAMAGES**

- 7.4.1. If the Contractor delivers a non-serviceable spare to the Authority and the Authority is required to return the spare to the Contractor, the Authority will incur costs for

transporting the spare to the Contractor and for another spare to be redelivered to the Authority. Both parties agree, the Contractor shall pay the sum of £435.34 in liquidated damages to the Authority, on each occurrence which the Authority is required to return a non-serviceable spare to the Contractor, to cover the costs incurred by the Authority. These Liquidated Damages will be capped at £4353.40 for each rolling 12-month period, beginning on the Equipment Delivery date.

## **7.5. FORCE MAJEURE**

- 7.5.1. 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:
- Acts of nature
  - 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.
  - delays directly caused by Government authorities
- 7.5.2. 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.
- 7.5.3. Subject to Clause 7.4.4 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.
- 7.5.4. The maximum extension of time granted under this clause shall be limited to 2 Months 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.

## **7.6. TERMINATION**

- 7.6.1. Notwithstanding the provisions contained in Clause 3.11 (Rectification) and 3.12 (Rectification for Persistent Breach), the Authority shall have the right to terminate the Contract in whole or in part, at its sole discretion, in the event that failure to comply with the Systems Requirements Document under Item 1 of the Schedule of Requirement are not delivered at any one time by the relevant Delivery Dates set out at Annex F (Core Deliverables Register). The Authority shall give notice in writing in accordance with DEFCON 526 to the Contractor, terminating the Contract as a whole or in part.
- 7.6.2. Notwithstanding the provisions contained in DEFCON 656B and the clause above and any other termination rights set out in the Contract, the Authority also retains the right to terminate the Contract in whole or in part in the event that:

- 7.6.2.1. The Contractor has failed to deliver any of the Articles under Item 1 of the Schedule of Requirement within 6 (six) months of the Delivery Dates as stated in the Delivery Plan in accordance with the Schedule of Requirements, or
- 7.6.2.2. The Contractor has committed a material breach; or
- 7.6.2.3. The contractor has committed a Persistent Breach as defined at Annex W to the Contract; or
- 7.6.2.4. The Contractor has breached any of the requirements of DEFCONS 68, 515, 518, 520, 566.

7.6.3. Each of the circumstances above shall constitute Contractor Default.

## **7.7. CONTRACT DURATION**

- 7.7.1. This Contract comes into effect on the Effective Date of Contract and will expire automatically on the date identified unless it is otherwise terminated in accordance with the provisions of the Contract, or otherwise lawfully terminated.

## **7.8. EXIT STRATEGY**

- 7.8.1. Under any of the DEFCON's that the Authority can terminate the Contract and under the Authorities reasonable requirements for any hand-over by the Contractor to any successor contractor or the Authority of all the data referenced in Clause 7.8.3 as may exist in the Contractor's possession, whether documented or not at the date of termination of the Contract, shall be at no additional charge to the Authority.
- 7.8.2. Under any of termination conditions at clause 7.6 the Contractor shall perform, at fair and reasonable rates, any additional tasks above and beyond 7.8.1 and their other liabilities under the Contract, as reasonably requested by the Authority to facilitate the wind-up and/or hand over of the contract.
- 7.8.3. The Contractor shall from Contract award and throughout the duration of the contract, assemble and maintain a Maintenance data package (the 'Maintenance Data Package') containing all information necessary to enable the Authority to reproduce, maintain, repair and support the Dismounted-Joint Fires Integrator- Integrated System, through a technically competent manufacturer at a fair and reasonable price. The Maintenance Data Package shall vest in and become the absolute property of the Authority as it is assembled and the Contractor shall mark the Maintenance Data Package to indicate that it is Ministry of Defence Property maintained and stored under Contract No ARTYSYS/00260. The Maintenance Data Package shall be held by the Contractor on behalf of the Authority without lien and will be made available to the Authority upon request without additional charge in line with DEFCON 609. For the avoidance of any doubt the Contractor will not be liable for any failure by the Authority's selected contractor to perform in respect of any such reproduction, maintenance, repair or support that is not attributable to a failure of the Maintenance Data Package to contain the necessary (and correct) information.

7.8.4. To provide for the possibility of a hand-over to another contractor on termination of the Contract, or the transfer back of responsibility for the work to the Authority, throughout the duration of the Contract, the Contractor shall maintain records, including an Intellectual Property Rights Register, in a manner suitable to facilitate such a hand-over. The records must be maintained by the Contractor in the manner that it would expect them to have been maintained were he to have been in the position of a successor contractor unfamiliar with the contractual requirements. The means used shall include computer records and/or transferable to hand-over CDs, to the maximum extent possible. The minimum requirement is that, subject to the ownership of the hardware and intellectual property rights, free user rights vesting with the Authority the following should be available at hand-over:

7.8.4.1. all relevant support documentation and hardware, including jigs, tools, and test equipment as applicable;

7.8.4.2. all Authority holdings to have been identified;

7.8.4.3. all reports, databases, software, etc, produced over the period of the Contract;

7.8.4.4. all supporting information relating to those reports, databases, software, etc, such as calculations, design sketches and drawings, and workbook items;

7.8.4.5. log of major technical and support decisions taken during the period of the Contract with any necessary information required to support those decisions.

