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Type 23 - Power Generation and MCAS Update (PGMU) - Machinery Control And Surveillance System (MCAS)

**CONTRACT SSA/004/04**

**TERMS AND CONDITIONS**

Issue: v1

Date: 04 JAN 2016

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# SCHEDULE OF REQUIREMENTS

|  |  |  |  |
| --- | --- | --- | --- |
| DEFCON 110(Edn 4/88) |   |  |  |
|  | Rolls-Royce Marine Electrical Systems Limited,Moor Lane, Derby,DE24 8BJ |  | **MINISTRY OF DEFENCE****Schedule of RequirementforPower Generation and Machinery Control and Surveillance System Update (PGMU)** |  | Contract No.SSA/004/04Effective Date:04 January 2016 |  |
| Table l **Contract Deliverables** |  |  |
| **Item****No** | **DESCRIPTION** | **TOTAL COST****FIRM PRICE****(VAT ex)****UK Sterling****11 SHIPS** | **FIRM ELEMENTS****5 YEARS** | **FIXED ELEMENTS – SUBJECT TO ESCALATION****3 YEARS** |
| 1. | Provision of Lot 4 (MCAS) equipment and technical services as defined in Parts 2 and 3 of the SOW including a Guaranteed Defect Period in accordance with Part 4:a. Project Management as per Part 2 of the SOW;b. Supply and Engineering as per Part 3 of the SOW as specified in the TES plus Support and Test Equipment (S&TE) as specified in Part 4;c. Supply and Engineering as per Part 3 of the SOW – On-board Spares, Base Spares and re-provisioning of both;d. Supply and Engineering as per Part 3 of the SOW – Operator Training Equipment;e. Guarantee Defect Period as specified in Part 4 of the SOW. | ''''''''''''''''''''''''''''''''''''''''''''''''''''''''''''''''''''''''''''''''''''''''''''''''''''''''''''''''''''''''''''''''''''''''''''''''''''''''''''''''''' | ''''''''''''''''''''''''''''''''''''''''''''''''''''''''''''''''''''''''''''''''''''''''''''''''''''''''''''''''''''''''''''''''''''''''''''''''''''''''''''''''''' | ''''''''''''''''''''''''''''''''''''''''''''''''''''''''''''''''''''''''''''''''''''''''''''''''''''''''''''''''''''''''''''' |
| 2. | Provision of Integrated Logistics Support pre-planning activities as defined at Schedule A (SOW) Part 4 paragraph 4.5. | ''''''''''''''''''''''''''''' | '''''''''''''''''''''''''''' | '''''' |
| 3. | Training Package for Lot 4 (MCAS) as defined at Schedule A (SOW) Part 5 and Supply and Engineering defined at Part 3 of Schedule A (SOW) at para 3.1.1.c Maintainer Training Solution | ''''''''''''''''''''''''''' | ''''''''''''''''''''''''''''' | '''''' |
|  | **TOTAL CONTRACT PRICE** | ''''''''''''''''''''''''''''''''''''''' | ''''''''''''''''''''''''''''''''''' | ''''''''''''''''''''''''''''''' |

**Option Prices**

The above Firm and Fixed Prices exclude the option items identified separately below:

1. HPSW/UAMR LPSW system modification;

2. Shaft Brake interlocks for shaft speed and power;

3. Main Lub Oil System Drain Tank Heater interlocks.

4. Ship Maintainer Training Course on HMS Sultan D86 Maintenance Trainer

|  |  |  |  |
| --- | --- | --- | --- |
| **Option** | **NRE** | **RE (11 Ship Sets)** | **Total** |
|  | **Firm** | **Firm** | **Fixed** |  |
| **HPSW** | ''''''''''''''' | ''''''''''''''''''''' | '''''''''''''''''''' | ''''''''''''''''' |
| **Shaft Brake** | '''''''''''''''' | ''''''''''''''''''' | '''''''''''''''''' | '''''''''''''''''' |
| **Drain Tank** | '''''''''''''' | '''''''''''''''''''' | ''''''''''''''''' | ''''''''''''''''''' |
| **Two Ship Maintainer Training Courses** | ''''' | '''''''''''''''' | ''''' | '''''''''''''''' |

**THIS CONTRACT** is made on 4th January 2016

**BETWEEN:**

(1) **THE SECRETARY OF STATE FOR DEFENCE** of Whitehall, London, SW1 (the “**Authority**"); and

(2) **Rolls-Royce Marine Electrical Systems Limited]**2799255 whose registered office is Moor Lane, Derby, DE24 8BJ (the “**Contractor”**).

**WHEREAS**:

(A) The Authority has a requirement for the supply of Machinery Control and Surveillance System (MCAS) update for Type 23 warships (“the Ships”), together with associated spares and training.

(B) Ships are now intended to be used beyond the original out of service date and the MCAS update is required to improve functionality to the MCAS system in order to extend the life of the Ships.

(C) The MCAS update will be installed onto the Ships during a limited period of time while each Ship is in dock for scheduled maintenance.

In consideration of the mutual covenants and undertakings set out below **THE PARTIES AGREE** as follows:

##### GENERAL CONDITIONS

* 1. The following Defence Conditions of contract shall apply to the entire Contract:

|  |  |  |  |
| --- | --- | --- | --- |
| DEFCON 5J | (Edn 03/15) | - | Unique Order Identifiers  |
| DEFCON 14 | (Edn 11/05) | - | Inventions And Designs – Crown Rights And Ownership of Patents And Registered Designs |
| DEFCON 15 | (Edn 02/98) | - | Design Rights and Rights to Use Design Information |
| DEFCON 16 | Edn 10/04 | - | Repair and Maintenance Information |
| DEFCON 21 | (Edn 10/04) | - | Retention of Records |
| DEFCON 23 | (Edn 08/09) | - | Special Jigs, Tooling and Test Equipment |
| DEFCON 68 | (Edn 06/15) | - | Supply of Data for Hazardous Articles, Materials and Substances |
| DEFCON 76  | (Edn 12/06) | - | Contractor’s Personnel at Government Establishments Note – For the purposes of this Contract DEFCON 76 Clause 3 and 4, the Contractor’s liability shall be limited to '''''''' '''''''''''''' '''''' '''''''''''''''''''''' '''''''''''''''''''''''' ''''''''''''''''''' ''''''''''''''''''''''''''''''' per incident and in the aggregate.  |
| DEFCON 82 | (Edn 07/13) | - | Special Procedure for Initial Spares |
| DEFCON 90 | (Edn 11/06) | - | Copyright |
| DEFCON 91 | (Edn 11/06) | - | Intellectual Property Rights in Software |
| DEFCON 92 | (Edn 08/90) | - | Failure of Performance |
| DEFCON 113 | (Edn 10/04) | - | Diversion Orders |
| DEFCON 117 | (Edn 10/13) | - | Supply of Documentation for NATO Codification Purposes |
| DEFCON 126 | (Edn 11/06) | - | International Collaboration(*Note: For the purposes of Clauses 2 and 3 the period shall be for as long as the equipment remains in service with the UK armed forces*.) |
| DEFCON 129 | (Edn 03/15) | - | Packaging (For Articles Other Than Munitions) |
| DEFCON 129J | (Edn 07/08) | - | The Use of Electronic Business Delivery Form |
| DEFCON 501 | (Edn 03/15) | - | Definitions and Interpretation |
| DEFCON 502 | (Edn 06/14) | - | Specification |
| DEFCON 503 | (Edn 12/14) | - | Amendments to Contract |
| DEFCON 507 | (Edn 10/98) | - | Delivery |
| DEFCON 509 | (Edn 09/97) | - | Recovery of Sums Due |
| DEFCON 513 | (Edn 06/10) | - | Value Added Tax |
| DEFCON 515 | (Edn 10/04) | - | Bankruptcy and Insolvency |
| DEFCON 516 | (Edn 04/12) | - | Equality  |
| DEFCON 518 | (Edn 11/12) | - | Transfer |
| DEFCON 520 | (Edn 08/15) | - | Corrupt Gifts and Payments of Commission |
| DEFCON 521 | (Edn 04/12) | - | Sub-Contracting to Supported Businesses |
| DEFCON 522J | (Edn 05/03) | - | Payment under P2P |
| DEFCON 523 | (Edn 03/99) | - | Payment of Bills Using the Bankers Automated Clearing Service (BACS) System |
| DEFCON 524 | (Edn 10/98) | - | Rejection |
| DEFCON 525 | (Edn 10/98) | - | Acceptance |
| DEFCON 526 | (Edn 08/02) | - | Notices |
| DEFCON 527 | (Edn 09/97) | - | Waiver |
| DEFCON 528 | (Edn 05/12) | - | Overseas Expenditure, Import and Export Licences |
| DEFCON 529 | (Edn 09/97) | - | Law (English)  |
| DEFCON 530 | (Edn 12/14) | - | Dispute Resolution (English Law)  |
| DEFCON 531 | (Edn 11/14) | - | Disclosure of Information  |
| DEFCON 532A | (Edn 06/10) | - | Protection of Personal Data (Where Personal Data is not being processed on behalf of the Authority) |
| DEFCON 534 | (Edn 06/97) | - | Prompt Payment (Sub-Contracts) |
| DEFCON 537 | (Edn 06/02) | - | Rights of Third Parties |
| DEFCON 538 | (Edn 06/02) | - | Severability |
| DEFCON 539 | (Edn 08/13)  | - | TransparencyNote – for the purposes of Clause 3 the Authority and the Contractor agree to redact the £values only in the following: DEFCON 76, the SOR and Special Conditions 11 and 27.  |
| DEFCON 550 | (Edn 02/14) |  | Child Labour and Employment Law |
| DEFCON 566 | (Edn 04/15) | - | Change of Control of Contractor |
| DEFCON 601 | (Edn 04/14) | - | Redundant Materiel |
| DEFCON 602A | (Edn 12/06) | - | Deliverable Quality Plan |
| DEFCON 604 | (Edn 06/14)) | - | Progress Reports |
| DEFCON 606 | (Edn 06/14) | - | Change and Configuration Control Procedure |
| DEFCON 608  | (Edn 10/14) | - | Access and Facilities to be Provided by the Contractor |
| DEFCON 609 | (Edn 06/14) | - | Contractor’s Records |
| DEFCON 611 | (Edn 07/10) | - | Issued Property |
| DEFCON 612 | (Edn 10/98) | - | Loss of or Damage to the Articles |
| DEFCON 614 | (Edn 09/03) | - | Default |
| DEFCON 619A | (Edn 09/97) | - | Customs Duty Drawback |
| DEFCON 621B | (Edn 10/04) | - | Transport (if the Contractor is Responsible for Transport) |
| DEFCON 624 | (Edn 11/13) | - | Use of Asbestos in Arms, Munitions or War Materials |
| DEFCON 627 | (Edn 12/10) | - | Quality Assurance – Requirement for a Certificate of Conformity |
| DEFCON 632 | (Edn 08/12) | - | Third Party Intellectual Property – Rights and Restrictions |
| DEFCON 637 | (Edn 08/99) | - | Defect Investigation And Liability |
| DEFCON 642 | (Edn 06/14)) | - | Progress Meetings |
| DEFCON 643 | (Edn 12/14) | - | Price Fixing |
| DEFCON 644 | (Edn 05/15) | - | Marking of Articles |
| DEFCON 647 | (Edn 09/13) | - | Financial Management InfoNote – EVM does not apply to this Contract. In addition to Clause 2 – Contractor shall provide the following Financial Management Information to the Authority by 1st March and 1st December each year: * Invoices paid to date
* Outstanding invoices
 |
| DEFCON 649 | (Edn 07/99) | - | Vesting |
|  |  |  |  |
| DEFCON 653 | (Edn 12/14) | - | Pricing On Ascertained Costs |
| DEFCON 656  | (Edn 03/06) | - | Break |
| DEFCON 670 | (Edn 07/14) | - | Tax Compliance |
| DEFCON 694 | (Edn 02/12) | - | Accounting For Property Of The Authority |
| DEFCON 695 | (Edn 02/15) | - | Interim Summary Cost Statement – Post Costing |
| DEFCON 697 | (Edn 07/13) |  | Contractors on Deployed Operations (CONDO) |
| DEFCON 800  | (Edn 12/14) | - | Qualifying Defence Contract (QDC) |
| DEFCON 801 | (Edn 12/14) | - | Amendments to Qualifying Defence Contracts |
| DEFCON 802  | (Edn 12/14) | - | QDC: Open book on sub-contracts that are not Qualifying Sub-contracts |

