



Flight Simulation and Synthetic Trainers Project Team

Chinook Mk 6 Synthetic Training System

FSASTC/00115

Conditions of Contract

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DEFFORM 111 – APPENDIX TO CONTRACT

SCHEDULE OF REQUIREMENTS

Name and Address of Contractor:- Lockheed Martin UK Limited Mission Systems and Training 2 nd Floor, Chester House Farnborough Aerospace Centre Farnborough GU14 6TQ	MINISTRY OF DEFENCE	Tender No FsASTC/00115
	Schedule of Requirements for Chinook Mk 6 Synthetic Training System	
	On 26th May 2015	Previous Contract No

Requirements

Item Number	Description	Price £ (ex-VAT) (Firm unless stated otherwise)
1	Design, Development, Manufacture and Supply of Chinook Mk6 Synthetic Training System	REDACTED
2	Provision of Operation and Maintenance of SOR Item 1 from RFT until Year 3	REDACTED
3	Provision of Operation and Maintenance of the Building from RFT until Year 3	REDACTED
4	Provision of Training in accordance with SOW from RFT until Year 3	REDACTED
5	Provision of Operation and Maintenance of SOR Item 1 from Year 4 to Year 10	REDACTED
6	Provision of Operation and Maintenance of the Building from Year 4 to Year 10	REDACTED
7	Provision of Training in accordance with SOW from Year 4 to Year 10	REDACTED
8	Document Deliverables (See relevant CDRs for these at Annex C)	REDACTED
9	Tasking as authorised in accordance with the conditions of the Contract	REDACTED
10	Design and Build Infrastructure to house Chinook Mk6 Synthetic Training System in accordance with Annex Z to the contract	REDACTED
10a	HV Power Substation	REDACTED
10b	Technical Waste Compound Construction	REDACTED

2. GENERAL CONDITIONS

DEFCON501 (Edn.05/13) - Definitions and Interpretations

DEFCON503 (Edn.07/05) - Amendments to Contract

DEFCON515 (Edn.10/04) - Bankruptcy and Insolvency

DEFCON516 (Edn.04/12) - Equality

DEFCON518 (Edn.11/12) - Transfer

See also related Condition 8.4 Debt Factoring

DEFCON520 (Edn.07/11) - Corrupt Gifts and Payments of Commission

DEFCON521 (Edn.04/12) - Sub-Contracting to Supported Employment Enterprises

DEFCON526 (Edn.08/02) - Notices

DEFCON527 (Edn.09/97) - Waiver

DEFCON528 (Edn.05/12) - Overseas Expenditure and Import Licences

The Contractor's attention is drawn to Clause 2 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 it has placed, or intends to place, in aid of the contract. Details to be provided are: Contract No; Country in which sub-contract placed/to be placed; Name, Division and full postal address of sub-contractor; Value of sub-contract as applicable to main contract; Date placed/to be placed. If no overseas orders are to be placed, the Contractor shall advise the Contracts Branch to this effect in the same timescale

DEFCON529 (Edn.09/97) - Law (English)

DEFCON530 (Edn.07/04) - Dispute Resolution (English Law)

DEFCON531 (Edn.05/05) - Disclosure of Information

See also related Condition 10.10 – Confidentiality.

DEFCON532A (Edn.06/10) - Protection Of Personal Data (Where Personal Data is not being processed on behalf of the Authority)

DEFCON537 (Edn.06/02) - Rights of Third Parties

DEFCON538 (Edn.06/02) - Severability

DEFCON566 (Edn.02/11) - Change of Control of Contractor

DEFCON656 (Edn.03/06) – Break

Note: For the purposes of Clauses 1 and 6(b) of DEFCON 656, the periods of notice shall be four (4) months and three (3) months respectively.

2.1 DEFINITIONS

2.1.1 In this Contract, unless the context otherwise requires:

- **‘Additional Instructor Usage’** means a 4 hour period of time used to deliver training, with Contractor supplied Instructors, outside Instructor Core Hours but within the STE Core Hours;

- **'Authority'** means the Secretary of State for Defence;
- **'Authority's Commercial Branch'; 'Commercial Branch'** or **'Commercial Officer'** means the commercial branch identified at box 1 of the Appendix to Contract;
- **'Authority Disclosed Data'** means information relating to the requirement disclosed to the Contractor including:
 - (a) the Invitation to Negotiate ('ITN');
 - (b) any supplementary data provided by the Authority to assist in the provision of this Contract. Including but not limited to clarification question responses, bidders conference responses and site specific reports
- **'Authority's Project Manager' or 'Project Manager'** means the project manager identified at box 2 of the Appendix to Contract or their delegated representative;
- **'Bill Paying Branch'** means the Authority's bill paying branch identified at box 11 of the Appendix to Contract;
- The **'Building'** means the building at RAF Odiham delivered and accepted under Item 10 to the Contract and leased back to the Contractor for use in the performance of this Contract;
- **'Build Up Period'** means the training capacity required in the start up period of the provision of training as detailed in section 7.4.1; 7.4.3 and 7.4.4 of the SOW;
- **'Cockpit Crew Training'** means training for a two (2) pilot cockpit crew;
- **'Commencement Date'** means the date of this Contract;
- **'Commercial Exploitation Agreement'** means the agreement set out in Annex Q to this Contract and referred to in Condition 8.7 hereof;
- **'Contract' or 'Conditions of Contract'** means this contract (including all Annexes, Appendices and Schedules as applicable);
- **'Contract Completion Date'** means the date specified in Clause 2.4 (Contract Duration) of the General Conditions of the Contract;
- **'Contractor'** means the person or persons, firm or company named in this Contract whose tender has been accepted by the Authority and includes the Contractor's legal personal representatives or permitted assigns;
- **'Contractor's Solution'** means the technical and commercial solution offered by the Contractor as part of the tendering process for this Contract and accepted by the Authority;
- **'Contract Period'** is as defined in Condition 2.4 (Duration);
- **'Core Hours'** means in respect of:

The Building Core Hours in respect of each Monday to Friday which is a working day the hours between 0600 hours to 2300 hours (inclusive). Such hours may be varied by mutual consent;

The Synthetic Training Equipment (STE) Core Hours in respect of each Monday to Friday which is a working day the hours between 0800 hours to 2200 hours (inclusive). Such hours may be varied by mutual consent;

The Instructor Core Hours in respect of each Monday to Friday which is a working day the hours between 0700 hours to 1730 hours (inclusive). Such hours may be varied by mutual consent;

- **'Delivery Schedule'** means the schedule for delivery of the goods and services under this Contract as detailed in Annex O;
- **'Establishment'** means RAF Odiham;
- **'Facility'** means all assets and rights to enable the Authority or a successor contractor to own, operate and maintain the requirement in accordance with this Contract including:
 - (a) any land or buildings; and/or
 - (b) any equipment; and/or
 - (c) any books and records (including operating and maintenance manuals, health and safety manuals and other know how); and/or
 - (d) any spare parts, tools and other assets (together with any warranties in respect of assets being transferred); and/or
 - (e) any revenues and any other contractual rights; and/or
 - (f) any IPR subject to the terms of Clause 5 and Annexes C and L; and/or
 - (g) any Government Furnished Assets,
- **'Flight Deck Crew Training'** means training for a three (3) aircrew flight deck crew consisting of two (2) pilots and the number two (2) crewman;
- **'Government Furnished Assets (GFA)'** means any assets owned by the Authority including Issued Property as defined in DEFCON 501 that is supplied to the Contractor in support of the Contract and identified at Annex N to the Contract;
- **'Government Furnished Information (GFI)'**, means any information provided to the Contractor in connection with the Contract by or on behalf of the Authority;
- **'Information'** has the meaning given under Section 84 of the Freedom of Information Act 2000;
- **'IPR'** means all trade marks, trade and business names, patents, copyright (including copyright in computer programs), database rights, design rights, registered designs, utility models, semi conductor topography rights, inventions, know-how, moral rights, confidential information and all other intellectual property and rights of a similar or corresponding nature in any part of the world, whether or not registered or capable of registration, in respect of such rights which are registerable, the right to apply for registration and all applications for registration of any of the foregoing rights;
- **'Item(s)'** means an item(s) as detailed in the Schedule of Requirements;
- **'JSP440'** means the Cabinet Office Security Policy Framework unless upon validation it is determined that the Cabinet Office Security Policy Framework is insufficiently compliant with JSP440. Under these circumstances the Authority will provide the relevant section of JSP440
- **'Key Personnel'** means the personnel of the Contractor named as defined in condition 3.5.4;
- **'Lease'** means the lease of the Premises in the agreed form attached as Annexure 1 to be granted by the Authority to and

accepted by the Tenant in accordance with clause 4 of this agreement;

- **'Legal Completion Date'** means the date ten Working Days after the date of handover and acceptance of the Facility from the Contractor to the Authority;
- **'LTA 1954'** means the Landlord and Tenant Act 1954;
- **'Non Core Training Hours'** means a 4 hour period of time used to deliver training, with Contractor supplied Instructors, outside of the STE Core Hours;
- **'Non-Core Hours'** means all hours which are not Core Hours;
- **'Overseas'** means outside the United Kingdom;
- **'Parties'** means the parties to this Contract and Party means either one of them;
- **'Payment Period'** means in respect of a calendar month commencing from the 1st day of the month;
- **'Payment Plan'** means the document detailed at Annex J that comprises all payment details for the Items listed in the Schedule of Requirements;
- **'Performance Deductions'** means any reduction in the monthly payment as a result of Service Credits;
- **'Quality Plan'** or **'Deliverable Quality Plan'** means the plan to be delivered by the Contractor and subsequently accepted by the Authority in accordance with DEFCON 602A (Edn. 12/06);
- **'Ready For Training Date (RFT)'** shall be 2 years from contract award (and is to be confirmed at contract award);
- **'Rear Crew Training'** means training for one (1) or two (2) rear crewman;
- **'Requirement'** means the Authorities requirement as described by the SOW;
- **'Service Commencement'** means the provision of Services from RFT;
- **'Services'** means Items 2, 3, 4, 7 and 8 in the Schedule of Requirements and the associated availability as defined in Annex A;
- **'Service Credit'** means a point awarded to the Authority in accordance with Annex U;
- **'Service Credit Value'** means the monetary value of Service Credits calculated in accordance with Annex U;
- **'Service Failure'** means any defect in or failure of the Service which results (or would result if the Authority was, at the relevant time, using that Service) in a failure to provide the Service in accordance with the requirements of this Contract or which results in the provision of Services to the Authority which do not comply with the requirements of this Contract;
- The **'Site'** means the identified location at RAF Odiham where the Chinook Mk 6 Synthetic Training System shall be located;

- **'Stage Payment Plan'** means the plan for the payment of milestones for Schedule of Requirements Item 1 as detailed in the relevant section of the Payment Plan at Annex J;
- **'Steady State Period'** means the training capacity required after the start up period for the provision of training as detailed in section 7.4.2; 7.4.3 and 7.4.5 of the SOW;
- **'Statement of Work (SOW)'** means the document detailing the requirements of the Chinook Mk 6 Synthetic Training System as detailed at Annex A to the Contract;
- **'Supply Chain'** means the individuals and organisations that will be responsible for any of the work in the Contractor's performance of this Contract as detailed in Annex Y;
- **'Sustainable Development'** means development which meets the needs of the present without compromising the ability of future generations to meet their own needs;
- **'Synthetic Training System (STS)'** means the Chinook Mk 6 synthetic training system inclusive of all synthetic device(s) delivered under Item 1 and 10 and used to deliver training in accordance with the SOW and delivery of courseware to enable training;
- **'Systems Requirements Document (SRD)'** means the Chinook Mk 6 Synthetic Training System Requirements Document Issue 2.2 dated 29 May 2013;
- **'Task'** means a task placed by the Authority under Item 9 of the Schedule of Requirements;
- **'Tasking Form'** means the form at Annex S used to initiate a Task;
- **'Training'** means the provision of Training Sessions, Additional Instructor Usage and Non Core Training Hours;
- **'Training Session'** means a period of time used to deliver training conducted within the STE Core Hours.
- **'Whole Crew Training'** means training for four (4) aircrew consisting of two (2) pilots, number one (1) and number two (2) crewman.

