



**Defence Equipment & Support**

**Contract Number:** 700512370

**Description:** PAVEWAY IV IN-SERVICE SUPPORT

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OFFICIAL-SENSITIVE COMMERCIAL OFFICIAL SENSITIVE -  
COMMERCIAL

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## 1. Key Contract Terms

## 1.1. Schedule of Requirements

MINISTRY OF DEFENCE		
Name and Address of Contractor	SCHEDULE OF REQUIREMENTS FOR	Contract No: 700512370
REDACTED	<b>PAVEWAY IV In-Service Support</b>	Dated: 20 <sup>th</sup> May 2022
		Issued With: ITN PWISS 001
Item No.	Item Description	Core Period: 20/05/2022 - 19/05/2027
1.	Core: Provision of In-Service Support in accordance with the Statement of Work at Annex A to this Contract	<b>REDACTED FOR SECURITY PURPOSES – OFFICIAL SENSITIVE</b>
2.	Special Tasking, including the Procurement of Spares and Repairs in accordance with Clause 9.3 and Annex F to this contract.	£ To be calculated using applicable Annex C Rates
		Core Period <b>Total REDACTED FOR SECURITY PURPOSES – OFFICIAL SENSITIVE</b> Price (ex VAT)

## 1.2 DEFCONS

### General

#### DEFCON 501 (Edn 10/21) - Definitions and Interpretations

Note 1: In addition to the definitions detailed in DEFCON 501 the following definitions and abbreviations shall also apply to this Contract:

- a) Clause: The term "Clause" means any individual term within this Contract.
- b) Condition: The term "Condition" means any individual / group of clauses within this Contract.
- c) Task / Tasking Authorisation Form: The term "Task" is contracted by The Authority in accordance with Clause 9.3 of the Contract.
- d) Parties: The term "Parties" means The Authority and The Contractor collectively.
- e) Party: The term "Party" means either The Authority or The Contractor.
- f) Sub-Contract: The term "Sub-Contract" means a contract or arrangement between The Contractor and any other organisation or person for the provision of goods and/or services to The Contractor solely for the purposes of fulfilling The Contractor's obligations under this Contract.
- g) Sub-Contractor: The terms "Sub-Contractor" means any organisation or person party to a subcontract, as defined at 1.2.g above, with The Contractor.
- h) Technical Publication: The term "Technical Publication" means all documentation required in the delivery of the Contract including, but not limited to equipment support publications, handbooks, user guides, user manuals, repair and maintenance manuals, technical reports and drawings.

#### DEFCON 503 (Edn 07/21) - Formal Amendments to Contract

#### DEFCON 514 (Edn 08/15) - Material Breach

#### DEFCON 515 (Edn 06/21) - Bankruptcy and Insolvency

#### DEFCON 516 (Edn 04/12) - Equality

#### DEFCON 518 (Edn 02/17) - Transfer

#### DEFCON 520 (Edn 08/21) - Corrupt Gifts and Payments of Commission

#### DEFCON 526 (Edn 08/02) - Notices

#### DEFCON 527 (Edn 09/97) - Waiver

#### DEFCON 528 (Edn 07/21) - Overseas Expenditure, Import and Export Licences

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

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

#### DEFCON 531 (Edn 09/21) - Disclosure of Information

Note 1: See also Condition 2.8.

#### DEFCON 532B (Edn 09/21) - Protection of Personal Data

DEFCON 537 (Edn 12/21) - Rights of Third Parties

DEFCON 538 (Edn 06/02) - Severability

DEFCON 539 (Edn.01/22) - Transparency

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

DEFCON 566 (Edn 10/20) - Change of Control of Contractor

DEFCON 620 (Edn08/21) - Contract Change Control Procedure

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

DEFCON 656A (Edn 08/16) - Termination for Convenience – Under £5m

Note 1: DEFCON 656A only applies to Tasks and Spares and Repairs with a value under £5m.

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

DEFCON 658 (Edn09/21) – Cyber

Note 1: Cyber Risk Assessment (RAR-7BZF8P95) has been produced for this contract. The Cyber Level for this contract has been assessed as being *Very Low*.

DEFCON 659A (Edn. 09/21) - Security Measures

Note 1: The Security Aspects Letter referred to at Clause 1a of DEFCON 659A (Edn. 09/21) is at Annex I to the Contract.

DEFCON 660 (Edn.12/15) - Official-Sensitive Security Requirements

### **Specifications, Plans etc.**

DEFCON 502 (Edn 05/17) - Specifications Changes

Note 1: For the purposes of clause 1, the “Specification” shall mean the Statement of Work at Annex A to the Contract.

DEFCON 601 (Edn 04/14) - Redundant Materiel

DEFCON 602A (Edn 12/17) - Deliverable Quality Plan

DEFCON 606 (Edn 07/21) - Change and Configuration Control Procedure

DEFCON 608 (Edn 07/21) - Access and Facilities to be provided by The Contractor

DEFCON 609 (Edn 07/21) - Contractor's Records

DEFCON 637 (Edn 05/17) - Defect Investigation and Liability

### **Price**

DEFCON 127 (Edn 08/21) - Price Fixing Condition For Contracts of Lesser Value

Note 1: Applicable to Tasks, United Kingdom (UK) Contracts and Sub-contracts only.

Note 2: In respect of the Sub-Contracts placed with the United States (US) Sub-Contractors, the Firm Price quoted may be verified by The Authority, using the services of the US Department of Defence (DoD), Defence Contract Audit Agency (DCAA) at The Authority's discretion. It is recognised that the

DCAA may review the Firm Price for the proper use of approved US Government pricing rates for labour hours, travel and material, using standard approved overhead burdens, with the exception of the Sub-Contractor's profit element.

DEFCON 654 (Edn 10/98) - Government Reciprocal Audit Arrangements

DEFCON 800 (Edn 12/14) - Qualifying Defence Contract

DEFCON 801 (Edn 12/14) - Amendments to Qualifying Defence Contracts – Consolidated versions

DEFCON 804 (Edn 03/15) - QDC: Confidentiality of Single Source Contract Regulations Information

### **Intellectual Property Rights**

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

Note 1: DEFCON 14 shall be applicable only to supplementary tasks under Item 2 of the Schedule Of Requirements involving design and development funded by the Authority.

DEFCON 15 (Edn 02/98) - Design Rights and Rights to Use Design Information

Note 1: DEFCON 15 shall be applicable only to supplementary tasks under Item 2 of the Schedule Of Requirements involving design and development funded by the Authority.

DEFCON 16 (Edn 10/04) - Repair and Maintenance Information

DEFCON 21 (Edn 10/04) - Retention of Records

DEFCON 90 (Edn 11/06) - Copyright

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

DEFCON 126 (Edn 11/06) - International Collaboration

Note 1: The periods referred to in Para 2 and 3 of this Condition shall be to the year 2028 or individual OSD's whichever is later.