* 1. In addition to the above the following DEFFORMs apply to the Contract:

DEFFORM 30 (Edn 04/15) - The Electronic Transactions Agreement at Appendix 4

DEFFORM 111 (Edn 08/15) - Addresses and other Information at Appendix 5

DEFFORM 315 (Edn 02/98) - Contract Data Requirements at Appendix 6

**SPECIAL CONDITIONS**

##### DEFINITIONS AND INTERPRETATIONS

* 1. In the Contract, where the first letter of a word is capitalised, it is a defined term as per the context it is used in or it is found in Clause 2.2 of these Terms and Conditions.
	2. In the Contract, terms defined in DEFCON 501 shall have the same meaning given therein and the following terms shall have the following meanings:

|  |  |
| --- | --- |
| **“Amendment to Contract”** | means an amendment to this Contract as described in these Terms and Conditions, found at Clause 23 Amendment to Contract and Clause 22 Contract Change Procedure; |
| “**Acquisition Operating Framework (AOF)”** | has the meaning as given in paragraph 1.3 of Schedule A (SOW); |
| **“Articles”** | means all goods (excluding Services) which the Contractor is required to supply under the Contract; |
| **“Authority”** | 'the Authority' means the Secretary of State for Defence;  |
| **“Authority Safety Officer”** | has the meaning as given in paragraph 1.3 of Schedule A (SOW); |
| **“Authority’s Commercial Manager or Commercial Officer”** | means the person appointed as such by the Authority as detailed in Box 1 of the Appendix to Contract (DEFFORM 111); |
| **“Authority’s Project Manager”** | means the person detailed in Box 2 of the Appendix to Contract (DEFFORM 111); |
| **“AQAP”** | means NATO Quality Assurance Procedural Requirements;  |
| **“Base Spares”** | has the meaning as given in paragraph 1.3 of Schedule A (SOW); |
| **“Business Day”** | means any day excluding:1. Saturdays, Sundays and public and statutory holidays in the UK; and
2. Privilege days in the UK notified in writing by the Authority to the Contractor at least ten (10) Business Days in advance;
 |
| **“Commercial Off The Shelf (COTS)”** | has the meaning as given in paragraph 1.3 of Schedule A (SOW); |
| “**Comprehensive Royal Naval Inventory Systems Project (CRISP)“** | has the meaning as given in paragraph 1.3 of Schedule A (SOW); |
| **“Consumable”** | has the meaning as given in paragraph 1.3 of Schedule A (SOW); |
| **“Contingency Support Spares”** | has the meaning as given in paragraph 1.3 of Schedule A (SOW); |
| **“Contract”** | Means these Terms and Conditions and the attached Schedules and Annexes; |
| **“Contractor”** | means the person who, by the Contract, undertakes to supply the Contractor Deliverables for the Authority. Where the Contractor is an individual or a partnership, the expression shall include the personal representatives of the individual or of the partners, as the case may be, and the expression shall also include any person to whom the benefit of the Contract may be assigned by the Contractor with the consent of the Authority; |
| “**Contractor Default ”** | means any one of the following: (a) where the Contractor fails to deliver the Contractor Deliverables (or any part thereof) in accordance with Schedule B (Delivery Plan) of this Contract;(b) where the Contractor provides Contractor Deliverables (or any part thereof) that fail to comply with the Schedule of Requirements and Schedule A (SOW) of this Contract;(c) where the Contractor commits a breach of any of the following DEFCONs: (i) DEFCON 68 (Supply of Data for Hazardous Articles, Materials and Substances); (ii) DEFCON 515 (Bankruptcy and Insolvency); (iii) DEFCON 516 (Equality); and (iv) DEFCON 520 (Corrupt Gifts and Payments of Commission); (d) where a Contractor makes a Change of Control in contravention of the Authority’s objection pursuant to clause 29.6 of this Contract; or (e) where the Contractor otherwise commits a material breach of its obligations under this Contract; |
| **“Contractor Deliverables”** | means the Articles and Services that the Contractor is to provide under this Contract as set out in Items 1 to 3 of the SOR and Schedules A and B;  |
| **“Contractor Intellectual Property”** | means the items of Intellectual Property which were developed by the Contractor using its own funds, listed in clause 34.1; |
| **“Contract Price”** | has the meaning set out in Clause 8.1;  |
| **“Contractor’s Safety Manager”****“Defect”** | has the meaning as given in paragraph 1.3 of Schedule A (SOW);means(a) any error, damage or defect in the manufacturing of any Contractor Deliverable; or (b) any error or failure of code within any Software which causes a Contractor Deliverable to malfunction or to produce unintelligible or incorrect results; or(c) any failure of any Contractor Deliverable to provide performance, features and functionality specified in the Requirements; or(d) any failure of any Contractor Deliverable to operate in conjunction with or interface with any other Contractor Deliverable in order to provide the performance, features and functionality specified in the Requirements; |
| **“Deliverable Information”** | means the information to be provided by the Contractor to the Authority in accordance with Schedule A (SOW) as listed in the Document Requirements List (DRL) at Schedule B (Delivery Plan); |
| **“Delivery Dates”** | means the dates for the delivery of Contractor Deliverables and Documentation as defined at Schedule B (Delivery Plan); |
| **“Design”** | means the Installation Solution (IS) prepared by the Design Management Service (DMS), Contractor or Sub-contractors and all Design Documents, which are necessary to meet the Authority’s requirements in accordance with the Contract; |
| **“Design Authority Maintenance Schedules (DAMS)”** | has the meaning as given in paragraph 1.3 of Schedule A (SOW); |
| **“Design Documents”** | means any plan, sketch, drawing (including setting out drawings), calculation, model, description, mock-up, proposal, report, specification, or any other document, group of documents, computer generated design, software, disk, microfilm or other thing whatsoever prepared by the DMS, Contractor or Sub-contractors in the performance of the Contract for or in connection with the Design; |
| **“Diagnostic Test Spares”** | has the meaning as given in paragraph 1.3 of Schedule A (SOW); |
| **“Dockyard Authority”** | has the meaning as given in paragraph 1.3 of Schedule A (SOW); |
| **“Effective Date (of Contract)”** | means the date of the contract 04 JANUARY 2016; |
| “**Equipment Set”** | means one complete ship set of Lot 4 equipment as specified at Schedule A (SOW); |
| “**Exit Period**” | means the period specified in paragraph 4.1.2 of Schedule H (Exit Management Plan); |
| “**Exit Plan**”**“Final Acceptance”**  | means the plan to be provided by the Contractor in accordance with Clause 31 (Exit Management);means acceptance shall occur upon successful completion of the element of sea trials (ME) relating to the relevant Ship’s Contractor Deliverables; |
| **“Firm Price”**  | means a price, agreed for the Contractor Deliverables which is not subject to variation; |
| **“Fixed Price”** | means a price, agreed for the Contractor Deliverables that is subject to variation in accordance with Clause 27 (Indexation); |
| **“Guarantee Defect”****“Guarantee Defect Period”** | means any Defect (excluding latent) in the Contractor Deliverables arising during the Guarantee Defect Period;means the period specified in clause 13 of this Contract in which the Contractor is obliged to repair or replace any Article with a Guarantee Defect; |
| **“Key Milestones”****“Latent Defect Guarantee Defect Period”****“Latent Defect”** | means those critical milestones identified at Schedule D (Payment Plan) for which failure to achieve may invoke Clause 24 Termination;means the period specified in clause 13.1.3 of this Contract; means any Defect that could not be reasonably discovered within the acceptance process under clause 10.8, which is evident within all Ships, and which is not a result of the Authority providing incorrect or incomplete information; |
| **“Man Day”** | Means 8 hours per day; |
| **“Milestones”** | means those milestones identified at Schedule D (Payment Plan) which instigate a payment if satisfactorily met; |
| **“Milestone Payment Plan”** | means as described in Schedule D (Payment Plan); |
| **“Officer(s)”** | means the persons holding from time to time any of the Offices, or the Officers appointed by the Authority; |
| **“Parties”** | means the parties to this Contract, being the Authority and the Contractor and “Party” shall include either party hereto according to the context; |
| **“Performance Deductions/Moderations”** | means the sums which the Authority may deduct from a payment due to the Contractor in accordance with Clause 9 (Payment) and Schedule [C] (Contract Performance Management);  |
| **“Performance Failures”** | means failure to deliver all or any part of the Contractor Deliverables in accordance with the Performance Levels;  |
| **“Performance Levels”**  | means the performance criteria and performance requirements levels to which the Contractor shall deliver the Contractor Deliverables, as detailed in Schedule [C] (Contract Performance Management);  |
| **“Progress Meeting”** | means a meeting held at agreed intervals between the Contractor and the Authority as detailed in paragraph 2.5 of Schedule A (SOW); |
| **“Purple Gate”** | means a process to ensure the regulation of materiel flow into the Joint Supply Chain for the sustainment of operational Theatres; |
| **“Quality Management Plan”** | Has the meaning as described at Clause 16 and in Schedule A (SOW) 2.5.13; |
| **“Requirements”**  | means the work and technical specification for the Contractor Deliverables as described at Schedule A (SOW) and its Annexes and the Schedule of Requirements (SOR);  |
| **“RN Operations”**  | refers to operations being undertaken by the Royal Navy requiring use of any of the Ships; |
| **“Security Aspects Letter”** | means a letter forwarded to the Contractor by the Authority in accordance with JSP 440 issued concurrently with this Contract; |
| **“Services”** | means all services (excluding the supply of Articles) which the Contractor is required under the Contract to perform or to fulfil the Requirements as described at Schedule A (SOW) and its Annexes and the Schedule of Requirements (SOR); |
| **“Ship”** | means any one or all of the Authority’s Type 23 warships; |
| **“Ship’s Staff”** | means the crew (including officers) of the Ship; |
| **“SSSA”** | Means Surface Ship Support Alliance; |
| **“SOW”** | Means Schedule A, Statement of Work; |
| **“Sub-contract”** | means a contract entered into between the Contractor and a Sub-contractor; |
| **“Sub-contractor”** | means a sub-contractor of the Contractor of any tier; |
| **“Support Period”**  | means the period of time for which the Contractor is to provide support as described in the Schedule of Requirements;  |