2.2 ORDER OF PRECEDENCE

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

Statement of Work (including Infrastructure)
 Schedule of Requirements and Conditions of Contract
 Contractor's Solution (including Infrastructure)

2.2.2 In the event of any internal conflict in any document or any conflict between any documents with the same order of precedence, 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 other document. Any dispute on precedence shall be dealt with in accordance with DEFCON 530.

2.3 SCOPE OF CONTRACT

2.3.1 The Contractor shall undertake all work under the Contract to deliver items 1 to 9 in accordance with the Statement of Work and the

Contractor's Solution as detailed at Annexes A and B to the Contract respectively. All work shall be carried out to the reasonable satisfaction of the Authority's Project Manager, in accordance with the agreed Integrated Test Evaluation and Acceptance Plan at Annex P.

2.3.2 The Contractor shall undertake all work to deliver the Building under Item 10 in accordance with the Statement of Work at Annex A and the Contractor's solution as detailed at Annex B. The Contractor shall undertake all work to deliver Item 10 in accordance with the terms and conditions within this contract and also the additional contract terms and conditions at Annex Z. Maintenance of the Building shall be undertaken in accordance with clause 6.5 and the Lease at Annex AA.

2.4 DURATION

2.4.1 The Contract shall commence on the date of unqualified acceptance of the terms and conditions and continue until 31 May 2027. All work authorised during this period shall be completed under the Contract, but the Contractor is required to notify the Commercial Branch of any work still outstanding at the end of the stated period.

2.5 AMENDMENTS TO CONTRACT

2.5.1 In addition to the provisions of DEFCON 503 (Amendments to Contract), nothing said, done or written by any person, nor anything omitted to be said, done or written by any person, including, but without limitation, any servant or agent of the Authority, shall in any way affect the rights of the Authority, or modify, affect, reduce or extinguish the obligation and liabilities of the Contractor under the Contract, or be deemed to be a waiver of the rights of the Authority, unless stated in writing and signed by the Authority's Commercial Branch.

2.6 COMPLIANCE WITH THE ELECTRONIC TRANSACTIONS AGREEMENT

2.6.1 The Authority and the Contractor shall comply with the Electronic Transactions Agreement comprised in the completed DEFFORM 30, reference DE&S JBTSE / Lockheed Martin UK/DEF30 01/07 dated 28th August 2012. The sending by the Contractor of an 'Acknowledgement of Receipt' message is to be regarded as acceptance of the Purchase Order message to which it refers, unless the Purchase Order Message itself constitutes acceptance in accordance with the terms and conditions of the Contract. Messages under DEFFORM 30 (latest edition) received by the Contractor shall be regarded as having been authorised by the Authority.

2.6.2 Payments shall be claimed on an electronic invoice message as specified in DEFFORM 30 (Edn. 01/07). The P2P Delivery Form (DEFFORM 129J) shall be submitted to the Authority's Project Manager for authorisation payment to be made.

2.7 DISCLOSURE OF INFORMATION

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

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

2.8 GAINSHARE

2.8.1 'Gainsharing' is the method by which the Authority and the Contractor agree to share in any improvements and savings that are identified by the Contractor throughout the duration of the Contract. Its purpose is to provide the Contractor with an incentive to reduce costs in the interests of the public purse. Accordingly:

- i. In the performance of the Contract, the Contractor agrees to endeavour to identify ways in which the requirements of the Contract could be changed so that, if implemented, the overall cost to the Authority of the Contract would be reduced.
- ii. In the event that the Contractor identifies any changes which would reduce the overall cost to the Authority of the Contract, the Contractor shall:
 - (a) Submit details of the proposed changes to the Authority;
 - (b) Identify the potential savings that would result from the implementation of any such proposals;
 - (c) Enter into discussions with the Authority regarding the implementation of any such proposed changes.
- iii. The total value of any savings shall be agreed mutually between the Authority and the Contractor by negotiation, with any savings so agreed being shared equally between the two parties.

2.8.2 Changes to the Contract shall only be effective following a Contract amendment agreed between the Authority and the Contractor.

2.9 RESPONSIBILITIES

2.9.1 The Contractor shall be responsible for the performance of all work required under the Contract, to the reasonable satisfaction of the Authority's Project Manager or their authorised representative.

2.9.2 Acceptance by the Authority of any of the Contractor's plans or 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.

2.10 SECURITY MEASURES

Definition

2.10.1 In this Condition:

- i. 'Secret Matter' means any matter connected with the Contract, or its performance which is designated by the Authority in the security aspects letter at Annex X to the Contract or otherwise in writing as "Top Secret" or "Secret", and shall include any information concerning the content of such matter and anything which contains or may reveal that matter;
- ii. 'Employee' shall include any person who is an employee or director of the Contractor or who occupies the position of a director of the Contractor, by whatever title given.

The Official Secrets Acts

2.10.2 The Contractor shall:

- i. take all reasonable steps to ensure that all Employees engaged on any work in connection with the Contract have notice that the Official Secrets Acts 1911-1989 apply to them and will continue so to apply after the completion or termination of the Contract; and
- ii. if directed by the Authority, ensure that any Employee shall sign a statement acknowledging that, both during the term of the Contract and after its completion or termination, they are bound by the Official Secrets Acts 1911-1989 (and where applicable any other legislation).

Security Measures

2.10.3 Unless they have the written authorisation of the Authority to do otherwise, neither the Contractor nor any of their Employees shall, either before or after the completion or termination of the Contract, do or permit to be done anything which they know or ought reasonably to know may result in Secret Matter being disclosed to or acquired by a person in any of the following categories:

- i. who is not a British citizen;
- ii. who does not hold the appropriate authority for access to the protected matter;
- iii. in respect of whom the Authority has notified the Contractor in writing that the Secret Matter shall not be disclosed to or acquired by that person;
- iv. who is not an Employee of the Contractor;
- v. who is an Employee of the Contractor and has no need to know the information for the proper performance of the Contract.

2.10.4. Unless they have the written authorisation of the Authority to do otherwise, the Contractor and their Employees shall, both before and after the completion or termination of the Contract, take all reasonable steps to ensure that:

- i. no photograph of, or pertaining to, any Secret Matter shall be taken and no copy of or extract from any Secret Matter shall be made except to the extent necessary for the proper performance of the Contract;
- ii. any Secret Matter is at all times strictly safeguarded in accordance with the Security Policy Framework (as amended from time to time) and upon request is delivered up to the Authority who shall be entitled to retain it.

A decision of the Authority on the question of whether the Contractor has taken or is taking reasonable steps as required by this Clause, shall be final and conclusive.

2.10.5. The Contractor shall:

- i. provide to the Authority:
 - a) upon request, such records giving particulars of those Employees who have had at any time, access to any Secret Matter that is required to be kept in accordance with Sub-clause 2.10.4 ii;
 - b) upon request, such information as the Authority may from time to time require so as to be satisfied that the Contractor and their Employees are complying with their obligations under this Condition, including the measures taken or proposed by the Contractor so as to comply with their obligations and to prevent any breach of them;

c) full particulars of any failure by the Contractor and their Employees to comply with any obligations relating to Secret Matter arising under this Condition immediately upon such failure becoming apparent;

ii. ensure that, for the purpose of checking the Contractor's compliance with the obligation in Sub-clause 2.10.4 ii a representative of the Authority shall be entitled at any time to enter and inspect any premises used by the Contractor which are in any way connected with the Contract and inspect any document or thing in any such premises, which is being used or made for the purposes of the Contract. Such representative shall be entitled to all such information as they may reasonably require.

2.10.6. If at any time either before or after the completion or termination of the Contract, the Contractor or any of their Employees discovers or suspects that an unauthorised person is seeking or has sought to obtain information directly or indirectly concerning any Secret Matter, the Contractor shall forthwith inform the Authority of the matter with full particulars thereof.

Subcontracts

2.10.7. If the Contractor proposes to make a sub-contract which will involve the disclosure of Secret Matter to the sub-contractor, the Contractor shall:

i. submit for approval of the Authority the name of the proposed sub-contractor, a statement of the work to be carried out and any other details known to the Contractor which the Authority shall reasonably require;

ii. incorporate into the sub-contract the terms of the Appendix to this condition and such secrecy and security obligations as the Authority shall direct. In the appendix "Agreement" shall mean the "Sub-Contract", "First Party" shall mean the "Contractor" and "Second Party" shall mean the "Sub-Contractor";

iii. inform the Authority immediately they become aware of any breach by the sub-contractor of any secrecy or security obligation and, if requested to do so by the Authority, terminate the sub-contract.

Termination

2.10.8. The Authority shall be entitled to terminate the Contract immediately if:

i. the Contractor is in breach of any obligation under this Condition; or

ii. the Contractor is in breach of any secrecy or security obligation imposed by any other contract with the Crown;

where the Authority considers the circumstances of the breach jeopardise the secrecy or security of the Secret Matter.

Provisions To Be Included In Relevant Sub-Contracts

Definition

1. In this Condition:-

a) 'Secret Matter' means any matter connected with the Agreement, or its performance which the First Party informs the Second Party in writing has been designated by the Authority as "TOP SECRET" or "SECRET" and shall include any information concerning the content of such matter and anything which contains or may reveal that matter;

- b) 'Employee' shall include any person who is an employee or director of the Second Party or who occupies the position of a director of the Second Party, by whatever title given.
- c) The 'Authority' means the Secretary of State for Defence.

The Official Secrets Acts

2. The Second Party shall:

- a) Take all reasonable steps to ensure that all Employees engaged on any work in connection with the Agreement have notice that the Official Secrets Acts 1911-1989 apply to them and will continue so to apply after the completion or termination of the Agreement; and
- b) If directed by the First Party or the Authority, ensure that any Employee shall sign a statement acknowledging that, both during the term of the Agreement and after its completion or termination, they are bound by the Official Secrets Acts 1911-1989 (and where applicable any other legislation).