DEFFORM 315 (Edn 02/98) - Contracts Data Requirement

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

DEFCON 687A (Edn 06/01) - Provisions of a Shared Data Environment Service

### **Loans**

DEFCON 23 (Edn 06/21) - Special Jigs, Tooling and Test Equipment

DEFCON 76 (Edn 06/21) - Contractor's Personnel at Government Establishments

DEFCON 611 (Edn 02/16) - Issued Property

DEFCON 694 (Edn 07/21) - Accounting For Property of The Authority

### **Delivery**

DEFCON 113 (Edn 02/17) - Diversion Orders

DEFCON 130 (Edn 11/21) - Packaging for Explosives

DEFCON 507 (Edn 07/21) - Delivery

DEFCON 524 (Edn12/21) - Rejection

DEFCON 525 (Edn 10/98) - Acceptance

DEFCON 612 (Edn 06/21) - Loss Of or Damage to the Articles

DEFCON 621B (Edn 10/04) - Transport (if The Contractor is responsible for transport).

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

Note 1: The Contractor shall follow the marking conventions and standards as per the DEFCON unless otherwise agreed by the Authority. The Authority shall consider the implications of any changes to marking conventions and standards against custom and practice applied to the equipment throughout its Service history with the MOD. Where doubt exists as to the Marking conventions and standards to be used, the Parties shall mutually agree an acceptable standard.

DEFCON 681 (Edn 06/02) - Decoupling Clause - Subcontracting with the Crown

### **Payments/Receipts**

DEFCON 5J (Edn 18/11/16) - Unique Order Identifiers

DEFCON 129J (Edn 18/11/16) - The Use Of the Electronic Business Delivery Form

DEFCON 513 (Edn 07/21) - Value Added Tax

DEFCON 522 (Edn 11/21) - Payment and Recovery of Sums Due

DEFCON 534 (Edn 06/21) - Subcontracting and Prompt Payment (Sub-Contracts)

DEFCON 670 (Edn 02/17) - Tax Compliance

### **Contract Administration**

DEFCON 604 (Edn 06/14) - Progress Reports

DEFCON 625 (Edn 06/21) - Co-operation On Expiry Of Contract

DEFCON 697 (Edn 06/21) - Contractors On Deployed Operations

DEFCON 642 (Edn 07/21) - Progress Meetings

### **Tasking**

DEFCON 127 (Edn 08/21) - Price Fixing Condition For Contracts of Lesser Value

Note 1: Applicable to Tasks, United Kingdom (UK) Contracts and Sub-contracts only.

Note 2: In respect of the Sub-Contracts placed with the United States (US) Sub-Contractors, the Firm Price quoted may be verified by The Authority, using the services of the US Department of Defence (DoD), Defence Contract Audit Agency (DCAA) at The Authority's discretion. It is recognised that the DCAA may review the Firm Price for the proper use of approved US Government pricing rates for labour hours, travel and material, using standard approved overhead burdens, with the exception of the Sub-Contractor's profit element.

DEFCON 656A (Edn 08/16) - Termination for Convenience – Under £5m

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

DEFCON 801 (Edn 12/14) - Amendments to Qualifying Defence Contracts – Consolidated versions

## 2. General Conditions

### 2.1 Entire Agreement

- a. The primary purpose of this Contract is to support the Authority in the provision of In-Service Support for the Paveway IV system; ensuring capability is maintained throughout contract duration.
- b. 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.

### 2.2 Duration

- a. The Contract shall commence either upon 20<sup>th</sup> May 2022 or upon signing of the DEFFORM 10 Contract Acceptance (whichever is later) and shall remain in force until the 19th May 2027, unless the Option Period detailed below is invoked and/or unless terminated in accordance with the terms of the Contract.
- b. Where a Task is contracted by The Authority in accordance with Clause 9.3 the Task shall be completed by the date specified in the contracted Task Authorisation Form. The Task shall be fulfilled in accordance with the Terms and Conditions and procedures of this Contract and by the date specified in the Task.

### 2.3 Responsibilities of The Contractor

- a. The Contractor shall be entirely responsible for undertaking the work detailed in the Schedule of Requirement (SOR) at Condition 1 of this Contract, including the Statement of Work at Annex A to this Contract, and any subsequent work added to it in accordance with the Special Tasking procedures at Condition 9.3 of this Contract.
- b. The Contractor's responsibilities under the Contract include, but shall not be limited to:
  - i. carrying out all activities and producing the deliverables, as described in the Statement of Work at Annex A to this Contract, in accordance with the Conditions of this Contract;
  - ii. the placing, administration, control and management of all Sub-Contracts, required to meet the requirements of the Contract;
  - iii. planning, resourcing, programming and progressing of the work, including preparation and delivery of appropriate documentation;
  - iii. financial management of the work, including financial control and monitoring of all Sub-Contracts; and
  - iv. providing The Authority with the information reasonably required to satisfy the Representative on a continuing basis that the work is proceeding to time, cost and performance. This is without prejudice to the specific Contract reporting requirements outlined in this Contract.
  - v. The Contractor shall monitor and, if appropriate, propose any efficiencies and cost savings to the benefit of both parties, as and when they become known for consideration by The Authority.

- vi. The Contractor shall be responsible for the financial management of the Core Activities and authorised Tasks and ensure that the accruals are recorded and reported in a timely manner.
- c. Authorisation for The Contractor to proceed with Tasks under Item 2 of the Schedule of Requirements shall be obtained from The Authority's Engineering Manager, Project Manager, Finance Manager and Commercial Officer using the Task Authorisation Form process at Clause 9.3 of this Contract.
- d. All Services are to be provided in accordance with and subject to the Terms and Conditions of this Contract.

#### 2.4 Order of Precedence

- a. In the event of any conflict or inconsistency between the Terms and Conditions of the Contract, the Contract Schedule of Requirements, Annexes to the Contract and any other document referred to therein, the following order of precedence shall apply:
  - i. The Narrative Conditions of Contract shall take precedence over;
  - ii. The DEFCONs, DEFFORMs and the Annexes shall take precedence over;
  - iii. Any other document incorporated by reference into this Contract.
- b. Should either party become aware of any conflicts or inconsistencies between contractual documentation, including referenced documents, that party's Commercial Manager shall notify the other party's Commercial Manager in writing, copied to the respective Project Managers.
- c. In the event of any internal conflict in any document, or any conflict between any documents with the same order of precedence, The Authority's Commercial Manager will consult with The Contractor's Commercial Manager to determine how such conflict or apparent conflict may be resolved. If after such consultation both parties fail to resolve the conflict or apparent conflict, then the conflict or apparent conflict shall be concluded in accordance with DEFCON 530 (Edn 12/14) and the escalation process documented at Clause 2.8.

#### 2.5 Sub-Contracts

- a. The Contractor shall immediately inform the Commercial Officer of any proposal to award Sub-Contracts or replace existing Sub-Contractors.
- b. Responsibility for the placement and performance of all Sub-Contracts/Sub-Contractors rests with The Contractor.
- c. The appointment by The Contractor of sub-system design authorities shall not derogate in any way from The Contractor's responsibilities.
- d. The Contractor shall ensure that the Terms and Conditions of the Contract are reflected in all Sub-Contracts, at whatever level, to the extent necessary to enable The Contractor to fully meet his obligations to The Authority under the Contract.
- e. Subject to any US Government export restriction, The Contractor shall furnish The Authority with copies of Sub-Contracts, if so, required by The Authority.
- f. Where The Contractor proposes to place any Sub-Contract involving design and development work and resulting in the creation of new Intellectual Property, the Contractor shall ensure that the Sub-Contract includes a provision for the Contractor to conclude direct agreement with the Authority in the form of a DEFFORM 177.