##### CONTRACTOR’S OBLIGATIONS

* 1. The Contractor shall deliver the Contractor Deliverables in accordance with the Schedule of Requirements, Schedule A (SOW) and Schedule B (Delivery Plan) to this Contract.
	2. The Contractor shall deliver Contractor Deliverables in accordance with clause 3.1 that are:
		1. Brand new and free from Defects (whether actual or latent) within the Guarantee Defect Period;

* + 1. Free from computer viruses, worms, bombs or other harmful code which is or could be detrimental to the computer systems of the Authority or the Authority’s other contractors;
		2. Free from asbestos, cadmium, beryllium, brittle materials including grey cast iron, materials which cause irritation to humans or give rise to toxic fumes when subject to high temperature or flame, viton and any other material identified as Substances of Very High Concern as restricted by the REACH Regulations save where such materials have been declared by the Contractor to the Authority and the Authority has provided its agreement that the Contractor Deliverables may contain these materials; and
		3. Of satisfactory quality and fit for their intended purpose in accordance with this Contract. For the avoidance of doubt, the Authority acknowledges that the Requirements are, as expressed in the contract, exhaustive and that any amendment, extension or addition to the Requirements will be the subject of a change request by the Authority made in accordance with clause 22. The Contractor Deliverables will be changed where the Authority requires such an amendment, extension or addition.
		4. Capable of representing a risk to health and safety that is acceptable and is as low as is reasonably practicable when maintained and operated in accordance with the Contractor’s technical publications.
	1. The Contractor is aware that the Contractor Deliverables will be installed and integrated into the Ships by the Authority’s employees, agents or other contractors during limited periods of scheduled maintenance. The Contractor accepts that time for performance of its obligation to deliver the Contractor Deliverables in accordance with Schedule B (Delivery Plan) of this Contract is of the essence.
	2. In order to facilitate the Contractor meeting Schedule B (Delivery Plan) the Authority shall provide the information detailed within the monthly Progress Meetings by the stated dates, any delays shall be treated as Force Majeure under clause 14.
	3. The Contractor acknowledges that the Authority will suffer loss and damage and incur costs as a result of a failure to deliver the Contractor Deliverables in accordance with Schedule B (Delivery Plan).
	4. The Contractor shall perform its obligations under this Contract in accordance with Schedule C (Contract Performance Management) and Schedule E (Relationship Management Plan) to this Contract.
	5. The Contractor shall maintain continuity of its performance in accordance with its Business Continuity Management Plan (BCMP) which shall as a minimum:

		1. Be provided to the Authority within 3 months of the Effective Date of Contract and agreed with the Authority within 6 months of the Effective Date of Contract. In the event that this cannot be agreed then the provisions of DEFCON 530 shall apply.
		2. Set out the arrangements that are to be invoked to ensure that the business processes and operations, required by the Contractor to provide the support covered under this Contract, remain supported, including but not limited to:

			1. The alternative processes, (including business processes), options and responsibilities that may be adopted in the event of a failure in or disruption to the business processes and operations; and
			2. The steps to be taken by the Contractor upon resumption of the business processes and operations in order to address any prevailing effect of the failure or disruption including a root cause analysis of the failure or disruption;
		3. Be jointly reviewed (together with the risk analysis on which it was based) on a regular basis and as a minimum once every 12 (twelve) months or as otherwise agreed with the Authority.

3.6 Except for acceptance in accordance with clause 10.8, the Contractor accepts that no acceptance, payment, authorisation, consent, comment, suggestion, requirement, proposal, consideration, inspection or approval of designs or other audit or inspection by the Authority or its agents regarding all or any aspect of the Contractor Deliverables to be supplied under the Contract shall derogate from the responsibility of the Contractor for ensuring that the Contractor Deliverables comply and function in accordance with the Requirements.

* 1. The Contractor shall produce a risk management plan and associated risk register in accordance with Schedule A (SOW).
	2. The Contractor shall attend Progress Meetings, which shall be held in accordance with the requirements of Schedule A (SOW).
	3. For the purposes of DEFCON 604, the Contractor shall submit progress reports to the Authority’s Project Manager in accordance with Schedule A (SOW).
	4. The Contractor shall maintain a current quality assurance registration, applicable to all activities to be undertaken under the Contract and shall ensure that the Contract is carried out in conformity with the quality requirements of ISO 9001.
	5. The Contractor shall comply with its obligations set out in Schedule H of this Contract.
	6. The Contractor shall comply with the provisions of the Security Aspects Letter.

##### WARRANTIES & REPRESENTATIONS

4.1 The Contractor warrants and represents that:

4.1.1 It shall discharge its obligations under this Contract with all due skill, care, diligence and operating practice by appropriately experienced, qualified and trained personnel;

* + 1. It shall discharge its obligations under this Contract in compliance with all applicable legislation (including but not limited to legislation relating to health and safety, environment, labelling and hazardous materials) and generally recognised industry standards and practices, as amended and updated from time to time;
		2. It has complied, and the Contractor Deliverables shall comply, with the Montreal Protocol, as amended;

##### DURATION

* 1. The Contract shall commence on the Effective Date shown on the Schedule of Requirements (SOR) and shall remain in place until all obligations have been fulfilled in accordance with the Contract or until earlier termination of all or all remaining parts of this Contract in accordance with Clause 24 (Termination).