All supporting information must be contained within the hand-over documentation. A list of references alone is not acceptable.

7.8.5. Subject to a confidentiality agreement having been entered into between the Contractor and the successor Contractor, the hand-over shall include for the Contractor making available to the Authority or any successor contractor, for a period up to twelve months from the date of termination of this Contract, the facility for the Authority or that contractor's representative(s) to be directly briefed (including face to face at the premises of the present or new contractor or those of the Authority, as the new contractor may require in agreement with the Authority's Project Management Branch) by their effective predecessor(s) in all matters they may raise relevant to the past and future performance of work under this Contract, not excluding records and data handed over and its proper interpretation and use.

7.8.6. The requirement for hand-over data to be maintained shall be recorded in the Contractor's Quality Plan (and any subsequent updates thereof) together with his proposed means of effecting that end. The reports called for under this Contract shall also record progress in this area, and both the Quality Plan (and any updates) and the reports may be subject to audit and challenge by the Authority at any time. Where such audit or challenge leads to a reasonable request for a change(s) to what the Contractor has done or is doing in this matter, the Contractor shall make that change(s).

## **8. PAYMENTS/RECEIPTS**

DEFCON 5J (Edn 11/16) – Unique Identifiers

DEFCON 129J (Edn 11/16) – The Use of Electronic Business Delivery Form

DEFCON 513 (Edn 11/16) - Value Added Tax

DEFCON 522 (Edn 11/17) - Payment and Recovery of Sums Dues

DEFCON 534 (Edn 06/17) – Subcontracting and Prompt Payment

DEFCON 649 (Edn 12/16) - Vesting

### **8.1. PAYMENT UNDER CP&F**

- 8.1.1. In consideration of the Contractor performing the Contractor Deliverables, the Authority shall pay the Contract Price to the Contractor in accordance with the following provisions of this condition 8.1. (Payment Under CP&F).
- 8.1.2. Payment under this Contract of the Contract Price will be made by electronic transfer and prior to submitting any invoices under condition 8.1. (Payment Under CP&F) the Contractor will be required to register their details (Supplier on-boarding) on the Contracting, Purchasing and Finance Electronic Procurement Tool (“CP&F”).
- 8.1.3. Where the Contractor submits an invoice to the Authority in accordance with this condition, the Authority will consider and verify that invoice in a timely fashion.

### **8.2. PAYMENTS**

- 8.2.1. All Payments shall be made in accordance with DEFCON 522. No part-payment can or will be made in relation to each Milestone.
- 8.2.2. For Line Item 1 please refer to clause 8.3.
- 8.2.3. For Lines item 2, and Options items 5 & 6 of the Schedule of Requirements, payments for Contract Deliverables shall be made quarterly in arrears.
- 8.2.4. Line items 3 of the Schedule of Requirements shall be paid on actual values of Travel and Subsistence incurred.
- 8.2.5. For Line Items 4 payments shall be made upon acceptance of task completion by the Authority in accordance with the Task Authorisation Form (TAF).

### **8.3. MILESTONE PAYMENT PLAN**

- 8.3.1. The Authority shall, subject to the following provisions of this condition, make to the Contractor payment against the price payable for Line Items 1 of the Schedule of Requirements in accordance with the Milestone Payment Plan set out in Annex E to the Contract.



8.3.2. The Contractor shall be entitled to claim payments in accordance with this condition for each stage under the Milestone Payment Plan, when:

8.3.2.1. The Contractor has obtained from the Authority a Milestone Acceptance Certificate certifying that all work and deliverables comprised in the stage for which the payment is sought have been completed in accordance with Annex E to the Contract and where applicable in accordance with technical acceptance contained in Annex D to the Contract - Acceptance Criteria (ITEAP.)

8.3.2.2. all previous stages have been completed, unless the parties agree in writing otherwise; and

8.3.2.3. the Contractor has complied with contractual obligations that enable the Authority to monitor the Contractor's contractual performance, including but not limited to those obligations related to the provision of information to the Authority.

8.3.3. Payment of a milestone payment by the Authority under this condition 8.2 shall not, unless expressly stated in writing by the Authority otherwise, constitute:

8.3.3.1. acceptance by the Authority of any Contractor Deliverable;

8.3.3.2. a representation by the Authority that the Contractor has complied with any contractual obligations; or

8.3.3.3. a waiver of the Authority's right to subsequently claim that the conditions for payment of that payment were not satisfied.

## **9. CONTRACT ADMINISTRATION**

DEFCON 604 (Edn 06/14) - Progress Reports

DEFCON 609 (Edn 08/18) - Contractor's Records

DEFCON 642 (Edn 06/14) - Progress Meetings

Note: For the purposes of DEFCON 642, the Authority considers that all meetings are to be held at the Authority's site at MOD Abbey Wood, Bristol, or the Contractor's site at Aztec West, Bristol. The Authority proposes that the first meeting is held at the Contractor's site then alternates quarterly between the Contractor's and Authority's sites. In the event that one party is unable to host the meeting in accordance with this schedule, both parties shall agree an alternative site.