#### 2.6 Performance of Work and Responsibilities

- a. The Contractor shall be responsible for meeting all aspects of the Contract, that Work shall be carried out by Suitably Qualified and Experienced Personnel (SQEP) and that Work will be performed with reasonable skill and care. The Contractor shall be fully responsible for carrying out

the requirements of the Contract, as detailed in the Contract Terms and Conditions and related Annexes.

- b. Acceptance by The Authority of any of The Contractor’s plans (documents referenced by the Contract) does not signify acceptance of liability for their accuracy, suitability or applicability. Acceptance only signifies The Authority’s acknowledgement of The Contractor’s intention to implement the provisions of those plans.
- c. The Authority shall accept no responsibility or liability for any costs arising from failure on the part of The Contractor to meet the requirements of the Contract.
- d. The Authority will be responsible for meeting its obligations under the Contract.

**2.7 Sustainable Procurement**

- a. The Contractor shall take all reasonable steps to ensure that all activities under this Contract shall comply with certified environmental management standards based on ISO 14001.

**2.8 Escalation Process**

- a. In accordance with clause 1 of DEFCON 530, the Parties will attempt in good faith to resolve any dispute or claim arising of or relating to this Contract through negotiations. To facilitate the timely resolution of the dispute or claim, the Parties will escalate any such dispute or claim through the following levels:

Level	The Authority	The Contractor
1	IGMR DT Project Manager	RSL Weapons Support Manager
2	IGMR DT Commercial Manager	RSL Commercial Manager
3	IGMR DT Senior Commercial Manager	RSL Senior Commercial Manager
4	IGMR DT Team Leader	RSL Weapons Support Director
5	Hd Commercial Weapons	RSL Commercial Director

- b. In an attempt to prevent a dispute from becoming prolonged, a maximum of 10 (ten) business days shall be allowed for discussion at any level before escalating the dispute to the next level for resolution. If at the conclusion of this process, the Parties are unable to reach a resolution then clauses 2-6 of DEFCON 530 shall apply.

**2.9 Publicity**

- a. The Contractor shall note that no publicity or communication with representatives of press, television, radio or other media, unless otherwise agreed in writing by The Authority’s Commercial Branch shall be permitted on any aspects of this Contract. The Contractor shall not release any information publicly relating them, any employees, or Sub-Contractors to this Contract without the prior written approval of The Authority’s Commercial Branch.
- b. This Condition is to be flowed down to all Sub-Contractors.
- c. Any failure to comply with the obligations under this Condition 2.9 shall be treated as a breach of contract potentially leading to termination or deductions equivalent to the damage resulting from any disclosure.

### 2.10 Termination for Convenience

- a. The Authority shall have the right at any time to terminate the Contract in whole or in part by giving The Contractor written notice to expire at the end of the period specified in the Contract Data Sheet or if no such period is specified at the end of twenty (20) Business days.
- b. In the event that The Authority exercises its rights in accordance with DEFCON 656A/B, The Authority shall indemnify The Contractor against any commitments, liabilities or expenditure, associated profit, which are reasonably and properly chargeable by The Contractor in connection with the Contract, which would otherwise represent an unavoidable loss by The Contractor by reason of termination of the Contract or the relevant part thereof.
- c. The Authority's total liability under DEFCON 656A/B shall be limited to the total price of The Contractor Deliverables payable under the Contract or the relevant part thereof, including any sums paid, due or becoming due to The Contractor at the date of termination.

### 2.11 Continuing Obligation

- a. Termination or expiry of this Contract shall not affect the continuing rights and obligations of The Contractor and The Authority under any provision of this Contract, which is expressed to survive termination or expiry, or which is required to give effect to such termination or the consequences of such termination.

## 3. Specifications, Plans etc.

### 3.1 Safety Critical Items

- a. For the purposes of the Contract, Safety Critical Items shall be subject to independent inspection in accordance with Defence Standard 05-061.

### 3.2 Requirements

- a. The Contractor shall be entirely responsible for the satisfactory completion of all work to be delivered as detailed in the Schedule of Requirement. It shall be The Contractor's responsibility to ensure and to demonstrate to The Authority that all such work conforms to the Statement of Work at Annex A to this Contract.

### 3.3 Authorisation and Performance of Work

- a. Item 1 of the Schedule of Requirements (Core Services). Upon placement of this Contract. The Contractor shall commence provision of the Core Services. The Contractor shall cease providing Core Services on 19th May 2027, unless the Option in Clause 2.2.b is invoked by The Authority.
- b. Should The Authority invoke the Option Period of the contract (Clause 2.2.b) The Contractor shall provide the Services agreed in the Option price through to the Contract cessation date.

### 3.4 Quality Assurance (QA)

- a. The Quality Assurance (QA) Requirements shall be delivered through adherence to the procedures and quality standards detailed at Clause 5 of Annex A to this Contract.
- b. Where The Contractor Sub-Contracts work to a DO who is a non-UK Company it is recognised that they may not meet the UK DEFSTANs detailed at Annex M of this Contract but will comply with existing Company Procedures, National and Military Standards and Procedures. Should this be the case, specific approval/agreement shall be required from The Authority to operate to these alternative standards and procedures.

- c. Unless otherwise directed in this Contract, The Contractor shall retain the Quality Control Inspection Records or such of those records as may be agreed by the APM for a period of 4 (four) years from completion of all work under this Contract and shall make them accessible to The Authority on request. Exceptionally, when requested by The Contractor, earlier disposal may be authorised in writing by the Authority Project Manager (APM). At the end of the retention period The Contractor shall seek advice from the APM regarding the disposal/continued retention of the Quality Control/Inspection Records, and The Contractor shall not dispose of such records without the written authority of the APM.
- d. The Authority's initial point of contact for Quality issues is the APM.
- e. The Quality Assurance (QA) Requirements are detailed at Annex A to the Contract; Statement of Work and Annex M to the Contract; Contract Specific Quality Assurance (QA) Requirements. Further, it is MoD Airworthiness Policy that, the Contractor, Co-ordinating Design Organisation (CDO) or Design Organisation (DO) are certified under the Design Approved Organisation Scheme (DAOS).

### 3.5 Risk Management

- a. The Contractor acknowledges that any risk assessment which has been, or may be undertaken in connection with this Contract, has been or will be, a project management function only. Such risk assessment does not affect the legal relationship between The Authority and The Contractor. The issuing of any risk assessment questionnaire and the process of risk assessment generally, including without limitation, the identification of (or failure to identify):
  - i. particular risks and their impact; or
  - ii. risk reduction measures, contingency plans and remedial actions, shall not in any way limit or exclude The Contractor's obligations under the Contract and shall be entirely without prejudice to The Authority's rights, privileges and powers under this contract. The risks identified as a result of any risk assessment process generally remains the risks of The Contractor and are not assumed by The Authority, except to the extent that The Authority expressly and unequivocally accepts those risks under this Contract.
- b. The Contractor's Risk and Opportunities Management Plan and requirements are to be shared with the Authority as part of the Quarterly Progress reviews.