##### PRECEDENCE OF DOCUMENTS

* 1. Should there be any discrepancy between any aspects of the documentation under this Contract then the order of precedence of the documentation shall be as follows: -
* Schedule of Requirements (SOR);
* Special Conditions of Contract;
* General Conditions of Contract; and
* The Schedules of the Contract.

##### DISCREPANCIES, ERRORS AND OMISSIONS

* 1. If either Party identifies any discrepancy, error or omission between the provisions of this Contract it shall notify the other Party in writing of such discrepancy, error or omission as soon as reasonably practical.
	2. The Parties shall seek to agree amendments to resolve such discrepancy, error or omission as soon as reasonably practical.
	3. Where the Parties fail to reach agreement within 10 (ten) Business Days of the notice and either Party considers that the discrepancy, error or omission to be material to its rights and obligations under this Contract, then the matter will be referred to the dispute resolution procedure in accordance with DEFCON 530

##### PRICE

* 1. The Contract Price is the price for the Contractor Deliverables as set out in the Schedule of Requirements and payable in accordance with Clause 9 and Schedule D (Payment Plan).
	2. In the case of a contract being placed by the Contractor on one or more of its Sub-Contractors outside the UK, duty shall not be levied on any Contractor Deliverables as they will be imported into the UK in accordance with the process in Clause 20 (Licences).
	3. The Contract Price shall:
		1. be a Firm Price for 5 (five) years from the Effective Date and shall be a Fixed Price thereafter;
		2. exclude Value Added Tax (VAT), which shall apply as described in DEFCON 513;
		3. be inclusive of all travel and subsistence costs, disbursements and expenses; and
		4. be in pounds sterling.
	4. The pricing of any change made in accordance with Clause 22 (Contract Change Procedure) shall be calculated in accordance with the rates set out in the Schedule J (Contractor Pricing Breakdown)
	5. The parties have used Provisional Estimated Rates for 2015 to price the Contract. Upon the parties reaching agreement on Agreed Estimated Rates for 2015, those rates shall automatically apply to the pricing of this Contract in place of the Provisional Estimated Rates and the Contract Price shall be re-calculated as though the Agreed Estimated Rates for 2015 applied from the date the Contract was entered into.

##### PAYMENT

* 1. Payment shall be authorised by the Authority’s Project Manager and made through the Defence Electronic Commerce Service / Purchase to Payment (DECS/P2P) in accordance with DEFCON 5J, DEFCON 522J and this Clause 9
	2. **Milestone Payments**
		1. The Contractor shall be entitled to request payment for the achievement of Milestones in accordance with Schedule D (Payment Plan) provided that: .
			1. the Contractor has met the stated Milestone for which the payment is sought, and completed all work comprised therein; and
			2. the Authority has signed a completed Milestone Acceptance Form in accordance with Appendix 2 (such signature not to be unreasonably refused, withheld or delayed); and
			3. the Milestones have been completed sequentially (unless otherwise agreed between the Parties).
	3. **Contract Payments**
		1. The relevant portion of the Contract Price for Item 1a and 1e of the Schedule of Requirements shall be paid against the achievement of Key Performance Indicators (KPIs) as set out in Schedule C (Contract Performance Management).
		2. The KPIs shall be measured monthly in accordance with Schedule C (Contract Performance Management) and paid quarterly in accordance with Schedule D (Payment Plan).

##### DELIVERY

* 1. The Contractor shall deliver the Contractor Deliverables in accordance with Schedule B (Delivery Plan) and the item shall be delivered upon confirmed receipt at the delivery site by the Authority’s authorised representative.
	2. The Contractor shall be responsible for delivery (including payment of any duty or taxes) to the delivery site.
	3. The Contractor shall not be responsible for the offloading of Contractor Deliverables on arrival at site.
	4. The Authority may from time to time (and acting reasonably) vary the delivery arrangements as set out in Schedule B (Delivery Plan), Such variation shall be subject to a mutually acceptable amendment to the Contract in accordance with clause 22 (Contract Change) and which shall consider the impact (if any) of such change.
	5. Where, after delivery, an Article is rejected by the Authority in accordance with DEFCON 524 that Article shall, for the purposes of the Contract, be considered as not having been delivered under the Contract and the property in that Article shall return to the Contractor unless a notice of objection has been issued to the Authority in accordance with DEFCON 524.
	6. The Contractor shall pack and deliver the Contractor Deliverables in accordance with the terms of the Contract and Schedule A (SOW). The packing and the package costs shall be included in the Contract Price.
	7. **Self to Self Delivery**
		1. Where any Article to be supplied under the Contract is to be delivered otherwise than being handed over by the Contractor to the Authority, as where an Article is to be delivered by the Contractor to his own premises or to those of a subcontractor ('self-to-self delivery'), the risk in such Article shall (notwithstanding the provisions of DEFCON 612) remain vested in the Contractor until such time as the Article is handed over to the Authority.
	8. **Acceptance**
		1. This Clause shall be in addition to the rights afforded under DEFCON 525 (Acceptance) and DEFCON 524 (Rejection). In the event of conflict between this condition and DEFCON 525 and DEFCON 524, this condition shall take precedence.
		2. The Contractor Deliverables acceptance process shall be in accordance with the ITEAP (Annex E to Schedule A (SOW) which shall be developed by the Contractor, in accordance with Schedule A (SOW) within 30 (thirty) days of the Effective Date of Contract, and agreed between the Parties post contract signature. This document shall provide the process for acceptance / rejection of Contractor Deliverables in accordance with the requirements set out at Schedule A (SOW).
		3. Acceptance of Contractor Deliverables shall be conducted incrementally through a series of acceptance events as laid down in the ITEAP. Final Acceptance of Contractor Deliverables to be installed on each Ship shall occur upon successful completion of the element of sea acceptance trials (ME) relating to that Ship.
		4. Acceptance of any Contractor Deliverables rejected under this Clause or in accordance with DEFCON 524 shall not take place until all defects have been made good and the Contractor Deliverables re-delivered to and accepted by the Authority.

##### LIMIT OF LIABILITY

11.1 Subject to clause 11.2, the Contractor shall be liable for and hereby indemnifies the Authority in full against, all loss (including indirect and consequential loss), damage, injury, cost and expense (including legal costs and expenses) of whatever nature suffered by the Authority resulting from breach of Contract or warranty, misrepresentation (whether tortious or statutory), tort (including negligence) or breach of statutory duty caused by the acts or omissions of the Contractor, its employees, sub-contractors or agents under or in connection with this Contract. For the avoidance of doubt, the indemnity referred to above does not (i) relieve the Authority of its obligation to mitigate any losses in respect of which it intends to claim under the indemnity, or (ii) result in the relaxation of the common law rules about the foreseeability of recoverable losses. Any and all liability arising under the indemnity will be subject to the cap set out in clause 11.2 below

* 1. The Contractor’s total liability in clause 11.1 above in respect of all loss damage, injury, cost and expense (including legal costs and expenses) of whatever nature suffered by the Authority resulting from breach of Contract or warranty, misrepresentation (whether tortious or statutory), tort (including negligence) or breach of statutory duty caused by the acts or omissions of the Contractor, its employees, sub-contractors or agents under or in connection with this Contract (including the '''''''''''''''''''''''''''' limit to damage to Government Property as set out in DEFCON 76 to this Contract) shall in no event exceed '''''''''''''''''''''''''''' ''''''''' '''''''''''''''' ''''''' ''''''''''''''''''' '''''''''''''''''''''' '''''''''''''''''''''.

* 1. Nothing in this clause 11 will exclude or limit either Party’s liability for:
1. death or personal injury caused by its negligence, or that of its employees, sub-contractors or agents;

(b) fraud or fraudulent misrepresentation by it or its employees; or

(c) any other liability to the extent it cannot be limited or excluded by law.

* 1. The Contractor shall not be liable for any loss, damage, injury, cost and expense suffered by the Authority if and to the extent it is caused by the negligence or wilful misconduct of the Authority or by breach by the Authority of its obligations under this Contract.
	2. Any termination or cancellation of this Contract by either Party for whatever reason shall be without prejudice to any rights or remedies which may have accrued prior to termination or cancellation.