Security Measures

3. Unless they have the written authorisation of the Authority to do otherwise, neither the Second Party nor any of their Employees shall, either before or after the completion or termination of the Agreement, do or permit to be done anything which they know or ought reasonably to know may result in Secret Matter being disclosed to or acquired by a person in any of the following categories:

- a) who is not a British citizen;
- b) who does not hold the appropriate authority for access to the protected matter;
- c) in respect of whom the Authority has notified the Second Party in writing that the Secret Matter shall not be disclosed to or acquired by that person;
- d) who is not an Employee of the Second Party;
- e) who is an Employee of the Second Party and has no need to know the information for the proper performance of the Agreement.

4. Unless they have the written permission of the Authority to do otherwise, the Second Party and their Employees shall, both before and after the completion or termination of the Agreement, take all reasonable steps to ensure that:

- a) no photograph of, or pertaining to, any Secret Matter shall be taken and no copy of or extract from any Secret Matter shall be made except to the extent necessary for the proper performance of the Agreement;
- b) any Secret Matter is at all times strictly safeguarded in accordance with the Security Policy Framework (as amended from time to time) and upon request is delivered up to the Authority who shall be entitled to retain it.

A decision of the Authority on the question of whether the Second Party has taken or is taking reasonable steps as required by this Clause, shall be final and conclusive.

5. The Second Party shall:

- a) provide to the Authority:

I. upon request, such records giving particulars of those Employees who have had at any time, access to any Secret Matter that is required to be kept in accordance with Sub-clause 4.b).;

II. upon request, such information as the Authority may from time to time require so as to be satisfied that the Second Party and their Employees are complying with their obligations under this Condition, including the measures taken or proposed by the Second Party so as to comply with their obligations and to prevent any breach of them;

III. full particulars of any failure by the Second Party and their Employees to comply with any obligations relating to Secret Matter arising under this Condition immediately upon such failure becoming apparent;

b) ensure that, for the purpose of checking the Second Party's compliance with the obligation in Sub-clause 4.b), a representative of the First Party or the Authority shall be entitled at any time to enter and inspect any premises used by the Second Party which are in any way connected with the Agreement and inspect any document or thing in any such premises, which is being used or made for the purposes of the Agreement. Such representative shall be entitled to all such information as they may reasonably require.

6. If at any time either before or after the completion or termination of the Contract, the Second Party or any of their Employees discovers or suspects that an unauthorised person is seeking or has sought to obtain information directly or indirectly concerning any Secret Matter, the Second Party shall forthwith inform the Authority of the matter with full particulars thereof.

Sub-Contracts

7. If the Second Party proposes to make a sub-contract which will involve the disclosure of Secret Matter to the sub-contractor, the Second Party shall:

- a) submit for approval of the Authority the name of the proposed sub-contractor, a statement of the work to be carried out and any other details known to the Second Party which the Authority shall reasonably require;
- b) incorporate into the sub-contract the terms of this Condition and such secrecy and security obligations as the Authority shall direct.
- c) inform the Authority immediately they become aware of any breach by the sub-contractor of any secrecy or security obligation and, if requested to do so by the Authority, terminate the Agreement.

Termination

8. The First Party shall be entitled to terminate the Agreement immediately if:

- a) the Second Party is in breach of any obligation under this Condition;
or
- b) the Second Party is in breach of any secrecy or security obligation imposed by any other contract with the Crown;

where the Authority considers the circumstances of the breach jeopardise the secrecy or security of the Secret Matter and notifies its contractor accordingly.

2.11 SUSTAINABLE PROCUREMENT - BEST PRACTICE

2.11.1 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.

2.12 SUSTAINABLE PROCUREMENT - LEGISLATIVE REQUIREMENTS

2.12.1 The Contractor shall take all reasonable steps to procure the observance of the economic, social and environmental legislation related to the subject matter or the execution of the Contract by any servants, employees or agents of the Contractor and any Sub-Contractor's engaged in the performance of the Contract.

2.12.2 If the Contractor becomes aware of any prosecution or proceedings, for criminal breaches of the economic, social and environmental legislation related to the subject matter or the execution of the Contract, against the Contractor, any servants, employees or agents of the Contractor and any Sub-Contractor's engaged in performance of the Contract, the Contractor shall immediately notify the Authority at the address specified in the Contract.

2.12.3 Any convictions during the period of the Contract for criminal breaches of the economic, social and environmental legislation related to the subject matter or the execution of the Contract by the Contractor or any of the Contractor's directors/partners or senior management who have powers of representation, decision or control, shall be regarded as a material breach of this Contract.

2.13 LEGISLATIVE REQUIREMENTS

2.13.1 The Contractor shall in the performance of this Contract comply with all applicable legislative requirements including but not limited to the requirements listed in the Conditions of Contract and all associated Annexes, Appendices and Schedules to the Contract.

3. SPECIFICATIONS, PLANS, ETC

DEFCON68 (Edn.11/12) - Supply of Data for Hazardous Articles, Materials and Substances

DEFCON117 (Edn.05/06) - Supply of Documentation for NATO Codification

DEFCON129 (Edn 07/08) - Packaging For Articles (Other than Ammunition or Explosives)

DEFCON129J (Edn.07/08) - The Use Of The Electronic Business Delivery Form

DEFCON502 (Edn.06/08) – Specifications

DEFCON601 (Edn.10/04) – Redundant Materiel

DEFCON602A (Edn.12/06) - Deliverable Quality Plan

See related Condition 3.10.

DEFCON606 (Edn. 10/97) – Change and Configuration Control Procedure

DEFCON608 (Edn.10/98) - Access and Facilities to be provided by the Contractor

See also related Condition 10.3 Tasking.

DEFCON624 (Edn.04/10) - Use of Asbestos in Arms, Munitions or War Materials

DEFCON627 (Edn.12/10) - Quality Assurance - Requirement for a Certificate of Conformity

DEFCON637 (Edn.08/99) – Defect Investigation And Liability

3.1 QUALITY ASSURANCE REPRESENTATIVE (QAR)

3.1.1 All reference to the QAR in documents which form part of this Contract shall be read as referring to the Authority specified in Box 7 of DEFFORM 111.

3.2 SUSTAINABLE PROCUREMENT – PERFORMANCE MANAGEMENT (PLAN REQUIRED)

3.2.1 The Contractor shall include the dependencies for the sustainable procurement objectives in the Contract risk register and in the risk management plan for the Contract, with appropriate review points. Where there is no requirement under the Contract for a risk management plan, the Contractor shall submit a sustainable procurement plan for agreement with the Authority.

3.2.2 The risk management plan or sustainable procurement plan shall include:-

(i) The actions required to fulfil the sustainable procurement objectives of the Contract and the time-lines associated with such actions;

(ii) Reporting schedule on implementing the plan, as required by the Authority;

(iii) An indication of any areas where the Authority and the Contractor will need to work together to enhance the sustainable delivery of the Contract;

(iv) A schedule for joint audit and review of the key performance indicators by the Authority and the Contractor, as required by the Authority; and

(v) A flow-down of the plan and actions to Sub-Contractor's where appropriate.

3.2.3 If the information required under this Clause has been provided previously to the Authority or Other Government Department by the Contractor, the Contractor may satisfy these requirements by giving details of the previous notification and confirming they remain valid.

3.3 PARTS; EQUIPMENT AND DATA

3.3.1 The Contractor shall be responsible for obtaining all necessary data, parts and equipment and for any liaison with the relevant Design Authorities, or other sources.

3.4 TECHNICAL INFORMATION AND DRAWINGS

3.4.1 The Contractor shall be totally responsible for obtaining all necessary technical information, drawings and data, whether the source of the data is the Authority's, Services or Industry.

3.5 CONTRACTOR'S PERSONNEL

3.5.1 The Contractor shall provide sufficient resources at all times to enable it to perform its obligations under the Contract. Personnel employed under the Contract shall have the appropriate qualifications and competence for the tasks on which they are engaged.

3.5.2 Where so requested by the Authority, full particulars of all personnel to be employed shall be forwarded in advance to the Authority for confirmation of acceptability.

3.5.3 Contractor's working at RAF Odiham will require Security Check (SC) clearance and are responsible for ensuring it remains valid throughout the life of the Contract.

3.5.4 Key Personnel

3.5.4.1 The Contractor shall employ or engage the Key Personnel, as detailed in Annex E, in connection with the performance of the Contract.

3.5.4.2 The Contractor shall not make alterations in the Key Personnel without the prior consent of the Authority's Project Manager (which shall not be unreasonably withheld). Any replacements of Key Personnel shall be with persons of a similar ability, experience and qualification.

3.5.4.3 If alterations to Key Personnel take place for reasons outside the Contractor's control, the Contractor may engage temporary replacements pending approval in accordance with condition 3.5.4.2, provided that such temporary replacements are of similar ability, experience and qualification.

3.5.5 Replacement Of Contractor's Employees

3.5.5.1 The Authority may at any time require the Contractor to immediately remove any personnel and/or cease to engage any person (including any of the Key Personnel) in connection with the performance of the Contract, whose continued presence or engagement is in the opinion of the Authority undesirable. The Contractor shall replace any such person with a person of similar ability, experience and qualification.

3.5.5.2 Any decision of the Authority under condition 3.5.5.1 shall be final and conclusive.

3.6 NOT USED

3.7 SECURITY

3.7.1 The Contractor shall be responsible for the provision and subsequent maintenance of the security of the Facility in accordance with Annex G – Security.

3.8 AUTHORITY DISCLOSED DATA AND UNDERTAKINGS

3.8.1 Authority Disclosed Data

3.8.1.1 Subject to Clause 3.8.4 (Fraudulent Statements) the Authority does not give any warranty or undertaking as to the relevance, completeness, accuracy or fitness for any purpose of any of the Authority Disclosed Data and neither the Authority nor any of its agents or employees shall be liable to the Contractor in contract, tort (including negligence or breach of statutory duty), statute or otherwise as a result of:

3.8.1.1.1 Any inaccuracy, omission, unfitness for any purpose or inadequacy of any kind whatsoever in the Authority Disclosed Data; or

3.8.1.12 Any failure to make available to the Contractor any materials, documents, drawings, plans or other information relating to the requirement.

3.8.2 No Relief

3.8.2.1 Subject to Clause 3.8.3 (Fraudulent Statements), the Contractor shall not in any way be relieved from any obligation under this Contract nor shall it be entitled to claim against the Authority on grounds that any information, whether obtained from

the Authority or otherwise (including information made available by the Authority), is incorrect or insufficient and shall make its own enquiries as to the accuracy and adequacy of that information.

3.8.3 Fraudulent Statements

3.8.3.1 Nothing in this Clause 3.8 (Authority Disclosed Data and Undertakings) shall exclude any liability which the Authority or any of its agents or employees would otherwise have to the Contractor in respect of any statements made fraudulently or fraudulent omissions to make statements prior to the Commencement Date.

3.9 QUALITY ASSURANCE

3.9.1 The Contractor shall maintain the Quality Management System in accordance with the applicable standards. The Authority is fully committed to ISO 9001:2008 and the Contractor shall be registered to this standard to meet the Quality Management Requirements of Authority contracts.