### 3.6 Airworthiness Technical Procedures

- a. The Contractor shall apply the Technical Procedures detailed within the following MAA Regulation – RA 5000 Series: Type Airworthiness Engineering Regulations. The Contractor shall manage Design and Modification and Configuration Management in accordance with the updated requirements of the MAA Regulations when undertaking any design, development, qualification, certification and support activities under this Contract.
- b. The Contractor shall comply with the supplementary Airworthiness requirements detailed within this Contract.

### 3.7 Supply of Information About Substances Referred to in The Montreal Protocol

- a. The Contractor shall provide, within 45-60 Business days of acceptance of this Contract the following details:
  - i. All substances listed at Annex P to the Contract (adopting the nomenclature used therein) contained in the equipment (including the packaging thereof, whether or not specified in this Contract);

- ii. The quantity of each of the substances at Annex P contained in the equipment, and
- iii. Where in the equipment (including packaging) the substances listed at Annex P are contained.

#### 4. Price

##### 4.1 Contract Pricing Strategy

- a. The Authority and The Contractor have agreed estimated direct labour rates and Overhead Rates for calendar year 2021. These rates shall be recorded in Annex C, and shall be inclusive of:
  - i. all appropriate taxes (but not UK VAT), license fees and the cost of complying with all the Contract conditions; and
  - ii. all costs associated with importing any items (equipment/software/data) into the UK from overseas.
- b. DEFCON 811 'Single Source: Profit and Loss Sharing on Firm / Fixed Price Contracts' (12/14) shall apply to the Contract.

##### 4.2 Allowable Costs

- a. The parties recognise that each has a legal obligation, under section 20 of the Defence Reform Act 2014, to be satisfied that the costs included in the contract price are Appropriate, Attributable and Reasonable (together 'AAR'). The parties also recognise that, at the time of contract award, the information provided to the Authority by the Contractor is not sufficient to allow the Authority to be satisfied that all the costs included in the contract price are AAR. The parties have identified at Annex H those costs or categories of costs in respect of which further information must be provided before an 'AAR assessment' can be made. Accordingly, the parties agree that the Contractor will provide to the Authority, by 19<sup>th</sup> May 2023, sufficient information to enable the Authority to be satisfied that those identified costs included in the contract price are AAR or, alternatively, to enable the Authority to be satisfied as to what revised quantum of costs would be AAR. Following that provision of information and the Authority's analysis thereof, the parties shall meet to consider whether, and if so in what respect, it is necessary to re-price the Contract in accordance with the Schedule to the Single Source Contract Regulations 2014. Without prejudice to any other right which the Authority may have, in the event that the Authority does not consider that the Contractor has complied with its obligation under this clause, or it is still not satisfied that the costs included in the contract price are AAR by 17<sup>th</sup> November 2023, it intends to refer the contract to the SSRO for a determination of allowable costs, pursuant to section 20 of the Defence Reform Act 2014.

##### 4.3 Contract Profit Rate

- a. The Contract is a Qualifying Defence Contract (QDC) and shall be subject to Part II of the Defence Reform Act 2014 (the Act) and the Single Source Contract Regulations 2014 (SSCR).
- b. In determining the contract profit rate for this QDC, The Contractor shall apply the steps set out in Section 7(2) of the Act and illustrated below. The following Profit Rate has been agreed for the Core Period of this Contract, subsequent tasks will be calculated in accordance with the applicable promulgated rates at the time of quotation:

SSRO Pricing - Profit Rate	REDACTED
1. Baseline Profit Rate (BPR) (issued by SofS)	REDACTED
2. Cost Risk Adjustment (CRA) +/- 25% of BPR	REDACTED
3. Profit on Cost Once (POCO)	REDACTED
4. SSRO Funding Adjustment	REDACTED
5. Incentive Adjustment	REDACTED
6. Capital Servicing Adjustment (CSA)	REDACTED
Contract Profit Rate	REDACTED

### 4.3 Tasking Authorisation Forms

- a. The price for all Tasks shall be agreed in accordance with either DEFCON 127 (Edn 12/14) where the price is below £250,000, or DEFCON 801 if above £250,000 using the Task Authorisation Form at Annex F. Prices for Tasks carried out under Item 2 of the Schedule of Requirements shall be priced using The Contractor's latest promulgated and agreed rates using the tasking procedure detailed at Condition 9.3 of the Contract.
- b. The Profit Rate on all Tasks is to be calculated using the six-step SSRO Profit Rate methodology, and utilise the prevailing BPR, SSRO Funding Adjustment and CSA in place at the time of Task award. The CRA will be calculated in accordance with 4.4.e of this Contract. Given that the balance of work between Contractor and Subcontractors part of its own organisation structure will vary for each task, the POCO and Incentive Adjustment factors shall be reviewed and agreed on an individual Task basis.
- c. All Task Authorisation Forms (Annex F) submitted under Condition 9.3 of the Contract shall be accompanied by a cost analysis showing how The Contractor has constructed its price. This analysis will, as a minimum, provide detail under the following headings: Direct Labour hours (labour hours by grade) and Rates (inclusive of overheads and profit); Materials; Sub-Contracted work, and claimed profit. Rates quoted shall be those agreed between The Authority and The Contractor.
- d. All travel and subsistence expenses shall in accordance with Annex C of the Contract.
- e. Tasking Authorisation Form - Agreed Cost Risk Adjustment Levels
  - i. The Contract Profit Rate for Tasks placed under this Contract shall be calculated utilising a tiered risk assessment methodology for Step 2 of the SSRO Pricing Formula.
  - ii. Cost Risk Adjustment shall be agreed separately for each Task.
  - iii. The Step 2 tier risk assessment shall be an adjustment against the Baseline Profit Rate (BPR). The risk criteria shall be clearly proposed by The Contractor on Part 2 of the Tasking Authorisation Form, and the tier of risk to be applied shall be mutually agreed prior to receipt of Task commencement approval. Any dispute will be escalated in accordance with Clause 2.8.

### 4.4 Key Performance Indicators

- a. The Contractor's performance will be measured against a set of Key Performance Indicators (KPI's) called up at Annex E. Failure to meet the Performance Criteria included within each KPI shall result in The Authority implementing the stated Performance Measures.

## 5. Intellectual Property Rights

### 5.1 Intellectual Property Rights

- a. Where The Authority has secured user-rights in information for items contained in this Contract prior to signature of it, The Authority will retain these rights. A detailed list of existing background IPR and DEFCON applicability can be found at Annex Q to the Contract; Ownership of Background Intellectual Property Rights.
- b. Should The Authority and The Contractor agree to make a change to the design of any equipment, then The Contractor or the Sub-Contractor performing the work shall own the IPR and The Authority shall obtain such free user rights in accordance with the relevant DEFCON /DEFFORM.
- c. Any IPR generated under the Special Tasks raised in accordance with Line Item 2 of the Schedule of Requirements shall be added to Annex Q to the Contract; Ownership of Background Intellectual Property Rights.