##### INSURANCE

* 1. The Contractor shall maintain the following primary insurance policies with insurers of international repute authorised to conduct business in the jurisdictions in which the Contractor deliverable is performed for the duration of the Contract.
		1. **‘General Third Party Liability (Public and Products Liability) insurance’** of an amount not less than ten million pounds sterling (£10,000,000) per event or series of events in respect of loss of or damage to the property of the Authority or death, disease, illness or injury to persons resulting from the performance of the Contract.
			1. The Contractor shall effect and maintain this insurance in respect of any Contractor Deliverables. Such product liability insurance must be commensurate with the exposure potential of the Contractor Deliverables when incorporated into the Ship.
			2. The Contractor shall effect and maintain this insurance in respect of the Contractor’s employees being present on the sites of the Authority or such other sites as the Contract requires.
			3. The Contractor shall ensure this insurance is in effect and maintained in respect of the agents or Sub-Contractors being present on the sites of the Authority or such other sites as the Contract requires.
		2. **‘Employers Liability Insurance’** for an amount not less than ten million pounds sterling (£10,000,000), or if outside the UK the minimum amount required by the lex loci, for each and every event.
		3. Any other insurance which the Contractor may, by law, be required to maintain.
	2. If the Contractor is required to carry out work at any site requested by the Authority, the Contractor shall ensure that its legal liability insurances extend to dock side or on-board liability.
	3. Save where such loss or damage is caused by or contributed to by the Authority or its employees, agents or Sub-Contractors, the Authority accepts no responsibility for damages to any property of the Contractor or personal property of the Contractor’s employees or Sub-Contractors while such property is on the Authority’s premises or Ship(s).

##### GUARANTEE DEFECT PERIOD

* 1. For all Contractor Deliverables supplied under this Contract for installation in a Ship, the Contractor shall provide a Guarantee Defect Period which shall commence at Final Acceptance in accordance with clause 10.8.3 and shall end:
		1. 24 (twenty-four) months after Final Acceptance for Ship 1 (one) and Ship 2 (two), or
		2. 12 (twelve) months after Final Acceptance for all subsequent Ships
		3. The Contractor shall also provide a Latent Defect Guarantee Defect Period for Contractor Deliverables for installation on Ship which shall commence at Final Acceptance of Ship 1 (One) in accordance with 13.1 and shall end on expiry of the Ship 11 (eleven) Guarantee Defect Period.
	2. Contractor Deliverables supplied which are not installed on a Ship such as training equipment, Support and Test Equipment (S&TE) and spares, the Guarantee Defect Period shall begin at the date of first issue from MOD stores and end 12 months later, subject to any shelf life limitations detailed on the packaging. In the case of the training equipment, 12 (twelve) months from STW
	3. In the event of a Guarantee Defect the Contractor shall without delay repair or replace the Article at its own expense, so that it is free from Defects and meets the Requirements.
	4. In the event of a Latent Defect the Contractor shall without delay repair or replace Articles delivered at its own expense, so that it meets the Requirements. If necessary, the Contractor shall take actions to ensure that the relevant Latent Defect is avoided in Articles to be delivered.
	5. Where the Contractor carries out repairs or implements replacements to rectify a Guarantee Defect, the Guarantee Defect Period in respect of those repairs or replacements shall be the remainder of the original Guarantee Defect Period as described in Clauses 13.1 and 13.2.
	6. Where a Guarantee Defect or Latent Defect occurs, the Authority shall notify the Contractor in writing of the existence of the Guarantee or Latent Defect. The Contractor shall acknowledge receipt of notification of all Guarantee or Latent Defects within no more than 24 hours, setting out:
		1. the proposed method of remedying the Guarantee or Latent Defect;
		2. the timescales for doing so; and
		3. any cost to the Authority where it is possible that the Contractor may make a claim under Clause 13.9. In such event, no work shall be undertaken until the Authority has approved such costs.
	7. During the Guarantee Defect Period, the Contractor may, at its election**,** provide authorisation for remedial works or repairs to be carried out by the Authority’s employees or subcontractors, including Ship Staff or Personnel. The Authority will ensure that, its employees or subcontractors are adequately trained and skilled to perform the remedial works or repairs and, subject to this, shall incur no liability whatsoever under this clause 13 and the liability and obligations of the Contractor under this clause 13 shall in no way be reduced or derogated.
	8. The Contractor shall remedy a Guarantee or Latent Defect, including delivery of repaired or replaced items to the Authority’s Purple Gate, within 30 (thirty) Business Days of receipt of the Article or part at the Contractor’s premises, unless otherwise agreed with the Authority.
	9. After completion of the remedial work or repairs by the Contractor the Authority shall reimburse the Contractor any fair and reasonable costs incurred to the extent that the Authority is satisfied that any Defects were not caused by:
		1. the Contractor’s neglect or default or the neglect or default of any agent or Sub-contractor of the Contractor; or
		2. by any circumstances within the Contractor’s control.
		3. where no fault is found with the Contractor Deliverables
	10. If the Contractor fails to comply with this Clause 13, the Authority may do anything necessary to make good any Defects notified to the Contractor. The fair and reasonable costs and expenses incurred by the Authority in so doing shall be recoverable from the Contractor. The Authority shall use all reasonable endeavours to mitigate such costs and expenses arising from the Defect.
	11. In the event that a Guarantee or Latent Defect is disputed or rejected by the Contractor, the matter shall be resolved between the Contractor and the Authority in accordance with DEFCON 530. The Contractor shall inform the Authority of such disputes in writing within 48 (forty eight) hours of the dispute being identified and in accordance with DEFCON 637.
	12. The Authority’s sole remedy upon the occurrence of a Guarantee Defect is contained within this Clause 13 (Guarantee Defect Period). DEFCON 76 and the limitation specified in the Clause 13.12 shall apply in the event that a Guarantee Defect causes damage to Government Property.
	13. The Contractor shall not be responsible for the expenses or liabilities in connection with towing, docking and ship yard services which are necessary to remove, inspect, test or replace the Contractor Deliverables.

	**Exclusions**
	14. This Guarantee shall not apply in respect of damage caused by:
		1. Contractor Deliverables not having been stored by the Authority in accordance with the Contractor's recommended procedures which have been notified to the Authority;
		2. Parts not approved by the Contractor being used to repair and maintain the Equipment, except where those parts are of the same or equivalent technical specification as the original Contractor-approved part and have been NATO codified as such;
		3. Any identity plate numbers, marks, warning or operating labels being altered, displaced or removed without the Contractor's consent.
		4. Any use or maintenance of the Article not in accordance with the instructions described in the Technical Manuals provided by the Contractor;
		5. Any use or maintenance of the Article performed by non-authorised personnel;
		6. War and peacekeeping operations resulting in battle damage;
		7. Misuse or neglect; and
		8. Any alterations, modifications or attachments made to the Article without the Contractor's approval.
	15. The Contractor shall not be liable under this Guarantee to carry out:
		1. Normal maintenance services, adjustments and the replacement of service items including, but not limited to, oils, filters and lubricants made in connection with such services; or
		2. Repairs to remedy fair wear and tear to any component.

##### FORCE MAJEURE

* 1. If, by reason of any acts of nature, war, hostilities, national strikes, (a ‘Force Majeure Event’) the Contractor has been delayed in delivering the Contractor Deliverables, the Contractor shall, immediately upon becoming aware that any such delay has been caused, give the Authority notice in writing of his claim for an extension of time.
	2. The Authority shall allow the Contractor an appropriate extension of time in respect of any delay as is reasonable in the circumstances, provided always that the Contractor has used all reasonable endeavours to prevent any such delay.
	3. The maximum extension of time granted under this Clause shall be 6 (six) months after which time the Authority may terminate in accordance with Clause 24.10 (Termination for Prolonged Force Majeure).

##### SUB-CONTRACTS

* 1. The Contractor shall be responsible for all aspects of its Sub-Contractor(s) performance(s) whether Sub-Contractors have been selected by the Contractor, nominated by the Authority, approved by the Authority as an alternative to a nominated Sub-Contractor, or otherwise employed on the Contract.
	2. The Contractor shall ensure that each Sub-Contract placed by the Contractor shall be subject to the terms and conditions of this Contract where these are relevant, replacing ‘Authority’ with ‘Contractor’ unless the context indicates otherwise shall include, but not be limited to the following:
* Contract Clause 18 – Documents, Drawings and Information
	1. No work on the Contract may be sub-contracted by the Contractor without the prior written consent of the Authority which shall not be unreasonably withheld.

##### QUALITY ASSURANCE

* 1. The Contractor and all its sub-contractors shall be registered as firms of assessed capability for quality assurance purposes as defined in BS EN ISO 9001:2008 A copy of the Contractor’s current certificate covering the relevant activity shall be included in their Quality Management Plan.
	2. In addition to the Requirements for quality assurance set out at Schedule A (SOW), the Contractor shall be subject to all reasonable applicable standards. However, any new standards which come into effect post Contract signature shall be subject to clause 22 (Contract Change) and their acceptance shall be by mutual consent.
	3. All references to the Quality Assurance Representative (QAR) in documents, which form part of this Contract, shall be read as referring to the QAR as shown at Box 7 of DEFFORM 111 at Appendix 5 to the Contract.
	4. The Authority reserves the right to inspect and examine at any time any part of the works or the management system or any activity or document produced by the Contractor and to carry out any investigations which are necessary to determine the quality and standards of the performance of work undertaken by the Contractor.
	5. In addition to the provisions of DEFCON 609, quality assurance records shall be retained for 5 (Five) years after completion of all work under the Contract.

##### PROTECTION OF EQUIPMENT FROM ELECTROSTATIC DAMAGE

17.1 It is MOD policy to provide protection for all electronic equipment deemed to be at risk from electrostatic discharge. The requirements for such protection is stated in BS IEC 61340-5-1:2001 – Basic Specification for Protection of Electrostatic Sensitive Devices. All PECs, Modules, Sub-assemblies and Assemblies containing or comprising electronic components and individual components are defined as Electrostatic Sensitive Devices (ESSDs).