3.9.2 The following Quality Assurance requirements shall apply:

Reference	Title	Issue No.	Date of Issue
AQAP 2105	NATO Requirements for Deliverable Quality Plans	Edition 2	November 2009
AQAP 2110	NATO Quality Assurance Requirements for Design, Development and Production	Edition 3	November 2009
AQAP 2210	NATO Supplementary Software Quality Assurance Requirements to AQAP 2110	Edition 1	2006
AQAP 2009	NATO Guidance on the application of the AQAP 2000 series	Edition 3	
AQAP 2070	The NATO Mutual Government Quality Assurance Process	Edition 2 + Ch 2	
ISO 14001:2004	Environmental Management		
ISO 14040:2006	Implementation of Environmental Management		
ISO 25051:2006	Software engineering – Software Product Quality Requirements and Evaluation (Square) Requirements for quality of COTS software product and instructions for testing		
Def Stan 00-56 Part 1	Safety Management Requirement for defence systems	Issue 4	Jun 2007
Def Stan 00-56 Part 2	Safety Management Requirement for defence systems	Issue 4 + AI 1	Jun 2007
Def Stan 00-56 Part 3	Safety Management Requirement for defence systems	X Issue 1	March 2012
Def Stan 05-61 Part 1	Quality Assurance Defence Standards Concessions	Issue 5	Aug 2010
Def Stan 05-61 Part 4	Quality Assurance Defence Standards Contractor's Working Parties	Issue 3 AL1	Jan 2011
Def Stan 05-99	Managing Government furnished Equipment in Industry	Issue 4 AL2	October 2011
Def Stan 05-57	Configuration Management of Defence Materiel	Issue 5	Jun 2005
Def Stan 00-250	Human Factors for Designers of Systems	Issue 1	May 2008

3.9.3 The measures to be taken by the Contractor to ensure compliance with the above requirements shall be those defined by the Contractor in the Quality Plan. The Quality Plan shall clearly define the responsibilities of the Contractor's Quality Assurance from commencement to completion of the Contract.

3.9.4 Any unsatisfactory standards or performances which come to light during the inspection and which are not rectified following discussion between the Authority's Project Manager and the Contractor will be reported to the Authority's Commercial Branch.

3.9.5 The Authority reserves the right to include additional relevant Quality Assurance standards as may be required for each individual task.

3.9.6 For the purposes of the Contract AQAP 2110 Edition 3 (NATO Quality Assurance Requirements for Design, Development and Production), DEFSTAN 05-57 Issue 5 (Configuration Management of Defence Materiel) and the Quality Assurance Procedural requirements of DEFSTAN 05-61 Part 1 - Issue 4 (Concessions) shall apply. The Contractor shall maintain its quality management system in accordance with the applicable standard. The Authority is fully committed to ISO 9001:2000 and the Contractor must be registered to this new standard to meet the quality management requirements of Authority Contracts.

3.9.7 When called up in standards invoked by this contract, Quality Assurance Representative (QAR) is to be read as Government Quality Assurance Representative (GQAR and/or Authority); note the Authority is normally the Output Business Unit Leader or their delegated Project Quality Assurance Officer (PQAO). Only MOD GQAR organisations or individuals that have been assessed, registered and authorised by the Defence Quality Assurance Authority (DQAA) can conduct Government Quality Assurance Surveillance (GQAS) on behalf of the MOD or overseas governments.

3.9.8 The Certificate of Conformity (CoC) attached at Annex H is to be used when releasing products to the Authority.

3.10 DELIVERABLE QUALITY PLAN

3.10.1 The Quality Plan shall be delivered to the QAR for review within one (1) month of contract award. Following review by the Authority, any changes required shall be notified to the Contractor in writing and the Contractor shall revise the Quality Plan and deliver the revised version to the Authority within one (1) month of receiving the Authority comments. Once the Deliverable Quality Plan has been agreed by the Authority it shall be incorporated into the Contract. The Contractor shall be solely responsible for the accuracy, suitability and applicability of the Quality Plan.

3.11 RETENTION OF QUALITY CONTROL/INSPECTION RECORDS

3.11.1 Unless otherwise directed in the Contract, the Contractor shall retain the Quality Control/Inspection Records or such of those records as may be agreed by the GQAR for a period of four years from completion of all work under the 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 GQAR. At the end of the retention period the Contractor shall seek advice from the GQAR 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 GQAR.

3.12 TECHNICAL QUERIES

3.12.1 Any queries of a purely technical nature are to be addressed to the Authority's Project Manager.

3.13 CONFIGURATION CONTROL

3.13.1 For the purposes of the Contract; Defence Standard 05-57 Issue 5 entitled 'Configuration Management of Defence Materiel' shall apply.

3.14 USE OF THE SUPPLY CHAIN

3.14.1 The Contractor shall engage those members of the Supply Chain as detailed in Annex Y. Any proposed changes to this Supply Chain must be approved in writing by the Authority's Commercial Branch before the placement of any contracts.

4. PRICE

DEFCON127 (Edn.10/04) - Price Fixing Condition for Contracts of Lesser Value

For the purposes of fixing firm price amendments or extensions to the Contract valued below £250,000.

DEFCON643 (Edn.07/04) - Price Fixing

For the purposes of fixing firm prices for amendments or extensions to the Contract valued over £250,000.

DEFCON648 (Edn. 10/02) – Availability of Information

DEFCON650 (Edn. 10/02) - Reference to the Review Board of Questions arising under the Contract

For the purposes of fixing firm prices for amendments or extensions to the Contract valued over £250,000.

DEFCON652 (Edn. 07/04) - Remedy Limitation

For the purposes of fixing firm prices for the main Contract, amendments, extensions to contract valued over £250,000.

This Contract and any subsequent amendments; extensions to the Contract; modifications and tasks valued at over £250,000 shall be subject to an Equality of Information Statement (Annex I). The Pricing Statements shall reflect the final prices agreed at the time of final pricing.

4.1 PRICE FOR ITEMS

4.1.1 The Price for Item 1 (Synthetic Training System) - the price shall be the Firm Price (ex VAT) of the articles and or services described in the Schedule of Requirements and shall include the cost of packaging, delivery and handling where applicable by the Contractor. The Contractor is to contact the Authority's Project Manager for delivery details.

4.1.2 The Price for Items 2, 3 and 4 (Service Provision) – shall be based on the availability of devices for training in accordance with the hours of training as detailed in Annex A section 7.4 - Capacity. The price shall be calculated using the Payment Plan at Annex J. The price for these services shall be Firm for a period of five (5) years from Contract Award; subsequent prices for years 4 to 10 (Items 5, 6 and 7) shall be indexed in accordance with Condition 4.3 below.

4.1.3 The Price for any tasks placed under Item 9 shall be a Firm Price (ex VAT) on a task by task basis and in accordance with DEFCON 127 (Ed. 10/04) (for changes up to a total value of £250,000) and DEFCON 643(Edn. 07/04) (for changes with a total value over £250,000). The Firm Price for these tasks shall be based on the rates included at Annex T which will be Firm for a period of five (5) years from Contract Award. Rates for subsequent years shall be based on the Contractors up to date QMAC (or equivalent) rates (to be reviewed with the MOD on a periodic basis) and shall be submitted to the Authority 60 working days prior to the expiry of the initial rates. Subsequent tasks placed after this time shall be based on the rates in Annex T after being indexed in accordance with Condition 4.3 below.

4.1.4 The Price for Item 10 (Infrastructure) shall be the Firm Price (ex VAT) in accordance with Condition 12 of Annex Z to the Contract.

4.1.5 The Price for Items 10a (HV Power Substation) and 10b (Technical Waste Compound Construction) shall be the Maximum Prices (ex VAT) in accordance with the Schedule of Requirements and the Assumptions at Annex CC. The Maximum Prices for these Items shall be converted to Firm Prices in accordance with DEFCON 643 (Price Fixing).

4.1.6 Any change in the price which results from a change agreed after issue of the Contract and for which the Authority accepts responsibility shall be agreed in accordance with DEFCON 127(Edn. 10/04) (for changes up to a total value of £250,000) and DEFCON 643 (Edn. 07/04) (for changes with a total value over £250,000).

4.2 OPTION PRICES

4.2.1 The Contractor, in consideration of the award of this Contract, hereby grants the Authority the irrevocable option to purchase further services to increase the capability of the Chinook Mk 6 Synthetic Training System as specified in Annex K to the Contract in accordance with the terms and conditions set out in this Contract or any such subsequent contract or contracts where such options are taken up, it being agreed that the Authority has no obligations to exercise with options.

(i) The Authority exercises the option(s) within the validity period stated in Annex K or another date as agreed between the Authority and the Contractor;

(ii) The Authority shall have the right to exercise the option(s) by the specified date or within such further period as corresponds to the aggregate of any period(s) for the duration of which the Authority is prevented from exercising any such option by reason of any other breach of the Contract by the Contractor.

(iii) It is agreed that the Authority is under no obligation to exercise any option.

4.2.2 The Authority undertakes to notify the Contractor by way of a suitable Contract amendment to the Contract, or by way of any such subsequent Contract(s), of the intention to exercise an option.

4.2.3 The Authority reserves the right to seek competitive tenders for the option requirement shown at Clause 4.2.1 to this Condition. In such event, the Contractor shall not relinquish any of its obligations to supply the option requirement detailed in Clause 4.2.1 of this Condition nor shall the Authority waive any of its rights under this condition for alternative solutions.

4.3 VARIATION OF PRICE

4.3.1 The prices stated in the Schedule of Requirements are FIXED at April 2014 price levels. With effect from the 1st April 2019, the price for Items 5, 6 and 7, the Service Credit Values detailed in Annex U Performance Deductions shall be adjusted (annually with effect from the 1st April in each year) in accordance with the following formula:

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

Where:

V represents the variation of price

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

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

O0 represents the average annual OUTPUT Price Index figure for the base period (2014).

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

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

b represents the Variable Element 90% (0.9)

$a + b = 1$

4.3.2 The Index referred to in clause 4.3.1 above shall be taken from the following tables:

OUTPUT Price Index – Table 1e of the Top – Level Services Producer Price Index (SPPI) – All Services GSO (SIC 2007)s – Output. The associated unique identifier of which is K8ZU.

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

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

4.3.5 In the event the agreed index or indices cease to be published (e.g. because of a change in the Standard Industrial Classification), the Authority and the Contractor shall agree an appropriate replacement index or indices, which shall cover to the maximum extent possible the same economic activities as the original index or indices. The methodology outlined by the Office for National Statistics used for rebasing indices (as in clause 4 above) shall then be applied.

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

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

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

4.3.9 Claims under this Condition shall be submitted to the Bill Paying Branch, certified to the effect that the requirements of this Condition 4.3 have been met.

5. INTELLECTUAL PROPERTY RIGHTS

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

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

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

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

The rights accruing to the Authority under DEFCON 15 shall apply to those deliverable Results and foreground intellectual property identified in the listed Contract Data Requirement(s) (CDR) in the form of DEFFORM 315 (Edn 02/98) provided at Annex C.

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

Note 1: The rights accruing to the Authority under DEFCON 16 shall apply to those deliverable Results and foreground intellectual property identified in the listed Contract Data Requirement(s) (CDR) in the form of DEFFORM 315 (Edn 02/98) provided at Annex C.