### 5.2 Design/Patent Rights in Equipment Designed Under Sub-Contracts

- a. The Contractor shall not place any Sub-Contract(s) or orders involving the design or development of equipment required under this Contract without the prior approval of The Authority, which will be given by The Authority's Commercial Officer.
- b. The Contractor shall not enter into any commitment with any Sub-Contractor(s) involved in the design and development of the Articles under the Sub-Contracts, until the Sub-Contractor(s) have entered into an agreement with The Authority in the form set out at Annex X to this Contract. Wherever possible, the request for approval should be accompanied by two copies of the agreement signed by the Sub-Contractor(s). If, in any case, The Contractor is unable to comply with this Condition, they shall report the matter to The Authority's Commercial Officer and await further instructions before placing the Sub-Contract(s) or orders.
- c. In the event that any Special Tasks raised under Item 2 of this Contract require the raising of a DEFFORM 177, a copy will be added to Annex X.
- d. For clarity this Condition is only applicable to Special Tasks involving new design or development work.

### 5.3 Copyright Marking

- a. In the case that The Contractor includes a copyright legend on any work, including extracts there from, generated under this Contract, such legend shall also refer to the rights of The Authority under DEFCON 90.

### 5.4 Patent Indemnity

- a. The Contractor hereby agrees to indemnify The Authority against any claim, action or proceeding arising inside either the UK or the US (on the understanding that the design only incorporates either UK or US registered patents) relating to use or infringement or alleged use or infringement (whether by manufacture, use, sale, or otherwise) of any patent, registered design, copyright, or other intellectual property arising in or out of the performance of this Contract or the supply or provision of equipment or services to The Authority or the use by The Authority of any article, drawing, document

or other information or service provided under this Contract, and The Contractor undertakes to be responsible for dealing with and settling, at their own expense, any such claim, action or proceeding. The Contractor shall keep The Authority fully informed of the progress of any such claim, action or proceeding and shall not conclude any settlement thereof without first advising The Authority of the terms proposed. The Authority reserves the right to intervene or assume responsibility at any time for the conduct of any such action or proceeding or consequent settlement. In such event, The Authority will bear any additional cost that arises beyond that which should have been reasonably incurred by The Contractor in such action, proceeding or settlement.

### **5.5 Import/Export Licenses and Technical Assistance Agreements (TAAs)**

- a. The Contractor shall be responsible for securing all necessary import/export licences, Technical Assistance Agreements (TAA's), permits and security clearances from the appropriate national Government(s) for the export to the UK, and use as required by the UK Armed Forces, in respect of:
  - i. Any equipment which is to be manufactured other than in the UK;
  - ii. Any data, drawings, specifications, manufacturing data and other like information required for manufacture of any equipment under licence in the UK;
  - iii. The provision of all other information, technical assistance, hardware documentation and data required to enable the full requirements of this Contract to be satisfied.
- b. The Contractor shall provide within one month of the date of this Contract evidence of either application for approval, or approval in principle at least, to the gaining of such export licences, permits and clearances as are required to satisfy, in full, the Conditions of this Contract (if applicable). A comprehensive list of all associated TAA's is at Annex S to this Contract.
- c. In support of the Contractor's activities under this Condition, The Authority undertakes to provide The Contractor within four weeks of a written request, with End User Certificates and/or such other information requested by a foreign government or agency in support of any export licence applications which may be required for importation into the UK in support of The Contractor's obligations hereunder.
- d. The Authority agrees to honour a reasonable request for UK Embassy assistance from The Contractor in support of licensing activities.
- e. Where The Contractor has demonstrated that they have operated in a timely manner, or failed to receive timely approval from the relevant Government or a TAA/Manufacturing Licensing Agreement (MLA)/Open General Export Licence (OGEL) approval is withdrawn for any reason by the respective Governments, The Authority will allow The Contractor a reasonable extension of time for completion, provided The Authority considers it would be unreasonable to expect The Contractor to perform within the required time.

### **5.6 Procedures For Making Direct Agreement with Sub-Contractors**

- a. The Contractor shall not place any sub-contact or order involving the significant design or development of equipment required under the Contract without the prior approval of The Authority.
- b. Further to Condition 2.5.f The Authority shall have the right to enter into DEFFORM 177 agreements with Sub-Contractors. The request for approval shall be accompanied by two copies of the agreement signed by the Sub-Contractor. If, in any case The Contractor is unable to comply with this Condition he shall report the matter to the ACO and await further instructions before placing the sub-contract or order.

- c. The Contractor shall incorporate into any sub-contract or order appropriately amended versions of the Contract Deliverable Requirements (the 'Sub-Contractor Deliverable Requirements') insofar as they are applicable to the sub-contract work; see also Annex N to the Contract.
- d. The Contractor shall be responsible for ensuring that the Sub-Contractor Deliverable Requirements are incorporated in any direct IPR agreement

### 5.7 Deliverable Data

- a. The Contract Deliverable Requirements List is detailed at Annex N to the Contract. The Contractor shall deliver each deliverable item by the date identified. The Authority shall accept or reject the deliverable data within ten (10) Business days of the date of receipt or the delivery date whichever is the later, or the timelines as specified.
- b. Upon acceptance of the deliverable item, The Authority shall formally notify The Contractor of acceptance and, where a payment milestone is held against that deliverable item, approve the payment under the CP&F procedure.
- c. The Authority may only reject deliverable items for material errors or omissions. Resolution of material errors or omissions shall be carried out soon as possible, but no later than 30 (thirty) business days of the date of receipt of the deliverable item or its delivery date whichever is the later. Within that 30 (days) Business day period a meeting may be held between The Contractor and The Authority to resolve any material errors or omissions which, where a payment milestone is held against that deliverable item, will permit payment to be made upon rectification and acceptance by The Authority. One iteration of any deliverable item has been allowed within 30 (thirty) day period unless otherwise agreed with The Authority.

## 6. Government Property

### 6.1 Government Furnished Assets, Resources, Facilities, Equipment and Information (GFX)

- a. Should The Contractor require any GFX other than that currently specified in the GFX section of Annex D, it must give The Authority a minimum of thirty (30) calendar notice. For all TAF, the notice period is to be agreed on a task by task basis. That notice must include full details of The Contractor's requirement.
- b. Wherever practicable The Authority will seek to meet the additional requirements submitted, but shall be under no obligation to do so. If the requirement can be satisfied from The Authority's existing resources the Parties shall seek to negotiate appropriate terms (type of loan, dates), noting that ultimately the acceptability or otherwise of those terms is at The Authority's sole discretion. Should The Authority agree to such a request and the associated terms, the Assets in Industry and GFX register as part of Annex D shall be amended accordingly at the next PMR.
- c. The GFX shall be made available at the Effective Date and shall be returned to The Authority unchanged in condition except for fair wear and tear. The integrity of any equipment loaned in support of the Contract must be maintained throughout the loan period.
- d. The Contractor shall not modify any GFX without the prior agreement of The Authority. If The Contractor has any doubt about the suitability of any item, or has proposals for design changes, The Contractor shall advise The Authority accordingly at the earliest opportunity. The Contractor shall ensure that the design of the installation using GFX is in accordance with the specific requirements of such equipment.
- e. The Contractor shall observe all reasonable instructions of The Authority's Project Manager regarding any GFX issued for the purpose of the Contract. The Contractor shall also observe any accounting instructions issued by The Authority.