17.2 Contractors engaged in the design, production, repair, servicing and packaging of equipment containing such ESSDs are to provide adequate measures for protection. Similar facilities are also to be provided when their employees carry out work on-board or at shore bases.

17.3 Handbooks, Setting-to-Work Instructions and other equipment-related documents should include a “Warning Page” notifying the presence of ESSDs. This page should appear, at least, in the Introduction and Maintenance Sections.

##### DOCUMENTS, DRAWINGS AND INFORMATION

**Supply of Drawings, Documents etc by the Authority**

* 1. All drawings, documents, design information and details of arrangements, mechanical, electrical and data interfaces, models, mock-ups and samples provided by the Authority in connection with the Contract shall remain the property of the Authority as applicable and will be provided free of charge unless otherwise stated.
	2. On expiry or earlier termination of this Contract, the Authority’s Project Manager shall advise the Contractor of the method of disposal of all documentary and other information supplied in connection with this Contract

**Supply of Drawings, etc by the Contractor**

* 1. Technical Handbooks, maintenance schedules, operating instructions, spare parts lists etc and/or any other documentation to be supplied by the Contractor shall be provided in accordance with the Schedule A (SOW) (CDRLs). The Authority will review the CDRLs, within 2 Calendar weeks, and either give notice of the CDRL acceptance, or arrange a meeting where all changes to the CDRLs will be agreed. The Contractor will make the agreed changes to the CDRLs in accordance to the meeting minutes, in sufficient time to be reviewed by the Authority.
	2. Documentation for inspection, tests or trials shall be provided in accordance with the SOW to the Authority’s Project Manager at least 5 (five) Business Days prior to the inspection test or trial or such other period as may be stated at Schedule A (SOW).
	3. Except for acceptance in accordance with clause 10.8, the approval and/or release by the Authority of any drawings, reports, specifications etc provided by the Contractor or the attendance of the Authority’s representatives at any tests or trials shall in no way derogate from the Contractor's responsibilities under the Contract or otherwise or release the Contractor from any of his obligations under the Contract or otherwise.
	4. The provisions of this Condition shall apply equally to any information (documents or drawings) provided to the Contractor by electronic means (e.g. drawings in AutoCAD) and to that provided in hard copy.

##### GOVERNMENT FURNISHED ASSETS (GFA)

* 1. The Authority shall be responsible for providing the Government Furnished Assets (Equipment, Facilities, Information and Services (GFE/GFF/GFI/GFS)) to be supplied under the Contract as detailed at Schedule [F] (Government Furnished

Assets).

* 1. The GFA shall at all times remain the property of the Authority; it shall be used in the provision of the Services under this Contract and for no other purpose, without the prior approval in writing of the Authority.
	2. The Contractor shall be responsible for the management of all GFA in accordance with DEFCON 611 (Issued Property), DEFCON 694 (Accounting For Property Of The Authority).
	3. Any and all Contractor Deliverables loaned in such a manner shall be identified in such a manner that ownership of the Contractor Deliverable(s) is indisputable during the duration of such loan.
	4. Without prejudice and further to the provision of DEFCON 611 and DEFCON 694, the Contractor shall be responsible for storage, protection, maintenance and accounting for all Contractor Deliverables owned or supplied by the Authority.
	5. Returnable crates, containers and packaging in which supplies are delivered will be on loan. These shall be despatched by the Contractor when empty at their cost, as instructed by the Authority’s Project Manager.
	6. At expiry or earlier termination of the Contract, in accordance with DEFCON 611, the Contractor shall provide to the Authority a list of all GFA holdings under the Contract. The Authority’s Commercial Branch shall issue directions for the transfer, disposal or return to stores of all listed items, with which the Contractor shall comply.

##### LICENCES

The Contractor shall be solely responsible for securing all licences necessary to enable him to meet all obligations and requirements of the Contract.

**Import/Export Licences**

* 1. The Contractor shall be responsible for securing all export licences necessary to enable him to meet all obligations and requirements of the Contract. Neither Party shall have any liability to the other for delayed delivery or non-delivery resulting from withdrawal or suspension of any necessary export licence or authority.
	2. The Authority warrants to the Contractor that this Contract qualifies for suspension of import duty under EU Council Regulation (EC) 150/2003.
	3. The Authority shall within 20 (twenty) Business Days of the Contractor’s request issue any necessary certificates to allow for suspension of import duty as required by the Contractor for the execution of the Contractor Deliverables.

##### INTEGRATED LOGISTICS SUPPORT (ILS)

* 1. **Guarantee Defect Period**
		1. Defects identified in accordance with the provisions of Clause 13 (Guarantee Defect Period) shall not be charged as In-Service Support.
		2. **Initial Spares**
			1. The Contractor shall provide the initial spares as listed at Schedule A (SOW) 4.5.9.d.iii and will be responsible for ensuring that the Initial Spares meet the requirements of DEFCON 82.

##### CONTRACT CHANGE PROCEDURE

* 1. The Contract may only be amended (or changed) with the written authority of the Authority’s Commercial Manager in accordance with the following procedures:
	2. Either Party may request a change to the Contract by completing and signing the Contract Change Proposal Form (CCPF) at Annex A to Schedule G (Record of Authorised Contract Changes) and issuing it to the other Party.
		1. Where requesting a change to the Contract, or where responding to a change request by the Authority’s Commercial Branch, the Contractor shall submit a Firm Price quotation/proposal to undertake the work detailed at Part 1 of the CCPF. As a minimum the quotation must contain, but not be limited to:
			1. break down including labour (hours and rates), materials, sub-contract, overheads and profit;
			2. detail of all assumptions, dependencies, including but not limited to Authority dependencies;
			3. a risk management plan detailing risk across the PGMU requirement;
			4. details of how the change is to be developed and implemented;
			5. a start date for the change.
		2. The Authority shall consider the Contractor’s quotation and may seek clarification on an iterative basis. Any changes to the Contractor quotation shall be clarified in writing.
		3. It shall be the Authority’s decision whether to accept or reject any change proposed by the Contractor.
		4. The Authority shall accept/reject the Contractor’s quotation by signing and issuing the Contract Change Acceptance Form (CCAF) at Parts 2, 3 and 4 of CCPF. The CCAF shall be accompanied by a formal Contract Amendment. Where the Authority has accepted the Contractor’s quotation this shall be the Contractor’s authority to proceed. Only CCAFs, signed by the Authority’s Commercial Branch, shall be accepted by the Contractor. Unsigned CCAFs or CCAFs signed by anyone other than Authority’s Commercial Branch shall be returned to the Commercial Branch detailed at Box 1 of DEFORM 111.
		5. Where the Authority grants an extension or other relief for reason of Contractor Default, all costs associated with such relief shall be borne by the Contractor, including any increased costs to be paid by the Authority to third parties which increase as a result of the relief granted to the Contractor, in particular in relation to extensions of time.

##### AMENDMENTS TO CONTRACT

* 1. Notwithstanding the inclusion of DEFCON 503 and Clause 22 (Contract Change Procedure), only the Authority’s Commercial Branch referred to in the Appendix (DEFFORM 111) to Contract is authorised to vary the Terms and Conditions of the Contract. Such variation shall only have effect when agreed in writing.

##### CONTRACT TERMINATION

* 1. Except as expressly set out in this Contract, upon termination of this Contract the Contractor shall not be entitled to payment for any:
		1. loss of profit
		2. loss of opportunity; or
		3. losses of a similar type or character.

Voluntary Termination by the Authority

* 1. The Authority shall be entitled to terminate all or part of this Contract pursuant to DEFCON 656 and in the event that the Authority terminates part of the Contract DEFCON 656 shall be applied in relation to that part of the Contract which is being terminated and its provisions construed accordingly. The notice period referred to in paragraph 1 of DEFCON 656 shall be three (3) calendar months and the Contractor shall be entitled to payment in accordance with DEFCON 656.

Termination for Contractor Default

* 1. Subject to Clause 24.4 (Rectification), if a Contractor Default has occurred, the Authority shall be entitled to terminate all or part of this Contract by serving a termination notice on the Contractor stating:
		1. that the Authority is terminating the Contract (in whole or in part) for Contractor Default; and
		2. the type and nature of the Contractor Default, giving reasonable details; and
		3. Where this Contract is terminated for Contractor Default, the Contractor shall be entitled to any approved and unpaid amounts outstanding at the time of termination (subject to any other provision of this Contact affecting the level of such payment and subject to DEFCON 614) in accordance with Schedule D (Contract Payment Plan).