Note 2: For the avoidance of any doubt, "Repair and Maintenance" shall not be construed to include a right to, Modify any Contractor or third party owned Intellectual Property, create derivative works of any Contractor or third party owned Intellectual Property, or update any Contractor or third party owned Intellectual Property.

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

For the purposes of this Contract DEFCON 21 shall apply with the following clarification:

(a) In accordance with clause 3 of DEFCON 21 the "Control Copy" shall be held for 10 years.

DEFCON 90 (Edn.11/06) – Copyright

The nations prescribed for the purposes of clause 4(c) of DEFCON 90 shall be the NATO nation states and Sweden. For clarification, DEFCON 90 clauses 4(a), 4(b) and 4(c) shall only apply to copyright works generated under the Contract. With the exception of clause 4(a) All other rights to Copyright shall be governed by licences granted to, transferred to, or sublicenced to the Authority by Contractor.

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

For the purposes of this Contract DEFCON 91 shall apply with the following modification and clarification.

(a) For the purposes of clause 3(c) and 3(d) of DEFCON 91 private venture Software shall be procured in accordance with the PV Software narrative provision below.

(b) The nations prescribed for the purposes of clause 3(e) of DEFCON 91 shall be the NATO nation states and Sweden.

DEFCON126 (Edn.11/06) – International Collaboration

For the purposes of this Contract DEFCON 126 shall apply with the following clarification:

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

DEFCON632 (Edn.08/12) - Third Party Intellectual Property - Rights and Restrictions

For the purposes of this Contract DEFCON 632 shall apply with the following clarification:

Contractor shall not have any liability or obligation to the Authority for an indemnity under DEFCON 632 to the extent that the alleged infringement claim is based upon the Authority's modification of the Articles without Contractor's prior written approval or the Authority's use of the Articles and Services in combination with equipment or intellectual property not supplied by Contractor or not reasonably contemplated by this Agreement and where the Articles and Services would not be infringing absent such modification or combination.

DEFCON703 (Edn.11/02) - Intellectual Property Rights – Vesting in the Authority

For the purposes of this Contract DEFCON 703 shall apply with the following modification and clarification.

(a) The presence of any background or private venture funded Contractor owned or third party owned intellectual property (including without limitation any patents or design rights) or confidential information in the Results, or delivered with the Results, shall not fetter the exercise of the Authority's right under clause 1 of this Condition to use or have used the items to which this Conditions applies for any Chinook training purpose within the United Kingdom to include the training of foreign personnel by or contractors acting on its behalf.

(b) The provisions of DEFCON 703 (Intellectual Property Rights - Vesting in the Authority) shall apply solely to those Results listed in the Contract Data Requirement(s) (CDR) at Annex M. No rights to background IP in the systems or sub-systems that are identified in the Top Level System Architecture CDR document shall be included as a deliverable under this CDR.

(c) Where contractor or third party owned background information is included, the Contractor shall notify the Authority as soon as he becomes aware of this fact.

(d) The Authority will give reasonable consideration to licensing on fair and reasonable terms all Authority owned intellectual property subsisting in the deliverables identified at CDR No.9 (Architectural Drawings) to enable the Contractor to commercially exploit the same.

(e) For avoidance of any doubt, Contractor may reuse any Contractor owned intellectual property, without restriction or fee, at its sole discretion.

5.1 PRIVATE VENTURE (PV) SOFTWARE

5.1.1 Contractor developed PV Software, and associated documentation to be delivered under the Contract (including "Open Source" software) shall be identified at Annex L (Table 1). Further, third party developed PV Software and associated documentation to be delivered under the Contract shall be identified at Annex L (Table 2).

5.1.2 The Authority shall have the right to use, copy, operate, repair and maintain the Contractor and third party PV Software (but not the source code thereof), and the associated documentation identified in Annex L by itself or on its behalf and to sublicense the same to any successor contractor providing Chinook training services within the United Kingdom that are substantially similar in whole or in part to the Services to the Authority but said right to be strictly limited to the extent necessary for those purposes only. For the avoidance of doubt, with the exception of the Key Interfaces identified in Annex L no right is granted to the Authority to modify any Contractor or third party owned source code, create derivative works of any Contractor or third party owned Software, or update any Contractor or third party owned Software.

5.2 RELEVANT BACKGROUND INFORMATION

5.2.1 The Contractor shall identify all relevant Contractor owned and Sub-contractor owned private venture Background Intellectual Property (herein

intellectual property that has been developed without funding from the Authority) at Annex L in accordance with the provisions thereof .

5.3 TECHNICAL SUPPORT CONTRACTORS

5.3.1 Subject to clause 5.3.2 below, and without prejudice to the Authority's ownership and/or rights of use under any other Condition of this IPR Section, the Authority shall have in respect of all technical information which comprises or is contained within any technical deliverable to which this Contract applies a free licence:

(a) to copy that technical information and to circulate it within any United Kingdom Government Department (which term includes the United Kingdom Armed Forces; and

(b) to issue that technical information or any copy of the same or any part thereof to a technical support contractor for the purposes of:

(i) monitoring the work under the Contract,

(ii) certification, inspection, testing, modelling, analysis and evaluation of the deliverables and/or

(iii) evaluation with a view to procuring further equipment for use with the Services ,

hereinafter the "Permitted Purposes".

5.3.2 The Authority shall ensure that:

(a) access to the Information contained in the technical deliverable is confined to those employees of the Authority and its technical support contractors who are not competitors of Contractor and who require access for the said Permitted Purposes, and

(b) access by an employee of a technical support contractor who is not a competitor of Contractor shall not be permitted until the technical support contractor has entered into a non-disclosure agreement with the owner of the Information.

5.4 IMPORT / EXPORT LICENCES

5.4.1 It shall be the Contractor's responsibility to apply for and obtain in a timely manner any licences required for the execution of this Contract.

5.5 SUB-CONTRACTS

5.5.1 The Contractor shall not place any subcontract or order involving the design or development of equipment required under this contract without the prior written consent of the Authority. Unless otherwise agreed, such consent will be conditional on the proposed sub-contractor concluding a direct agreement with the Authority in the form set out in Annex M to the Contract. Wherever possible the request for approval should be accompanied by two copies of the agreement signed by the subcontractor. If, in any case the Contractor is unable to comply with this condition he shall report the matter to Air Support Commercial Deputy Head and await further instructions before placing the subcontract or order.

5.5.2 Without prejudice to sub-clause 5.5.1 above the Contractor shall ensure that the requirements and obligations as set out in this Intellectual Property Rights section are flowed down and included in all subcontracts so as to ensure that the Authority is able to rely on this Contract in determining its contractual rights and obligations with respect to IPR subsisting in the deliverables.

5.6 TECHNICAL PUBLICATION CONDITION

5.6.1 The contractor shall ensure that the Authority has the right to copy, amend, extend or have copied, amended to extended any technical publication called for under CDR No's 002 and 003 or any part thereof including any such part when incorporated in any amended or extended version of such technical publication, and to circulate, use or have used said technical publication including any amended or extended version and any copies thereof for any United Kingdom Government Defence purpose but not for the purpose of manufacturing equipment to which the technical publication relates.

5.7 EXIT MANAGEMENT

5.7.1 Without prejudice to any of the above provisions of this Section, the Contractor shall ensure that the Authority has the right to disclose, use, operate, repair and maintain by itself and on its behalf the identified deliverables at CDR No. 9 Annex C at no additional charge to the Contract price so as to give effect to the Exit Management transfer provisions at Section 10 and future use by any successor Contractor on behalf of the Authority solely for future Chinook training services. The Authority may make six (6) copies of these deliverables.

6. LOANS

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

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

For the purposes of this Contract, the Contractor's liability under Clauses 3 and 4 of DEFCON 76 will be limited to (**REDACTED**) cumulative.

DEFCON611 (Edn.07/10) – Issued Property

DEFCON694 (Edn.02/12) – Accounting For The Property Of The Authority

6.1 ATTENDANCE AT GOVERNMENT ESTABLISHMENTS

6.1.1 The Contractor shall be required to attend a Government Establishment as indicated to undertake tasks.

6.1.2 The Contractor shall ensure that it's nominated representatives meet the requirements of sub-clauses 6-9 of DEFCON 76.

6.1.3 The Contractor's attention is also drawn to sub-clause 16 of DEFCON 76. At the same time as it advises the Authority of special health or safety hazards in respect of the work to be performed, the Contractor must also enquire of the Authority (i.e. nominated site project liaison officer or overseeing officer) what hazards etc the Ministry would wish it to be aware of in undertaking the Contract. The Contractor shall therefore ensure that its representatives are aware of the relevant health and safety precautions associated with the establishment.

6.2 GOVERNMENT FURNISHED ASSETS (GFA)

6.2.1 The Authority shall make available those items of GFA as listed at Annex N to the Contract, on the terms set out against each item.

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

6.2.3 For the avoidance of doubt, the Contractor shall be responsible for obtaining all spares, tools and test equipments required for installing and commissioning the equipment being supplied under the Contract. All such spares, tools and test equipment shall remain the property of the Contractor and shall be removed from the sites by the Contractor on completion of all work under the Contract.

6.2.4 The contractor will not be held liable for a failure to deliver the contracted services arising as a consequence of a failure by the Authority, for whatever reason, to supply (eg electricity, water, sewage, gas etc), provided the contractor has taken all reasonable steps to mitigate the impact of such a failure.

6.3 OWNERSHIP OF SYNTHETIC DEVICE(S)

6.3.1 On successful acceptance, in accordance with the Testing, Evaluation and Acceptance detailed at Annex P, of the Synthetic Device(s) delivered to the Authority under Item 1, the Authority shall take ownership of said Synthetic Device(s).

6.3.2 The Authority shall then make the Synthetic Device(s) available to the Contractor whom shall use said Synthetic Device(s) for the provision of training under Item 4. The Contractor shall be fully responsible for the operation and upkeep of the Synthetic Device(s) throughout the life of the Contract.

6.4 THE BUILDING

6.4.1 not used

6.4.2 Following delivery and acceptance of the Building provided under Item 10, the Authority shall grant an infrastructure lease in accordance with clause 6.5 to the contract.

6.4.3 Under Item 3, the Contractor shall be responsible for the internal and external maintenance of the Building in accordance with the lease at Annex AA.

6.4.4 The Contractor shall be responsible for furnishing the Building in its entirety and shall be responsible for the operation and upkeep of said furnishings throughout the life of the Contract. On completion or expiration of the Contract ownership of all extant internal furnishings shall be transferred to the Authority at nil cost.

6.4.5 In the event that the Contractor is late in the delivery of the Building under Item 10, and is unable to find suitable alternative accommodation, the Contractor shall be required to arrange to store any items to be incorporated into the Building. The Authority shall not be liable for any additional costs incurred.

6.4.6 In the event that a delay in the provision of the Building affects the Contractor's ability to provide the STS training service at the contracted Ready For Training Date, the Liquidated Damages detailed at paragraph 7.2 shall apply. The Contractor and the Authority shall together agree a revised Ready For Training Date.