- f. Where The Contractor is responsible for the supply to The Authority of equipment, facilities, information or services under this or other contractual arrangements which are then to be supplied as GFX under this Contract, then The Contractor shall take full responsibility for the timely delivery of such items. At no point will The Authority assume responsibility for The Contractor's failure to deliver.
- g. For the purpose of this Contract, the notice period associated with clause 12.c of DEFCON 611 (Edn 02/16) shall be 20 Business Days. On being given such period, The Contractor shall permit, and cooperate, with The Authority to conduct audits of the property of The Authority recorded in the Public Store Account in a manner to be determined by The Authority. Where The Authority has reasonable grounds to believe that the property of The Authority has been used not in accordance with the terms of issue then these audits may be conducted without notice. The Contractor shall ensure a similar provision to this clause is included in any Sub-Contract under which GFX is issued.
- h. The Authority reserves the right to withhold milestone payments against the Contract until such time as any GFX items requested to be returned prior to completion of such milestones are returned.
- i. Assets required for use as Reference Equipment or STT Test Equipment shall be issued to the contractor on Ordinary Loan at the discretion of the Authority's PM.

## 6.2 Disposal of Government Property

- a. Throughout the duration of the Contract, Assets deemed surplus to requirements may only be disposed of by prior agreement via a task issued by The Authority. Disposal of Classified or contaminated material may only be disposed of through an appropriately cleared contractor.
- b. The Authority shall issue disposal instructions within three (3) months of receipt of the final list. When all items have been disposed of as directed, The Contractor shall inform The Authority accordingly.

## 6.3 Assets in Industry

- a. A comprehensive list of assets that The Contractor is managing on behalf of The Authority can be found at Annex D to the contract. These assets shall be managed in accordance with DEFCON 611 – Issued Property.

## 7. Deliverables

### 7.1 Acceptance and Rejection

- a. The Authority shall have 30 (thirty) Business Days to accept any documents and/or deliverables supplied under the Schedule of Requirements (Item 2). If The Authority is not satisfied that the Services are delivered in accordance with the Statement of Work, or the Statement of Work outlined in each Task, it shall formally reject the Services in writing, within 10 working days, detailing the reasons for such rejection in accordance with DEFCON 524.
- b. If a document or deliverable is rejected, The Contractor shall then have 20 (twenty) Business Days to address those comments provided to the satisfaction of The Authority. If no comments are provided by The Authority within 30 (thirty) Business Days, the document or deliverable will be considered to have been accepted.
- c. Where Tasks involve an acceptance process which differs from that described in condition 7.1.a, this will be agreed and recorded on the Task Authorisation Form (TAF).

### 7.2 Delivery

- a. The Contractor shall deliver all Articles and Services required under the Contract in accordance with these Terms and Conditions, Annex A and Annex N to the contract.

- b. In the event that delay in delivery of any of the Articles or Services required under the Contract occurs or is expected to occur for any reason, The Contractor shall immediately notify the Commercial Officer with a full explanation of the circumstances.
- c. The Contractor shall complete any Task authorised in accordance with Clause 9.3 no later than the day specified in any such task, or a date mutually agreed between the Parties.

## **8. Payment Arrangements**

### **8.1 Payment**

- a. Payment shall be made in accordance with the terms of the Contract using CP&F and the Delivery and Milestone Payment Plan at Annex B to this Contract.
- b. Payment for the provision of Core In-Service Support, Item 1 of the Schedule of Requirements, shall be made in accordance with the agreed Delivery and Milestone Payment Plan at Annex B to the Contract, provided that The Contractor has fulfilled their obligations in accordance with the Terms of the Contract and applicable acceptance criteria, including Key Performance Indicators, within the relevant period and has notified The Authority in writing that they have done so. Any underspend resulting in excessive profit will be treated in accordance with the Single Source Contract Regulations Protection against Excessive Profit and Loss process.
- c. Payment for completion of Tasks, Item 2 of the Schedule of Requirements, shall be made in accordance with the Milestone Payment Plan agreed within each individual task provided that The Contractor has fulfilled their obligations in accordance with the requirements of the Task and the Terms of the Contract and applicable acceptance criteria, including Key Performance Indicators. The Contractor shall notify The Authority in writing that this has been completed.

## **9. Contract Administration**

### **9.1 Management and Reporting**

- a. The Management Meeting hierarchy together with the structure of each meeting are detailed at Annex A to the Contract. The Contractor shall be represented by Suitably Qualified and Experienced Personnel (SQEP) to discuss and make decisions at these meetings.
- b. The Contractor undertakes to work with The Authority on Item 1 of the Schedule of Requirements to identify and mature a number of potential process improvements and innovations within this Contract and any potential future Contracts.
- c. The Contractor shall provide reports and documentation as required by Annex A to the Contract. The Contractor shall ensure that all reports are signed by an officer duly authorised to sign the reports on behalf of The Contractor.

### **9.2 Retention of Records**

- a. During the continuance of the Contract and for the period during which the service to which the contract relates remains in-service with The Authority, The Contractor shall retain a copy of any deliverables together with fully documented records of work done for the purposes of the Contract.
- b. The Authority shall have the right during that time, and thereafter as long as a copy of the Results and such documented records are actually retained, to require The Contractor to furnish The Authority copies of all such Results and documented records in such form and detail as The Authority may prescribe. A reasonable charge for this service based on the cost of providing it will be borne by The Authority unless already included in the price of the Contract.

### **9.3 Task Authorisation Form**

- a. For activities described under Item 2 of the Schedule of Requirement the following process will apply:
  - i. Tasks shall be initiated and controlled on a Task Authorisation Form (TAF) as attached at Annex F to this Contract.
  - ii. The Authority will submit the Tasking Authorisation Form to The Contractor - defining the requirement, timescales required (both for TAF delivery and overall work output) and any other relevant information - to allow The Contractor to provide a quotation and technical proposal that meets The Authority's requirement.
  - iii. The Task Authorisation Form is made up of the following elements:
    1. Part 1 – This shall be completed by The Authority's Project Manager (APM) and/or Engineer and issued to The Contractor's Commercial Manager (CCM) from The Authority's Commercial Manager (ACM). The Task completion date will be mutually agreed by the parties and will reflect the business needs of The Authority's Delivery Team.
    2. Part 2a - The Contractor shall provide a quotation and cost breakdown for the Assessment, at Part 2a of the TAF by the required date (unless agreed otherwise by The Authority). The Contractor shall support their quotation with a technical proposal outlining the methodology proposed to fulfil the requirement. This shall be supported by a full BoE and cost analysis, including Cost Risk Adjustment in accordance with Clause 4.4.e.ii, allocated to the financial period in which the work will be carried out. This will include (with the equivalent £ Sterling value):
      - a Number Labour hours;
      - b Non-Labour Costs (such as Material, Travel and Subsistence, Subcontracts) with supporting evidence.Part 2b – Assessment Authorisation to proceed with any works detailed within Part 2a
    3. Part 3a – The Contractor shall provide a quotation and cost breakdown for the Task, at Part 3a of the TAF by the required date (unless agreed otherwise by The Authority). The Contractor shall support their quotation with a technical proposal outlining the methodology proposed to fulfil the requirement. This shall be supported by a full BoE and cost analysis, including Cost Risk Adjustment in accordance with Clause 4.4.e.ii, allocated to the financial period in which the work will be carried out. This will include (with the equivalent £ Sterling value):
      - a Number Labour hours;
      - b Non-Labour Costs (such as Material, Travel and Subsistence, Sub-Contracts) with supporting evidence.Part 3b – Task Authorisation to proceed with any works detailed within Part 3a.
    4. Part 4 – Task Completion – to be signed by both parties upon completion of the task.
    5. Part 5 – Task Closure – to be signed by both parties upon total completion including invoicing and payment of the task.
- b. With the exception of any reasonable and acceptable bid and proposal costs, The Authority shall not be responsible for any work or costs incurred by The Contractor prior to the signed Part 2b and/or Part 3b being returned to The Contractor by the ACM.
- c. The Authority may cancel any Task agreed between The Authority and The Contractor at The Authority's sole discretion in accordance with DEFCON 656A or 656B, dependent upon the value of the TAF. In the event that a Task is cancelled by The Authority, The Contractor may submit a revised TAF Part 2b and/or Part 3b quotation for expenditure undertaken up to the date of the cancellation.
- d. The Authority and The Contractor, via Contract Amendment, shall record contracted Tasks and update the Task Register at Annex G of the Contract every 6 months.