Rectification

* 1. For the avoidance of doubt, Clauses 24.5 to 24.7 shall not apply where the Contract is terminated for Contractor Default following breach by the Contractor of:
		1. DEFCON 68 (Supply of Data for Hazardous Articles, Materials and Substances);
		2. DEFCON 515 (Bankruptcy and Insolvency);
		3. DEFCON 516 (Equality);
		4. DEFCON 520 (Corrupt Gifts and Payments of Commission);
	2. Subject to Clause 24.4 above, where the Authority serves a termination notice in accordance with Clause 24.3 then the Contractor may within 5 (five) Business Days of receipt of a the termination notice propose to the Authority a rectification programme to rectify the Contractor Default.
	3. If the Authority accepts the proposed rectification programme (such acceptance to be at the Authority’s sole discretion) and it is implemented by the Contractor in full accordance with its terms, the termination notice referred to in Clause 24.3 shall be deemed to be revoked and this Contract shall continue.
	4. If no acceptable rectification programme has been proposed by the Contractor pursuant to Clause 24.5 or the Contractor fails to rectify within the time period set out in the accepted rectification programme, the Authority may give further notice stating that this Contract shall terminate (in whole or in part) on a date which shall be no sooner than 30 (thirty) Business Days’ time.
	5. Where this Contract is terminated in accordance with Clause 24.7, the Contractor shall be entitled to any approved and unpaid amounts outstanding at the time of termination (subject to any other provision of this Contact affecting the level of such payment and subject to DEFCON 614) in accordance with Schedule D (Contract Payment Plan).
	6. The Authority’s rights and remedies under this clause 24 are in addition to and without prejudice to its rights and remedies implied by statute and common law.

Termination due to prolonged Force Majeure

* 1. The Authority may terminate this Contract in whole or in part thereof pursuant to Clause 14 (Force Majeure) by giving 10 (ten) Business Days’ written notice to the Contractor. The Contract shall terminate in accordance with the timescales detailed in the written notice (the “Force Majeure Termination Date”). Where such a termination notice is served, the Contractor shall exit the Contract, or part thereof in accordance with Schedule [H] (Exit Plan) and payment shall be made for sums incurred to the date of termination in accordance with the calculation provisions set out in DEFCON 656, clauses 3, 4 and 5.

##### CONTINUING OBLIGATIONS

* 1. Save as otherwise provided for in this Contract or as already taken into account in the calculation of any payment on termination pursuant to this Contract:
		1. termination or expiry of this Contract shall be without prejudice to any accrued rights and obligations prior to termination or expiry; and
		2. termination of this Contract shall not affect the continuing rights and obligations of the Parties under:

Clauses 2 (Definitions and Interpretations), 6 (Precedence), Clause 3.11 (Contractor’s Obligations and orderly transition), Clause 11 (Limit of Liability), Clause 13 (Guarantee Defect Period), Clause 18 (Documents, Drawings and Information), Clause 19 (Government Furnished Assets), Clause 31 (Exit Management), Clause 32 (Publicity), Clause 33 (Confidentiality), Clause 34 (Intellectual Property Rights);

DEFCONS 14 (Inventions and Designs Crown Rights and Ownership of Patents and Registered Designs), 15 (Design Rights and Rights to Use Design Information), 21 (Retention of Records), 90 (Copyright), 91 (Intellectual Property Rights in Software), 529 (Law (English), 530 (Dispute Resolution (English Law), 532A (Protection Of Personal Data (Where Personal Data is not being processed on behalf of the Authority), 538 (Severability), 632 (Third Party Intellectual Property - Rights and Restrictions);

Schedules D (Payment Plan) and H (Exit Management): and

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

##### MINISTRY AUDIT

26.1 Regarding DEFCON 608 (Access and Facilities to be provided by the Contractor), access by the Contractor shall also be granted during the 2 years after completion of all work there under, for the purpose of allowing the Authority and/or its authorised representative(s) or agent(s) to obtain such information as is necessary to:

26.1.1 Fulfil the Authority’s obligations to supply information in relation to Parliamentary, Governmental, judicial or other administrative purposes; or

26.1.2 Carry out an audit of the Contractor’s compliance with the obligations set out in the Contract including, without limitation, the Contractor’s obligations with respect to the meeting of performance and quality standards, the security and confidentiality of data, computer integrity and other security requirements or

26.1.3 Investigate suspected fraud or other impropriety by the Contractor, the Ministry and/or any third party in relation to the Contract, in which cases the provisions of this Condition shall be to the powers of the law enforcement authorities granted by law; or

26.1.4 Verify the accuracy of and appropriate applications of charges prices and any proposed or actual variations to the charges and process in accordance with this Contract

26.2 The Authority and its agent(s) shall respect the confidentiality of the Contractor and of its sub-Contractors/Suppliers in respect of all data and records accessed during any audit carried out pursuant to the conditions set out in this Condition.

26.3 The Authority shall give a minimum of 5 working days’ notice of the exercise of its audit under this Condition, except:

26.3.1 Where circumstances dictate (e.g. Ministerial/Parliamentary requirements); or

26.3.2 The circumstances set out in sub-condition 26.1.3 above, in which case the Authority will be entitled to conduct an audit without notice; or

26.3.3 There shall be a standing right for the Authority or its agent(s) to carry out a spot check audit in conjunction with Progress Meetings held at the Contractor’s premises.

##### INDEXATION

* 1. The Firm prices stated in the Schedule Of Requirements are Firm Prices for 5 (five) years from the Effective Date. The Fixed prices stated in the Schedule Of Requirements do not include any provision beyond the 5 (five) year period for variation in the market price and are the price as at the end of the Firm price period (e.g. they are at 2020 Economic Conditions) . Any such variation to these prices, shall be calculated by the application of the index ''''''''''''' ''' '''''''''''''''''''''' '''''''''''''''''''''' ''''''''''''' '''''''''''' ''''''''''''''''''''''''''' '''''''''''''''' by the Office of National Statistics, to the payments as set out in Schedule D, Payment Plan issue 1.5 dated 3rd Nov 15 that are claimed in the Fixed Price period, as set out in the equation below.

****

Where:

V represents the variation;

P represents the payment (as set out at Schedule D , Payment Plan issue 1.5 dated 3rd Nov 2015) that is to be claimed during the Fixed Price period (i.e. subject to variation) for the purposes of the price variation formula;

Oo represents the average Output Price Index figure at the start of the Fixed Price period.

Oi represents the average Output Price Index figure at the date the payment is claimed.

a represents the non-variable element (NVE) which shall be ''''''';

b represents the variable element which shall be '''''''';

'''''''''' ''' ''''''''''

The Output Price Index to be applied in the above formula shall be the '''''''''''''''' ''''''''''''''''''''' '''''''''''' '''''''''''''' ''''''' ''''''''''''''''''''''' ''''''''''''''' ''''''''''''''''''''' '''''' ''''''''''''' ''' '''''''''''''''''''''' ''''''''''''''''''''' '''''''''''' '''''''''''''' ''''''''''''''''''''''''' '''''''''''''''''' by the Office of National Statistics.

* 1. In the event that any changes occur to the basis of any of the Indices, (e.g. a revised statistical base) or where an index ceases to be published, during the period of the Contract and before final adjustment of the Contract Price(s), the Authority and the Contractor shall agree a fair and reasonable adjustment to the relevant Index, or agree a new index, or, if appropriate, shall agree revised formulae which will have substantially the same effect as those specified herein.
	2. 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.
	3. Prices shall be adjusted annually 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. Claims for payment shall be made in accordance with Clause 9 (Payment) using the latest annual average Output Price Index that can be calculated from published information. Payment shall be retrospectively adjusted, where appropriate, when the annual average Output Price Index for the year in question can be calculated from published information.
	5. Claims under this Condition shall be submitted to the Bill Paying Branch, certified to the effect that the requirements of Clause 9 (Payment) of the above have been met.
	6. In the event of it becoming impossible or impracticable for any reason whatsoever to apply the index, such index or indices shall be substituted as may be agreed by the Parties, or, in absence of agreement, through the procedures set out in DEFCON 530 (Dispute Resolution).

##### GAINSHARE

* 1. At any time during the Contract, the Contractor may make a proposal to the Authority for a new or alternative way of providing the Contractor Deliverables. Any proposal must clearly state that it is submitted for consideration under this Condition and shall include:
		1. A business case for the new or alternative way the Contractor proposes to provide the Contractor Deliverables;
		2. Cost/benefit analysis that will consist of an outline of the costs that might be saved by the Authority (both direct and indirect);
		3. The costs which might be incurred by the Contractor or the Authority (both direct and indirect);
		4. The potential benefit(s) (financial or otherwise) to the Authority;
		5. Any impact on the Contract; and
		6. The Gainshare ratio.
	2. The Parties shall meet to discuss the proposal including the investment (financial or otherwise) to be contributed by both Parties, the estimated amount of saving, the Gainshare ratio and the timing of any payments. The Contractor shall then submit a revised proposal to the Authority.
	3. The Authority shall then assess the proposal and shall, in writing within 30 (thirty) Business Days (or such other time as agreed between the Parties), either accept it in principle, or reject it or offer recommendations or refinements in order for the Contractor to submit a revised proposal.
	4. If and when the proposal is accepted in principle by the Authority in writing, the Contractor shall formulate an Implementation Plan which shall set out in more detail the way in which the Contractor intends that the proposal shall be implemented and the timetable for payments or adjustments to any element of the Contract Price.
	5. The Authority shall be under no obligation to accept such proposal.