6.4.7 The Authority shall be responsible for all charges for electricity, gas, water and other utility services consumed or used. The Contractor shall ensure it operates the Facility in the most energy efficient and environmentally friendly way throughout the life of the Contract. The Authority reserves the right to review the responsibility for utilities and where it considers better value for money would

be achieved by switching this responsibility over to the Contractor an appropriate amendment to Contract will be negotiated.

6.4.8 not used

6.5 GRANTING OF INFRASTRUCTURE LEASE

6.5.1 On successful acceptance of the works Infrastructure delivered under Item 10 to the contract and in accordance with the infrastructure terms at Annex Z, the Authority shall take ownership of said works Infrastructure.

6.5.2 The parties shall then execute the Agreed Form of Lease on or before 5 working days prior to planned lease commencement date. During the term of the lease the Authority shall afford to the Contractor for the purpose of service provision the rights contained in the Lease and the Authority shall discharge its obligations pursuant to such lease.

6.6 FORM AND GRANT OF THE LEASE

6.6.1 On the Legal Completion Date the Authority shall grant to the Contractor and the Contractor shall accept from the Authority the Lease;

6.6.2 The Lease and its counterpart shall be prepared by the Authority's Solicitors and an engrossment of the counterpart shall be delivered to the Contractor's solicitors within five Working Days after the date of handover and acceptance of the Facility from the Contractor to the Authority.

6.6.3 On completion of the Lease the Contractor shall deliver to the Authority the counterpart of the Lease duly executed by the Contractor and the Authority shall deliver to the Contractor the executed Lease

6.7 EXCLUSION OF SECURITY OF TENURE

6.7.1 The parties confirm that:

- (a) the Authority served a notice on Lockheed Martin UK Ltd, as required by section 38A(3)(a) of the LTA 1954 and which applies to the tenancy to be created by the Lease before this Contract was entered into; and
- (b) Brendan Rolle-Rowan of Plainlaw Solicitors who was duly authorised by Lockheed Martin UK Ltd to do so, made a statutory declaration dated in accordance with the requirements of section 38A(3)(b) of the LTA 1954.

6.8 LICENCE IN RELATION TO RAF ODIHAM

Licence in relation to RAF Odiham

6.8.1 Until the Lease Completion Date, the Authority shall grant the following rights to the Contractor and any Sub-Contractor for the purpose of the carrying out of the works in relation to the Chinook Mk6 STS as required under the Schedule of Requirements:

6.8.1.1 A non-exclusive licence to enter and remain upon those parts of RAF Odiham as are edged in red on the plan included as Annex DD to this Contract (the "Property");

6.8.1.2 Such rights of access to and egress from RAF Odiham as are necessary for the Contractor and any Sub-Contractor over land in the ownership or control of the Authority to perform their obligations and exercise their rights under this Contract and in particular for the purposes of implementing the Chinook 6 Training Service as required under the Schedule of Requirements and for the purposes of installation of the Equipment (and to rectify any Snagging Matters or Defects), provided that

any routes may be varied by the Authority to such alternative routes as the Authority may reasonably specify from time to time

6.8.1.3 From the relevant date specified in the Contractor Deliverables Programme, the right to occupy the Property for the purpose of carrying out the works (and to rectify any Snagging Matters or Defects) relating to the Chinook Mk6 STS as required under the Schedule of Requirements and (where necessary) to erect a barrier around the [area of land edged in red on the plan included as Annex DD to this Contract/ Property] and to take such other measures as may be required by legislation, or otherwise, to make the [Contractor and/or Sub-Contractor occupied area/ Property] safe for the [relevant period specified in the Contractor Deliverables Programme for the purposes of carrying out the works relating to the Chinook Mk6 STS/duration of the licence granted by this clause 6.8

6.8.1.4 A non-exclusive licence to park motor vehicles only within the area of land edged in red on the plan attached to this Contract as Annex DD and as may be shown or described or varied, from time to time during the duration of the licence in accordance with the Contractor Proposals, or any other agreement made between the parties, each acting reasonably Provided That the Authority may determine the right under this clause 6.6.1.4 at any time on reasonable notice.

Conditions attached to the Licences

6.8.2 The licences granted by the Authority pursuant to clause 6.8.1 are subject to the following:

6.8.2.1 The statutory rights of the Authority or any relevant authority or any third party that has existing rights over RAF Odiham or any third party who acquires such rights in the future over RAF Odiham;

6.8.2.2 The rights shall not in any circumstances entitle the Contractor or Sub-Contractor to exclusive occupancy or exclusive possession of the Property or any part of RAF Odiham;

6.8.2.3 Save where otherwise required or permitted by this Contract, the Contractor and each Sub-Contractor are not to cause any material disruption to the operations or activities carried out by the Authority or any third party on or at RAF Odiham for the purposes contemplated by this Contract or any other of the Authority's or any third party's continuing occupation of any part of RAF Odiham;

6.8.2.4 All local charges registered before or after the date of this Contract;

6.8.2.5 All notices, orders, resolutions, restrictions, agreements, directions and proposals therefore made by any local authority the Authority or relevant authority before or after the date of this Contract;

6.8.2.6 Any unregistered interests which would override registered dispositions under the Land Registration Act 2002, notwithstanding that any title to the relevant part of RAF Odiham is unregistered;

6.8.2.7 The Contractor's obligation to abide by and to comply in full at all times with the provisions of the RAF Odiham 4 Cs Health and Safety Brief for Visitors and Contractors, a copy of which has been provided to the Contractor prior to the date of this Contract;

6.8.2.8 The Contractor's obligation to notify the Authority immediately of any issues arising during the carrying out of the works which could affect RAF Odiham [and to allow the Authority entry onto the [Property] together with all necessary machinery and equipment in order to carry out any works to the [Property] and or RAF Odiham Provided That there shall be no obligation on the Authority to do the same];

6.8.2.9 To ensure that all vehicles leaving the [Property] are adequately cleaned to prevent the deposit of waste materials and debris on RAF Odiham and if any such material or debris is so deposited the Contractor shall forthwith employ such measures as shall be necessary to remove the material and debris and to clean and reinstate such property to the reasonable satisfaction of the Authority;

6.8.2.10 In accordance with the timetable for the fulfilment of the Contractor's Obligations to clear from the [Property] and the car parking area referred to in clause 6.6.1.4 to the reasonable satisfaction of the Authority all temporary structures rubbish and all building and surplus material and equipment of the Contractor and in default the Authority shall be entitled to employ an alternative contractor to clear them and shall be entitled to be reimbursed by the Contractor for any costs reasonably incurred in clearing or procuring the clearing of them;

6.8.2.11 Not to store materials or park vehicles in the immediate external vicinity of the boundaries of the [Property] other than for reasonable periods necessary for loading and unloading or as agreed with the Authority in respect of RAF Odiham;

6.8.2.12 The Prime Contractor shall be solely responsible for the provision of all utilities and mains services connections from agreed connection points to the new facility. This shall include meeting the requirements of Aquatrine, the Authority's water and wastewater provider for new connections.

7. DELIVERY

DEFCON5J (Edn.07/08) - Unique Identifiers

Where used in conjunction with contracts for services, Clause 2 of the DEFCON shall not apply.

DEFCON507 (Edn.10/98) - Delivery

DEFCON524 (Edn.10/98) – Rejection

For the purposes of DEFCON 524, the period for rejection shall be 30 days

DEFCON525 (Edn.10/98) - Acceptance

DEFCON612 (Edn.10/98) - Loss of or Damage to the Articles

DEFCON614 (Edn.09/03) - Default

DEFCON621B (Edn.10/04) - Transport (if the Contractor is responsible for transport).

7.1 DELIVERY

7.1.1 Deliveries under this Contract shall be made in accordance with the Delivery Schedule at Annex O. No work shall be undertaken by the Contractor until such a programme has been agreed.

7.1.2 The Contractor should note that the timely processing of tasks throughout all their stages is a firm Authority requirement. If work on a particular activity is delayed for any reason, the Contractor shall immediately inform the Authority's Project Manager of the circumstances.

7.2 LIQUIDATED DAMAGES

7.2.1.1 It is recognised by the Parties that if the Contractor fails to achieve RFT to the satisfaction of the Authority by the date(s) specified in the delivery schedule at Annex O; the Authority will suffer loss and damage.

7.2.2 Accordingly, for each day's delay (including bank holidays and weekends) the Contractor shall pay the Authority the amount of **(REDACTED)** per day for a maximum of **(REDACTED)** days, that shall constitute up to a maximum of **(REDACTED)** as Liquidated Damages. The Parties agree that this sum represents a genuine pre-estimate of the Authority's loss.

7.2.3 The provisions of this Condition 7.2 are without prejudice to any other rights of the Authority under the Contract, including but not limited to those under DEFCON 614 (Default). Accordingly, in the event that the Authority terminates the Contract, Liquidated Damages shall be payable under paragraph 7.2.2 above until the date of such termination.

7.2.4 Unless expressly stated by the Authority in writing, the provisions of DEFCON 527 (Waiver) shall apply to the Authority's right to recover Liquidated Damages under this Condition 7.2.

7.2.5 The Authority shall not be entitled to exercise its rights under this Clause if the Contractor's failure to achieve RFT is as a direct result of the acts or omissions of the Authority, provided that the Contractor has made reasonable endeavours to mitigate any such delay.

7.3 TESTING, EVALUATION AND ACCEPTANCE

7.3.1 The acceptance of all deliverables under the Contract shall be conducted in accordance with the Testing, Evaluation and Acceptance detailed at Annex P.

7.4 FORCE MAJEURE

7.4.1 If, by reason of any acts of nature, war, hostilities or of any fire at any of the Contractor's premises or those of its suppliers, the Contractor shall have been delayed in completing the design, manufacture and installation of the Items of the Schedule of Requirements, the Contractor shall, immediately upon becoming aware that any such delay has been caused, give to the Authority notice in writing of its claim for an extension of time for the completion of the design, manufacture and installation of the articles and the Authority shall allow the Contractor an extension of time for such completion in respect of any delay caused by any of the circumstances before mentioned as shall be reasonable provided always that the Contractor shall not be entitled to any extension of time unless it shall at all times have used all reasonable endeavours to prevent any such delay and to minimise any such delay and to do all that may be reasonably required to the satisfaction of the Authority to proceed with the work.

7.4.2 The maximum extension of time granted under this clause shall be limited to 40 working days after which time the Authority may, on giving written notice to the Contractor, terminate this Contract with immediate effect.

7.5 INSURANCE

7.5.1 The insurance provisions at Part 2 of Schedule 6 to Annex Z shall apply during the service phase of this Contract (i.e. delivery of schedule of requirement items 2, 3, 4, 5, 6 and 7) in accordance with condition 18 to Annex Z.

7.6 LIMITATION OF LIABILITY

7.6.1 The Contractor's total aggregate liability to the Authority for any claims, losses, costs, damages of any nature arising under DEFCON 614 "Default" and Clause 10.7.7 under this Contract, shall not exceed an amount equivalent to 100% of the Contract value.