- e. Tasks shall be priced in accordance with Clause 4.4 of this Contract.
- f. Any hardware that the Authority has issued to The Contractor via this Tasking process, that is no longer required to be assessed or repaired, shall be collected by the Authority within a mutually agreeable timescale.

## 10. Limitations on Liability

### Definitions

10.1 In this Condition [1] the following words and expressions shall have the meanings given to them, except where the context requires a different meaning:

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

“Data Protection Legislation” means all applicable Law in force from time to time in the UK relating to the processing of personal data and privacy, including but not limited to: (1) UK GDPR;

(2) DPA 2018; and

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

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

‘DPA 2018’ means the Data Protection Act 2018;

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

“Service Credits” means the amount that the Contractor shall credit or pay to the Authority in the event of a failure by the Contractor to meet the agreed Service Levels as set out/referred to in [cross refer to service credit regime in contract];

“Term” means the period commencing on [the commencement date / the date on which this Contract is signed / the date on which this Contract takes effect] and ending [on the expiry of x years /on x date] or on earlier termination of this Contract.

‘UK GDPR’ means the General Data Protection Regulation (Regulation (EU)

2016/679) as retained in UK law by the EU (Withdrawal) Act 2018 and the Data

Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019;

### Unlimited liabilities

10.2 Neither Party limits its liability for:

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

10.2.2 fraud or fraudulent misrepresentation by it or its employees;

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

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

10.3 The financial caps on liability set out in Clauses 10.4 and 10.5 below shall not apply to the following:

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

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

10.3.1.2 the Contractor's indemnity in relation to TUPE at Schedule [(TUPE)];

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

10.3.2.1 the Authority's indemnity under DEFCON 514A (Failure of Performance under Research and Development Contracts));

10.3.2.2 the Authority's indemnity in relation to TUPE under Schedule [(TUPE)];

10.3.3 breach by the Contractor of DEFCON532B and Data Protection Legislation; and

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

10.3.5 For the avoidance of doubt any payments due from either of the Parties to the other in accordance with DEFCON 811 or the Defence Reform Act 2014 and/or the Single Source Contract Regulations 2014, as amended from time to time, shall not be excluded or limited under the provisions of Clause 10.4 and/or 10.5 below.]

#### **Financial limits**

10.4 Subject to Clauses 10.2 and 10.3 and to the maximum extent permitted by Law:

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

10.4.1.1 in respect of DEFCON 76 [£ pounds] **(REDACTED)** in aggregate;

10.4.1.2 in respect of DEFCON 514 [£ pounds] **(REDACTED)** in aggregate;

10.4.1.3 in respect of DEFCON 611 [£ pounds] **(REDACTED)** in aggregate; and

10.4.1.4 in respect of DEFCON 612 [£ pounds] **(REDACTED)** in aggregate.

10.4.2 Without limiting Clause 10.4.1. and subject always to Clause 10.2, 10.3 and 10.4.3, the Contractor's total liability through the Term in respect of all other liabilities (but excluding any Service Credits paid or payable in accordance with Annex E, whether in contract, in tort (including negligence), arising under warranty, under statute or otherwise under or in connection with this Contract shall be **[REDACTED pounds]**(£ pounds) (in aggregate).

10.4.3 On the exercise of any and, where more than one, each option period or agreed extension to the Term, the limitation of the Contractor's total liability (in aggregate) set out in Clauses 10.4.1 an 10.4.2 above shall be fully replenished such that on and from each such exercise or extension of the Term, the Authority shall be able to claim up to the full value of the limitation set out in Clauses 10.4.1 and 10.4.2 of this Contract.

10.5 Subject to Clauses 10.2, 10.3, and 10.6, and to the maximum extent permitted by Law the Authority's total liability (in aggregate) whether in contract, in tort (including negligence), under warranty, under statute or otherwise under or in connection with this Contract shall in respect of all liabilities (taken together) be limited to the Charges paid by the Authority in the relevant Contract Year in respect of any and all claims in that Contract Year.

10.6 Clause 10.5 shall not exclude or limit the Contractor's right under the Contract to claim for the Charges.

#### **Consequential loss**

10.7 Subject to Clauses 10.2, 10.3 and Clause 10.8, neither Party shall be liable to the other Party or to any third party, whether in contract (including under any warranty), in tort (including negligence), under statute or otherwise for or in respect of:

10.7.1 indirect loss or damage;

10.7.2 special loss or damage;

10.7.3 consequential loss or damage;

10.7.4 loss of profits (whether direct or indirect);

10.7.5 loss of turnover (whether direct or indirect);

10.7.6 loss of business opportunities (whether direct or indirect); or 10.7.7 damage to goodwill (whether direct or indirect), even if that Party was aware of the possibility of such loss or damage to the other Party.

10.8 The provisions of Clause 10.7 shall not restrict the Authority's ability to recover any of the following losses incurred by the Authority to the extent that they arise as a result of a Default by the Contractor:

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

10.8.1.1 to any third party;

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

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

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

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

10.8.4 any losses arising in connection with the loss, destruction, corruption, inaccuracy or degradation of Authority data, or other data or software, including, to the extent the Authority data, other data or software can be recovered or reconstituted, the fees, costs and expenses of reconstituting such Authority data, data or software;

10.8.5 damage to the Authority's physical property and tangible assets, including damage under DEFCON 76 and 611;

10.8.6 costs, expenses and charges arising from, or any damages, account of profits or other award made for, infringement of any third party Intellectual Property Rights or breach of any obligations of confidence;

10.8.7 any additional costs incurred by the Authority in relation to the Authority's contracts with a third party as a result of the Default (including the extension or replacement of such contracts);

10.8.8 any fine or penalty incurred by the Authority pursuant to Law and any costs incurred by the Authority in defending any proceedings which result in such fine or penalty; or

10.8.9 any savings, discounts or price reductions during the Term and any option period or agreed extension to the Term committed to by the Contractor pursuant to this Contract.