DEFCON 647 (Edn 04/19)– Financial Management Information

NOTE: Earned Value Management (EVM) Applies to DEFCON 647

### **9.1. PROGRESS REPORTS**

9.1.1. For the purposes of Clause 1 of DEFCON 604 and Clause 2c of DEFCON 647, the frequency of reports shall be quarterly in accordance with the Contractor's standard reporting format, combining progress and financial information where practicable into a single report to include the following information:

- 9.1.2. costs accrued under the Contract to inform the Authority's financial accrual process;
- 9.1.3. Review of risks on joint risk register, and any agreed mitigation actions;
- 9.1.4. Performance of and progress against deliverables;
- 9.1.5. Status of GFA;
- 9.1.6. Commercial / contractual issues;
- 9.1.7. Achievement against individual KPIs per period including progress towards such achievement; and per annum to facilitate the annual review of performance, including any proposals for KPI criteria adjustment;
- 9.1.8. Reporting for earned value management systems;
- 9.1.9. Status of payments made, in progress, upcoming;
- 9.1.10. Update on previously recorded actions, as per an action tracker; and
- 9.1.11. Gainshare (to be replaced by incentive scheme if agreed).

## **9.2. PROGRESS MEETINGS**

- 9.2.1. For the purposes of Clause 1 of DEFCON 642, progress meetings shall be quarterly.
- 9.2.2. The chairman of the meetings shall be the Authority's Project Manager or an authorised representative unless expressly stated otherwise in Annex B to the Contract.
- 9.2.3. The Contractor shall be responsible for issuing all calling notices for the meetings giving not less than twenty (20) business days' advance notice of the meeting date and detailing any information required from attendees. The Contractor shall prepare and issue an agenda based on the details in the progress report (above) to the Authority for agreement and in support of each quarterly meeting, not less than five (5) business days prior to the meeting. Matters to be discussed in the quarterly progress meeting should cover the areas identified for inclusion in the progress reports at condition 9.1.1. The Contractor shall record minutes and produce report within twenty (20) business days.
- 9.2.4. Progress meetings are to be held at the Authority's site or the Contractor's site and alternate between sites each quarter. Where it is not feasible for one party to host a progress meeting as scheduled, both parties are to agree suitable alternative premises to host the meeting.

## **9.3. KEY PERFORMANCE INDICATORS**

- 9.3.1. The Contractor and the Authority agree that performance under the Contract shall be assessed against the key performance indicators (KPIs) detailed at Annex K to the Contract.
- 9.3.2. Where an instance relating to any of the KPIs cannot be progressed due to a need for information or authorisation from the Authority, such waiting time (from the date of

Contractor request until the date of receipt of the information or authorisation) will be discounted from the KPI measure. All claims by the Contractor for alleviation against KPI performance shall be made in the quarterly report and shall be made with supporting evidence.

- 9.3.3. The Authority may annually review and if necessary adjust KPI measures, subject to agreement within twenty (20) business days, at no additional cost to the Authority.

#### **9.4. EARNED VALUE MANAGEMENT**

- 9.4.1. The Contractor shall develop, deliver and update as needed over the term of the contract, an Earned Value Management Plan (EVMP) Level 3 in accordance with the requirements stated in Annex M to the Contract.

## Appendix - Addresses and Other Information

**1. Commercial Officer:**

[Redacted]

[Redacted]

[Redacted]

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

[Redacted]

[Redacted]

[Redacted]

[Redacted]

**3. Packaging Design Authority:**

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

**4. (a) Supply/Support Management Branch or Order Manager Branch/Name: Project Manager (as Box 2)****(b) U.I.N.****5. Drawings/Specifications are available from:**

Project Manager (as Box 2)

**6. Intentionally Left Blank****7. Quality Assurance Representative:**

[Redacted]

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

See Condition 3.2

**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]

**8. Public Accounting Authority:**

- 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
- For all other enquiries contact DES Fin FA-AMET Policy, Level 4 Piccadilly Gate, Store Street, Manchester, M1 2WD  
☎ 44 (0) 161 233 5394

**9. Consignment Instructions:**

The items are to be consigned as follows:

Trade Receipts,  
JSCS Donnington,  
Telford,  
Shropshire, TF2 8JT

**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 ☎ 01869 256052 (option 2, then option 3); JSCS Fax No 01869 256837 [www.freightcollection.com](http://www.freightcollection.com)

**11. The Invoice Paying Authority:**

Ministry of Defence ☎ 0151-242-2000

DBS Finance

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

Liverpool, L2 3YL

**Website is:**

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

**12. Forms and Documentation are available through \*:**

Ministry of Defence, Forms and Pubs Commodity Management  
PO Box 2, Building C16, C Site

Lower Arncott

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

Applications via fax or email: [DESLCSLS-OpsFormsandPubs@mod.uk](mailto:DESLCSLS-OpsFormsandPubs@mod.uk)**NOTES**

\* Many **DEFCONs** and **DEFFORMs** can be obtained from the MOD Internet Website [extranet, registration needed]:  
<https://www.aof.mod.uk/aofcontent/tactical/toolkit/index.htm>