8. PAYMENTS/RECEIPTS

DEFCON509 (Edn.09/97) - Recovery of Sums Due

DEFCON513 (Edn.06/10) - Value Added Tax

DEFCON522J (Edn.05/03) - Payment under P2P

DEFCON523 (Edn.03/99) - Payment of Bills Using the Bankers Automated Clearing Service (BACS) System

DEFCON534 (Edn.06/97) - Prompt Payment (Sub-Contracts)

DEFCON649 (Edn.07/99) – Vesting

8.1 PAYMENT FOR ITEM 1 (SYNTHETIC DEVICES)

8.1.1 Payments for Item 1 (Synthetic Training System) shall be claimed in accordance with DEFCON 522J (Edn. 05/03) and Clause 2.7.2 by the Contractor on completion of milestones and provision of a stage payment achievement certificate throughout the duration of the construction phase with the final balance being paid on acceptance from the Authority of the completed Synthetic Devices in accordance with the Acceptance Plan at Annex P. The payment claimed shall be inclusive of any deductions made in the form of Liquidated Damages.

8.2 STAGE PAYMENT PLAN FOR ITEM 1

8.2.1 Subject to the following provisions of this Condition 8.2, the Authority shall make to the Contractor advances against the total Contract price in accordance with Part 1 (Milestones for Synthetic Devices) of the Payment Plan set out in Annex J to the Contract.

8.2.2 The Contractor shall be entitled to advance payments, to be claimed in accordance with Condition 8.1 for each stage under the Payment Plan. The Contractor shall have satisfactorily completed or performed the part of the Contract to which the stage relates when:

- (1) The Contractor has completed all work comprised in the stage for which the advance is sought;
- (2) The stages have been completed sequentially unless otherwise agreed between the parties;
- (3) The Contractor has complied with all its contractual obligations that impinge on progress of the work covered by the Payment Plan, including, where required under the Contract, the provision of information required by the Authority for the purposes of assessing contractual performance; and

8.2.3 Not Used

8.2.4 Other than as hereby provided, the entitlement of the Contractor to retain all advance payments is conditional on complete performance of Item No. 1 of the Schedule of Requirements. Where the Authority terminates the Contract otherwise than in accordance with DEFCON 656, the Authority shall without prejudice to any other right or remedy of either party be entitled to recover in full all advance stage payments made before termination, except where articles or services have been delivered or rendered in accordance with the Contract and acceptance has occurred.

8.2.5 In the event of repayment to the Authority under the provisions of Clause 8.2.4 above then all that which vested in the Authority under the provisions of DEFCON 649 shall re-vest in and become the absolute property of the Contractor.

8.2.6 If RFT is declared by the Authority with defects/deficiencies, in accordance with the Acceptance Process at Annex P to the Contract, an appropriate retention from the RFT Milestone Payment shall be withheld until satisfactory completion/rectification of all outstanding work. The value of the retention shall be agreed between both parties at RFT and shall be commensurate with the value of the work outstanding.

8.3 PAYMENTS FOR ITEMS 2, 3, 4, 5, 6 and 7 (SERVICE PROVISION)

8.3.1 Payments for Items 2, 3 4 (Service Provision) shall be claimed monthly in arrears in accordance with DEFCON 522J (Edn. 05/03) and Clause 2.6.2 for the amounts as detailed in Part 2 (Service Provision years 1 to 3) of the Payment Plan at Annex J minus any applicable performance deductions.

8.3.2 Payment for Items 5, 6 and 7 shall be claimed monthly in arrears in accordance with DEFCON 522J (Edn. 05/03) and Clause 2.6.2 for the amounts detailed in Part 3 (Service Provision years 4 to 10) of the Payment Plan at Annex J minus any applicable performance deductions and taking account of any adjustments in accordance with Condition 4.3 (Variation of Price).

8.4 PAYMENTS FOR ITEMS 10, 10a and 10b

8.4.1 Payment for Item 10 shall be in accordance with the Condition 13 of Annex Z (Milestone Payments and Set Off) and the Payment Plan at Annex J.

8.4.2 Payment for Items 10a and 10b shall be subject to agreement of firm prices in accordance with clause 4.1.5 of the Contract and amendment of Annex J to include suitable stage payments.

8.5 DEBT FACTORING

8.5.1 Subject to the Contractor obtaining the prior written consent of the Authority in accordance with DEFCON 518 (Transfer), the Contractor may assign to a third party ('the Assignee') the right to receive payment of the Contract Price or any part thereof due to the Contractor under this Contract (including any interest incurred by the Authority under any Contract clause concerning the late payment of debts).

8.5.2 Any assignment of the right to receive payment of the Contract Price (or any part thereof) under DEFCON 518 (Transfer) shall be subject to:

- a. Reduction of any sums in respect of which the Authority exercises its right of recovery under DEFCON 509 (Recovery of Sums Due);
- b. All related rights of the Authority under the Contract in relation to the recovery of sums due but unpaid; and
- c. The Authority receiving notification under both clause 8.4.3 and sub-clause 8.4.4(b) below.

8.5.3 In the event that the Contractor obtains from the Authority the consent to assign the right to receive the Contract Price (or any part thereof) under clause 8.4.1 above, the Contractor shall notify the Authority in writing of the assignment and the date upon which the assignment becomes effective.

8.5.4 The Contractor shall ensure that the Assignee:

- a. Is made aware of the Authority's continuing rights under sub-clauses 8.4.2(a) and 8.4.2(b) of this Condition 8.4; and
- b. Notifies the Authority of the Assignee's contact information and bank account details, to which the Authority shall make payment, subject to any reduction made by the Authority in accordance with sub-clauses 8.5.2(a) and 8.5.2(b) above.

8.5.5 The provisions of the Contract, including any clauses concerning payment, shall continue to apply in all other respects after the assignment and shall not be amended without the prior approval of the Authority.

8.6 COMMERCIAL EXPLOITATION

8.6.1 The Contractor shall not to persons other than the Authority, use, sell, dispose or otherwise exploit for commercial gain any work, design, or service undertaken or produced under or in connection with the Contract without the prior written consent of the Authority. In the event of such consent, which shall not be unreasonably withheld, the Contractor shall first agree with the Authority, in the form set out in Annex Q to this Contract, the sum or sums which shall reasonably be paid to the Authority having regard to the amounts paid or payable to the Contractor by the Authority under this Contract. Any applicable sum shall be agreed on a case by case basis. The Contractor shall procure that its Supply Chain shall also enter into similar agreements under their Supply Chain contracts in appropriate circumstances.

9. CONTRACT ADMINISTRATION

DEFCON604 (Edn.11/04) - Progress Reports

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

DEFCON609 (Edn.10/98) - Contractor's Records

DEFCON625 (Edn.10/98) - Co-operation On Expiry Of Contract

See also related Condition 10.6 Exit Management

DEFCON642 (Edn.06/97) - Progress Meetings

9.1 MEETINGS

9.1.1 Prior to RFT the following meetings shall be held:

- An Inaugural meeting shall be held within four (4) weeks of Contract Award;
- System Readiness Review (SRR);
- System Design Reviews (SDR);
- Critical Design Reviews (CDR);
- Monthly Project Board meetings until the point of RFT.

9.1.2 Post RFT:

- Project Board Meetings shall be held on a quarterly basis at a venue in the United Kingdom to be agreed by the Authority and the Contractor. The Project Board shall act as the main forum for reviewing Contract progress. The Authority shall Chair all Project Board Meetings;
- The above lists are not exhaustive and the Authority reserves the right to hold additional meetings as and when required.

9.1.3 Further detail on establishment and membership of the Project Board can be found at Annex BB to the Contract.

9.2 PREPARATION FOR AND SUPPORT TO MEETINGS

9.2.1 The Contractor shall provide secretarial services and support services required for all approved meetings over the entire period of the Contract. This shall include the preparation and issue of all necessary information, calling notices, agendas and minutes.

9.2.2 The Contractor shall provide agendas and reports in accordance with Paragraph B-3 of the SOW and submit to the Authority no later than fourteen (14) working days before the subsequent PRM over the entire period of the Contract.

9.3 PUBLICITY

9.3.1 The Contractor shall not release any information associated with the project without first obtaining the prior written consent of the Authority, except as may be required by law or other government requirements. Prior to release, copies of the information to be released shall be forwarded to the Authority's Commercial Branch. If the publication is to be in a language other than English, an accurate and complete type-written translation in English shall be provided with the request. It is agreed that neither party has the authority to communicate on behalf of the other.

9.4 PROJECT MANAGEMENT

9.4.1 The procedures used to manage the relationship between the Contractor and the Authority during the life of this Contract are as set out in Annex BB to the Contract.

10. SPECIAL CONDITIONS OF CONTRACT

10.1 OBSOLESCENCE MANAGEMENT

10.1.1 The Contractor is responsible for managing obsolescence over the entire period of the Contract and, notwithstanding any obsolescence issues or problems; the Contractor remains responsible for meeting all performance and other requirements of this contract.

10.1.2 The Contractor shall implement a proactive obsolescence management strategy in accordance with IEC 62402:2007. This will include as a minimum:

- The ongoing identification and review of obsolescence concerns and issues over the life of the Contract.
- Identification of mitigation action of obsolescence concerns over the life of the Contract.
- Identification of resolution action of obsolescence issues.

This shall include but is not limited to obsolescence of components, assemblies, sub-assemblies, piece parts, and material (hereafter referred to for purposes of this section only as 'parts and/or material').

10.1.3 The Contractor shall liaise with the Authority to ensure obsolescence management plans and mitigation/resolution of concerns and issues are appropriately aligned with any Authority planned upgrades to the capability.

10.1.4 Any configuration changes due to obsolescence shall be approved in accordance with the clause 3.13.

10.1.5 The Contractor shall provide the Authority with obsolescence status briefs, as part of the periodic programme reviews.

10.1.6 The Contractor is responsible for all costs associated with:

- Mitigation of obsolescence concerns.
- Resolution of obsolescence issues.

The costs for which the Contractor is responsible include, but are not limited to, the costs of investigating part availability, locating suitable part replacement, 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.

10.1.7 The Contractor shall ensure all known obsolescence issues and forecasted concerns have been identified and have mitigation plans. No less than 18 months before contract end, the Contractor shall transfer this data to the Authority which shall fall within the negotiated contract price. The Contractor is to ensure that the Authority shall have the right to use this data.

10.2 PREVENTATIVE MAINTENANCE

10.2.1 The Contractor shall undertake routine maintenance and inspection in accordance with the schedule shown at Annex R to Contract over the entire period of the Contract.

10.2.2 The Contractor's maintenance and inspection schedule shall not affect the availability of the STS for Authority training.

10.3 TASKING

10.3.1 Changes to the contract may be required during the contract duration. The Authority will raise a tasking form for orders in the format detailed at Annex S, and the Contractor is to complete the form using Firm Prices (ex VAT) for the work involved. In response to the Authority's tasking form the Contractor is to provide a complete statement of work including a detailed technical proposal on how it intends to meet the requirements of the Authority's task that shall include a breakdown of the costs in the form shown below:

Labour – Estimated Number of Hours (per grade) x Hourly Rate £/Hr (using the agreed rates applicable at the time of quotation as detailed in Annex T). Labour rates are to be inclusive of overheads.

Materials – Estimated costs.

Subcontracts – Quotes to be provided; competition to be used where possible. The Contractor shall be allowed to apply a handling charge of five percent (5%) on Subcontract costs but shall not be allowed to apply any additional profit nor apply the below level of profit to the Subcontract costs.