##### CHANGE OF CONTROL

* 1. The Contractor shall notify the Authority, as soon as practicable, in writing of any material proposed Change of Control. The Contractor shall not be required to submit any information which is unlawful or is in breach of either any pre-existing non-disclosure agreement or any Legislation governing the conduct of the Contractor or any member of the Contractor’s Group in the UK or other jurisdiction where the Contractor may be subject to legal sanction arising from submission of such notification.
	2. For the purposes of this Clause ‘control’ means the power of a person to secure that the affairs of the Contractor are conducted in accordance with the wishes of that person and ‘change’ thereto shall be construed accordingly:
		1. by means of the holding of shares, or the possession of voting powers in, or in relation to, the Contractor; or
		2. by virtue of any powers conferred by the constitutional or corporate documents, or any other document, regulating the Contractor.
		3. and a change of control occurs if a person who controls the Contractor ceases to do so or if another person acquires control of the Contractor.
	3. Subject to Clause 29.6 below:
		1. the Authority shall have no right to object to a proposed Change of Control; and
		2. the Contractor shall not be required to seek the Authority’s consent to a Change of Control.
	4. The notification referred to in Clause 29.1 shall be submitted to the Authority’s Commercial Branch and to:

Mergers & Acquisitions Team

Poplar

Level 2,

Abbey Wood South

Bristol

BS34 8QJ

* 1. Notification by the Contractor of any Change of Control shall not prejudice the existing rights of the Authority or the Contractor under this Contract, nor create or imply any rights of either the Contractor or the Authority additional to the Authority’s right to receive that notification.
	2. Where the Authority reasonably considers that the proposed Change of Control would be contrary to the defence or national security of the UK, then the Authority shall, within fifteen (15) Business Days of the date of receipt of the Contractor’s notification pursuant to Clause 29.1 notify the Contractor in writing of its objection. Provided the Contractor has received such timely notification, the Change of Control shall not proceed until agreement with the Authority is established, pursuant to Clause 29.7 below.
	3. The Authority shall, within ten (10) Business Days of the Authority’s notification above meet with the Contractor (and/or a member of the Contractor’s Group) to discuss the Authority’s objection to a proposed Change of Control, and to endeavour to agree a resolution to allow such Change of Control to proceed.
	4. Subject to Clause 24 (Contract Termination) in the event that there is a Change of Control contrary to the objection of the Authority on the grounds set out in Clause 29.6 the Authority shall be entitled to terminate this Contract for reason of Contractor Default.

##### PARENT COMPANY GUARANTEE

* 1. The Authority reserves the right to request a Parent Company Guarantee from the Contractor’s parent company. This Parent Company Guarantee shall be supplied no later than 15 business days inclusive of the Effective Date, and is conditional for this Contract to be effective.

##### EXIT MANAGEMENT

* 1. The Contractor shall develop Schedule H (Exit Management) within 3 (three) months of the Effective Date of Contract and the Parties shall agree the final form of Schedule H (Exit Management) within 6 (six) months of the Effective Date of Contract. The Parties shall comply with Schedule H (Exit Management) in the event of termination or expiry of the Contract.

##### PUBLICITY

32.1 Unless expressly permitted in writing by the Authority, the Contractor shall not publish or permit to be published either alone or in conjunction with any other person, any information, Contractor Deliverables, photographs or other illustrations relating to the business of the Authority, his servants, agents or employees in relation to this Contract.

##### CONFIDENTIALITY

* 1. This Condition shall apply in addition to and notwithstanding DEFCON 531 (Disclosure of Information) or any other confidentiality condition of the Contract.
	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.
	3. The Contractor shall:
		1. hold the Controlled Information and not to use it other than for the purpose of discharging its obligations under the Contract;
		2. not to copy the Controlled Information except as strictly necessary for the purpose of discharging its obligations under the Contract;
		3. not disclose the Controlled Information to any third party unless so authorised in writing beforehand by the Authority;
		4. protect the Controlled Information diligently against unauthorised access and against loss; and,
		5. act diligently to ensure that:
			1. Controlled Information is disclosed to its employees only to the extent necessary for the purpose of discharging its obligations under the Contract;
			2. employees to whom Controlled Information is disclosed are made aware of and required to comply with the terms of this Condition.
	4. Where Controlled Information is provided to the Contractor, it shall:
		1. compile a register of that Controlled Information, which shall include explicit description of the Controlled Information, a record of the number of copies made and a record of all access to the Controlled Information including access to any copies of the Controlled Information.
		2. maintain this register for the duration of the Contract and for two years following completion of the Contract.
		3. make the register of access available to the Authority upon reasonable notice for inspection and audit for so long as it is required to be maintained under this Condition; and,
		4. at the completion of the Contract, return to the Authority all original and duplicate copies of the Controlled Information, or else at the Authority’s option destroy these copies and provide a certificate of destruction to the Authority.
		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:
		6. 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;
		7. 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;
		8. that the information concerned was lawfully provided by a third party without restriction on use or further disclosure; or
		9. from its records, that the information was derived independently of the Controlled Information;
		10. that copying use or disclosure of this other information shall not disclose its relationship to any Controlled Information.

#####  INTELLECTUAL PROPERTY RIGHTS

34.1 The following Contractor Intellectual Property has been identified prior to this Contract.

1. D88 and Derivatives
2. D86 and Derivatives, (including D86 PC104 Module and D86 Coupler Card)
3. FSG Software and all Application Specific Software
4. VTAS Foundation Software
5. Microprocessor Control Families and Peripherals –, D86, D88, and Board Support Software
6. COTS Control Systems – OSCA, VTAS,
7. Software/Simulation Models
8. Configuration of Linux Operating Systems, MS Windows Embedded Standard 2009, ISaGraf, SLGMS software tool to suit the requirements of the D86 hardware and OSCA/VTAS software.

34.2 The Contractor grants to the Authority a non-exclusive, revocable, royalty free, worldwide limited licence to use such Contractor Intellectual Property as is necessary for the purpose (only) of its use of the Contractor Deliverables within the Ships.

34.3 The licence granted by the Contractor in clause 34.2 above

- does not entitle the Authority to provide Contractor Intellectual Property to any third party without the consent of the Contractor (which shall not be unreasonably withheld).

- does not entitle the Authority to use or have used Contractor Intellectual Property for any purpose other than the operation of the Ships

- does not entitle the Authority to use or have used Contractor Intellectual Property to manufacture or competitively tender for alternative or replacement Deliverables, in the event of termination due to Contractor Default the terms of Clause 2 of Schedule H shall apply.

- Shall automatically expire upon the Royal Navy ceasing to operate the Ships

34.4 There shall be no restrictions on the Authority’s use of any Intellectual Property which is not Contractor Intellectual Property listed in clause 34.1 above.

**Technical Publications**

34.5 The Contractor shall ensure that the Authority has the right to copy, amend, extend or have copied, amended or extended any Technical Publication called for under the Schedule or any part thereof including any such part when incorporated in any amended or extended version of such Technical Publication, and to circulate, use or have used said Technical Publication including any amended or extended version and any copies thereof for any United Kingdom Government purpose relating to Type 23 MCAS but not for the purpose of manufacturing equipment to which the Technical Publication relates. The Authority shall be liable for and hereby indemnifies the Contractor in full against, all loss damage, injury, cost and expense (including legal costs and expenses) of whatever nature suffered by the Contractor due to the Authority amending or extending Technical Publications. Where any repair, maintenance, operation and training information is utilised or generated in performance of the Contract but not specified in the Schedule as a Technical Publication then this will be construed to be subject to this Technical Publications Clause unless the Authority agrees in writing on a case by case basis to the contrary.

**Sub-Contracts**

34.6 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, such consent shall not be unreasonably withheld or significantly impact on the performance of the programme.

34.7 Unless otherwise agreed, such consent will be conditional on the proposed sub-contractor concluding a direct agreement with the Authority which provides the Authority with rights in information consistent with those rights in 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 Authority’s Commercial Manager and await further instructions before placing the subcontract or order.

##### ENTIRE AGREEMENT

* 1. Except where expressly provided in this Contract, this Contract constitutes the entire agreement between the Parties in connection with its subject matter and supersedes all prior representations, communications, negotiations and understandings concerning the subject matter of this Contract.

# Annex A – Certificate of Conformity

|  |  |
| --- | --- |
| **Certificate of Conformity**  | 1. Supplier CoC Serial No.  |
|  |
| 2. Supplier Name and Address: | 3. Contract Number:  |  |
|  | 4. Contract Modification Number:  |  |
| 5. Details of Concessions:  |
| 6. Acquirer Name and Address: | 7. Deliver Address: |
|  |  |
| 8. Contract item number | 9. Product Description and/or part number | 10. Quantity | 11. Shipment Document Numbers | 12. Undelivered Quantity |
|  |  |  |  |  |
| 13.N/A[ ]  | **Traceability Information reference DEFCON 627** *(check the N/A box to indicate no traceability requirements)* |
| a. Sub-contract/Order number: |   |
| b. Specification/Drawing number including issue: |   |
| c. Identification Marks and/or serial number(s): |   |
| d. Material Cast number: |   |
| e. Batch and/or Lot number: |   |
| f. Test and/or Inspection Report(s): |   |
| g. Incoming Release Note number/Reference: |   |
| 14. | Other Remarks or Comments: (e.g. Cure date. Shelf life.) |
|  |
| 15.  | Supplier Statement of Quality: It is certified that apart from the concessions noted in block #5 above, the products listed above conform in all respects to the contract requirements.  |
| Date:  | Name and Post Title:  | Signature:  |