### **Invalidity**

10.9 If any limitation or provision contained or expressly referred to in this Condition [1] is held to be invalid under any Law, it will be deemed to be omitted to that extent, and if any Party becomes

liable for loss or damage to which that limitation or provision applied, that liability will be subject to the remaining limitations and provisions set out in this Condition [1].

### **Third party claims or losses**

10.10 Without prejudice to any other rights or remedies the Authority may have under this Contract (including but not limited to any indemnity claim under DEFCONs 91 and 632 or at Law), the Authority shall be entitled to make a claim under this Contract against the Contractor in respect of any losses incurred by the Authority which arise out of a claim made against the Authority by a third party under any contract with that third party provided that such third party claim:

10.10.1 arises solely and directly out of a valid and upheld claim as a result of the Contractor's failure to provide the Contractor Deliverables or failure to perform any of its obligations under the Contract; and

10.10.2 is a type of claim or loss that would have been recoverable under this Contract if the third party were a party to this Contract (whether as the Authority or the Contractor), such claim to be construed as direct losses for the purpose of this Contract.

10.10.3 both parties agree to review the risks associated with both core activities and proposed Task Authorisation Form (TAF) activities, to enable the contractor to assess and agree appropriate mitigations.

- a) An appropriate level risk review of the Core support will be carried out quarterly.
- b) An appropriate level risk review of any proposed Task Authorisation Form activity will be carried out in advance of the TAF being agreed.

### **No double recovery**

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

## **10.12 Contractors on Deployed Operations (CONDO)**

- a. Where The Authority has a requirement for The Contractor, a Subcontractor, or both, to Deploy to undertake a task at an Expected Work Location in a CONDO Applicable Area, the provisions of DEFCON 697 shall apply. DEFCON 697 shall become effective when such a task is included in the Contract.
- b. In the event that Contractor support is required in a designated CONDO area, which shall include DCS designated areas. Individual trips to such areas will be costed via the tasking procedure in accordance with clause 9.3 to the Terms and Condition of the Contract.

## **10.13 Earned Value Management (EVM)**

- a. In accordance with the requirements stated in Annex A of the Contract, The Contractor shall develop, deliver a level 4 EVM style report in the Contractors own format, this shall be part of the bi-weekly meetings.

**1. Commercial Officer**

Name: REDACTED FOR SECURITY PURPOSES – OFFICIAL SENSITIVE

**8. Public Accounting Authority**

1. Returns under DEFCON 694 (or SC equivalent) should be sent to DBS Finance ADMT – Assets In Industry 1, Level 4 Piccadilly Gate, Store Street, Manchester, M1 2WD  
☎ 44 (0) 161 233 5397
2. For all other enquiries contact DES Fin FA-AMET Policy, Level 4 Piccadilly Gate, Store Street, Manchester, M1 2WD  
☎ 44 (0) 161 233 5394

<p><b>2. Project Manager, Equipment Support Manager or PT Leader</b> (from whom technical information is available) Name <b>REDACTED FOR SECURITY PURPOSES – OFFICIAL SENSITIVE</b></p>
<p><b>3. Packaging Design Authority</b> Organisation &amp; point of contact:</p> <p>(Where no address is shown please contact the Project Team in Box 2)</p> <p>☎</p>
<p><b>4. (a) Supply / Support Management Branch or Order Manager:</b> <b>Branch/Name:</b> Name</p> <p>Address:</p> <p>Email:</p> <p>☎</p>
<p><b>(b) U.I.N.</b> <b>5. Drawings/Specifications are available from</b></p>
<p><b>6. Intentionally Blank</b></p>

<p><b>9. Consignment Instructions</b> The items are to be consigned as follows:</p>
<p><b>10. Transport.</b> The appropriate Ministry of Defence Transport Offices are: <b>A. DSCOM</b>, DE&amp;S, DSCOM, MoD Abbey Wood, Cedar 3c, Mail Point 3351, BRISTOL BS34 8JH <u>Air Freight Centre</u> IMPORTS ☎ 030 679 81113 / 81114 Fax 0117 913 8943 EXPORTS ☎ 030 679 81113 / 81114 Fax 0117 913 8943 <u>Surface Freight Centre</u> IMPORTS ☎ 030 679 81129 / 81133 / 81138 Fax 0117 913 8946 EXPORTS ☎ 030 679 81129 / 81133 / 81138 Fax 0117 913 8946</p> <p><b>B. JSCS</b></p> <p>JSCS Helpdesk No. 01869 256052 (select option 2, then option 3) JSCS Fax No. 01869 256837 Users requiring an account to use the MOD Freight Collection Service should contact DESWATERGUARD-ICSSupport@mod.gov.uk in the first instance.</p>
<p><b>11. The Invoice Paying Authority</b> Ministry of Defence ☎ 0151-242-2000 DBS Finance Walker House, Exchange Flags Fax: 0151-242-2809 Liverpool, L2 3YL <b>Website is:</b> <a href="https://www.gov.uk/government/organisations/ministry-ofdefence/about/procurement#invoice-processing">https://www.gov.uk/government/organisations/ministry-ofdefence/about/procurement#invoice-processing</a></p>
<p><b>12. Forms and Documentation are available through *:</b> Ministry of Defence, Forms and Pubs Commodity Management PO Box 2, Building C16, C Site Lower Arcott Bicester, OX25 1LP (Tel. 01869 256197 Fax: 01869 256824) <b>Applications via fax or email:</b> <a href="mailto:Leidos-FormsPublications@teamleidos.mod.uk">Leidos-FormsPublications@teamleidos.mod.uk</a></p>

<p><b>7. Quality Assurance Representative:</b> Commercial staff are reminded that all Quality Assurance requirements should be listed under the General Contract Conditions.  <b>AQAPS and 05 61s</b> are available from UK Defence Standardization, for access to the documents and details of the helpdesk visit <a href="http://dstan.gateway.isg-r.r.mil.uk/index.html">http://dstan.gateway.isg-r.r.mil.uk/index.html</a> [intranet] or <a href="https://www.dstan.mod.uk/">https://www.dstan.mod.uk/</a> [extranet, registration needed].</p>	<p><b>* NOTE</b> <b>1.</b> Many <b>DEFCONs</b> and <b>DEFFORMs</b> can be obtained from the MOD Internet Site: <a href="https://www.aof.mod.uk/aofcontent/tactical/toolkit/index.htm">https://www.aof.mod.uk/aofcontent/tactical/toolkit/index.htm</a> <b>2.</b> <a href="#">If the required forms or documentation are not available on the MOD Internet site requests should be submitted through the Commercial Officer named in Section 1.</a></p>
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Issue No.	Date	Incorporated By	Section	Details of change
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1.0	03/02/2022	<b>REDACTED</b>	Entire Document	Drafting Contract Terms and Conditions
2.0	20/05/2022	<b>REDACTED</b>	Entire Document	Issued Contract.