Travel and Subsistence – Estimated Cost broken down as total cost per trip multiplied by the number of anticipated trips.

Profit – To be applied in accordance with the Government Profit Formula

Risk – A costed risk register is to be provided where applicable.

Timescale – Proposed Start and Duration shall be entered on the Tasking form prior to submission for approval. A resourced project schedule shall be provided.

Documents – Updated versions of extant project management plans and any other relevant documentation. A resourced Work Breakdown Structure to include a level 4 resource Schedule as a hierarchical decomposition of the project into phases, deliverables and work packages shall be provided.

10.3.2 Where the task is split into a number of discrete work packages; the information required in 10.3.1 above shall be provided for each work package.

10.3.3 All of the above breakdowns (where applicable) are to be provided for any subcontracts involved in the task.

10.3.4 All tasking forms raised are to contain a unique Serial Number.

10.3.5 On receipt of the Contractor's quotation, the Commercial Officer will negotiate a price for the task and, on agreement of price, will issue a Firm Price letter to authorise the commencement of work. For the avoidance of doubt, no work shall commence until the task has been formally authorised by the Commercial Officer.

10.3.6 On completion of the Task, the Contractor shall complete and return the Tasking Form to the Authority and claim payment in accordance with DEFFORM 522J.

10.3.7 The Authority or the Contractor may, on a case by case basis, determine that the tasking form process is not sufficient for contract changes. The Authority (or the Contractor) shall notify the Contractor (or the Authority) in writing if a contract change will be implemented outside of the tasking process; such notification shall identify the reason for the proposed departure from the tasking process and the level of detail required to implement the change.

10.4 PERFORMANCE DEDUCTIONS

10.4.1 The Contractor shall deliver the training to comply with the SOW at Annex A and in accordance with Performance Deductions as detailed at Annex U.

10.5 TRANSPARENCY

10.5.1 For the purpose of this Condition the expressions: 'Transparency Information' shall mean the content of this Contract in its entirety, including from time to time agreed changes to the Contract, and details of any payments made by the Authority to the Contractor under the Contract; 'Contractor Commercially Sensitive Information' shall mean the information listed in the Contractor Commercial Sensitive Information at Annex V to the Contract being information notified by the Contractor to the Authority which is acknowledged by the Authority as being commercially sensitive information.

10.5.2 Notwithstanding any other term of this Contract, including DEFCON 531 where applicable, the Contractor gives its consent to the Authority to publish the content of this Contract in its entirety, including from time to time agreed changes to the Contract, and details of any payments made by the Authority to the Contractor under the Contract ('the Transparency Information') to the general public. The Contractor shall assist and cooperate with the Authority to enable the Authority to publish the Transparency Information.

10.5.3 Before publishing the Transparency Information to the general public in accordance with paragraph 10.5.2 above, the Authority may redact any information that would be exempt from disclosure if it was the subject of a request for information under the Freedom of Information Act 2000 ('the Act') or the Environmental Information Regulations 2004 ('the Regulations').

10.5.4 The Authority may consult with the Contractor before redacting any information from the Transparency Information in accordance with paragraph 10.5.2 above. The Contractor acknowledges and accepts that its representations on redactions during consultation may not be determinative and that the decision whether to redact information is a matter in which the Authority shall exercise its own discretion, subject always to the provisions of the Act or the Regulations.

10.5.5 For the avoidance of doubt, nothing in this Condition shall affect the Contractor's rights at law.

10.6 EXIT MANAGEMENT

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

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

- a. All relevant support documentation including repair specification and hardware;

- b. All Authority holdings;
- c. All reports, databases, software produced over the period of the Contract that would be required to continue the provision of Services;
- d. The Contractor shall provide the Authority with all information identified in sub-clauses a. to c. above within 12 months from RFT, and shall thereafter provide the Authority with an updated version on a rolling 12 month basis up until Contract expiration;
- e. The Contractor shall comply with the requirements of Annex W - Transfer of Undertakings (Protection Of Employment) – TUPE.

10.6.3 For a twelve (12) month period from termination of the Contract, the Contractor shall co-operate with and give explanation advice and guidance to any successor contractor or the Authority in all matters that the successor contractor or Authority may raise as relevant to the past and/or future performance of the Contract.

10.6.4 The Contractor shall ensure that all necessary intellectual property licences to give effect to this Exit Management section are procured in accordance with Section 5.7 (Intellectual Property Rights – Exit Management).

10.7 TERMINATION

10.7.1 Without prejudice to the Authorities rights in DEFCON 614, DEFCON 656 or elsewhere in this Contract, the Authority may terminate the Contract where:

- i. the Contractor accumulates Service Credits for five (5) consecutive Payment Periods above a threshold amount of 400 service credits per month representing continual poor performance;
- ii. the Contractor fails to achieve four (4) consecutive milestones in the Payment provisions detailed at Annex J to the Contract;
- iii. the Contractor has exhausted payment of Liquidated Damages (as set out in Condition 7.2).

10.7.2 If the Authority decides to terminate the Contract under any of the circumstances in 10.7.1 above, the Authority shall inform the Contractor, in a written notice, of its intention to terminate subject to Clauses 10.7.3 and 10.7.4.

10.7.3 On the receipt of written confirmation from the Authority of its intention to terminate the Contract under Clause 10.7.1, the Contractor shall where production has not commenced refrain from commencing production. The Contractor may respond to the notice within ten (10) working days of receipt of it, detailing the reasons for failure and including a plan for recovery (the “Recovery Plan”) to rectify said failure(s).

10.7.4 The Authority shall review the proposed Recovery Plan and the reasons for failure within ten (10) working days of receipt and shall either:

- i. instruct the Contractor to commence with the Recovery Plan;
or
- ii. notify the Contractor of immediate Contract termination.

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

10.7.5 Where the Authority has instructed the Contractor to commence the Recovery Plan, the Contractor shall immediately implement the Recovery Plan at its own expense and provide the Authority with weekly updates on its progress until such a time that the Authority is satisfied that the Delivery Schedule and/or

the provision of the Services is back on track. The Authority shall confirm in writing once this has been achieved.

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

10.7.7 Upon the Authority notifying the Contractor of Contract termination:

i. the Contractor shall cease all workings for this Contract and determine all sub-contracts; and

ii. the Authority shall have the right to claim from the Contractor such damages as may have been sustained as a direct result of the Contractor's breach or breaches of the Contract, including but not limited to any costs and expenses reasonably incurred by the Authority in obtaining the Synthetic Training Equipment and Services in substitution from another supplier.

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

10.8 CONFIDENTIALITY

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

10.8.2 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.

10.8.3 The Contractor shall:

(a) Hold the Controlled Information and not to use it other than for the purpose of discharging its obligations under the Contract;

(b) Not to copy the Controlled Information except as strictly necessary for the purpose of discharging its obligations under the Contract;

(c) Not to disclose the Controlled Information to any third party unless so authorised in writing beforehand by the Authority;

(d) Protect the Controlled Information diligently against unauthorised access and against loss; and,

(e) Act diligently to ensure that:

(i) Controlled Information is disclosed to its employees only to the extent necessary for the purpose of discharging its obligations under the Contract;

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

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

(a) 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;

- (b) Maintain this register for the duration of the Contract and for two years following completion of the Contract;
- (c) 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,
- (d) 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.

10.8.5 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:

- (a) 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;
- (b) 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;
- (c) That the information concerned was lawfully provided by a third party without restriction on use or further disclosure; or
- (d) 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.

10.9 RELIEF EVENTS

10.9.1 Pursuant to the Performance Deductions regime at Annex U to the Contract, the following events shall be regarded as Relief Events for the purposes of calculating the Contractor's level of performance and the associated number of service credits:

- a. Misuse or improper use of the facilities or equipment by the Authority, its employees, representatives or sub-contractors.
- b. Fire, flood, water ingress, explosion, damage to the building or any similar event, to the extent that such occurrence has not arisen as a result of the Contractor's own acts, omissions or negligence.
- c. Changes in security arrangements which restrict or inhibit access or egress to the Facility, so as to prevent the Contractor from being able to adequately discharge its obligations under this Contract.
- d. Loss of power or other utilities to be provided by the Authority that have a material effect on the delivery of the Service.
- e. Late arrival or absence of personnel to be trained during a particular Training Session where that late arrival or absence is the sole reason that prevents completion of the Training Session.
- f. Unavailability and/or failure of GFA which the Authority had committed to provide, or has provided, to the extent that such unavailability or failure has not arisen as a result of the Contractor's own acts, omissions or negligence.

10.9.2 Where it is practicable and reasonable to do so, the Contractor shall demonstrate to the Authority that the occurrence of the event impacted on its ability to deliver the required Training.

10.9.3 Relief from the provisions of the performance deductions regime shall apply only for the period during which the occurrence of each event affects the Contractor's ability to deliver the required Training. Upon cessation of the cause of each Relief Event the performance deductions regime will apply.

10.9.4 In the event of one or more of the events identified in Clause 10.9.1 occurring, the Contractor shall provide a formal written statement to the Authority's designated representative confirming:-

- a. The times during which such event occurred;
- b. The impact the occurrence had on the planned Training, and the details of the Service which was unavailable as a consequence
- c. An estimate as to when the Service will be available for use once again

10.10 AUTHORITY USE

10.10.1 The following Authority Use provisions shall apply during the duration of the Contract:

- a. From acceptance of RFT the Contractor shall make Training Sessions available to the Authority in respect of each STE Core Hour irrespective of whether the Authority provides the Contractor with notice of intended use. However, in practice and where possible, the Contractor shall be notified of a training requirement by 1730 the preceding day.
- b. From acceptance of RFT the Contractor shall make the STE available to the Authority in respect of each Core Hour outside of the Instructor Core Hours but within the STE Core Hours irrespective of whether the Authority provides the Contractor with notice of intended use. The Contractor is not required to provide Instructors for such usage unless a booking is made in accordance with 10.10.1c or 10.10.1e below.
- c. From acceptance of RFT the Contractor shall make Additional Instructor Usage available to the Authority outside Instructor Core Hours but within the STE Core Hours, provided the Authority books Additional Instructor Usage a minimum of 10 working days of prior to the date of the requirement.
- d. From acceptance of RFT the Contractor shall make the STE available to the Authority for Non Core Training Hours outside of STE Core Hours provided the Authority books the Non Core Training Hours a minimum of 10 working days of prior to the date of the requirement. The Contractor is required to provide Instructors for such usage.
- e. From acceptance of RFT the Contractor shall use reasonable endeavours to provide the Authority with Additional Instructor Usage and/or Non Core Training Hours booked less than 10 working days prior to the date of the requirement.
- f. From acceptance of RFT and subject to the provisions of Section 5 (IPR) of the Contract and notification in accordance with 10.10.1.c, 10.10.1.d and 10.10.1.e, the Authority shall have the right to book and use any Training for third party use at no additional charge to that incurred by the Authority in accordance with Annex J.

g. The Contractor shall ensure that prior to provision of Training, the STE is appropriately configured to the Authority's requirements as previously notified to the Contractor within a reasonable period of time before the relevant Training.