

# FRAMEWORK AGREEMENT FOR TECHNICAL SUPPORT (FATS/3)

## TERMS AND CONDITIONS

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# **THIS AGREEMENT that came into effect on 1 April 2009**

## **BETWEEN:**

- (1) The Secretary of State for Defence (the "Authority"); and
- (2) The Participating Contractors who are listed at Annex A:

## **BACKGROUND:**

- (A) The purpose of this Agreement is to enable the Authority to place Tasks with a Participating Contractor under the terms of the Framework Agreement for Technical Support as set out here. The agreements entered into by the Authority and the Participating Contractors, who have been assessed against their declared Narrow Areas of Expertise in the Market Knowledge Matrix, are on identical terms and conditions.

THE PARTIES AGREE THAT:-

## **GENERAL TERMS AND CONDITIONS**

### **1. INTERPRETATION**

#### **Definitions**

1.1 In this Agreement, except where the context otherwise requires:

"Affiliate" (in relation to a body corporate) means any other entity which directly or indirectly Controls, is Controlled by, or is under direct or indirect common Control with, that body corporate from time to time;

"Agreement" means the Framework Agreement entered into between the Authority and the Participating Contractors, effective date of commencement 1 April 2009 pursuant to which the Tasking Order is issued;

"Article(s)" means all items that the Contractor is required to provide under the Tasking Order (this definition will take precedence over the definition of "Articles" given at 1a) in DEFCON 501);

"Authority Data" means:

(a) any Personal Data for which the Authority is the Data Controller (together with any database made up of any of this) which is embodied in any electronic, magnetic, optical or tangible media, and which is:

- (i) supplied to the Contractor by or on behalf of the Authority; or
- (ii) which the Contractor is required to generate, process, store or transmit pursuant to this Agreement;

"BCDR Plan" means any plan prepared pursuant to Annex H to Schedule 1 (Business Continuity and Disaster Recovery Provisions);

"Commercial Branch" means the body identified as such in Section 7 of the Tasking Order;

“Commercial Officer” means the person identified as such in Box 1 of the DEFFORM 111 (Schedule 4);

“the Contractor” means a Participating Contractor who has been selected to perform a particular Tasking Order either through competition or at the direction of the Authority;

“Controlled Information” means 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 Tasking Order, 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;

“Data Controller” shall have the same meaning as set out in the Data Protection Act 1998;

“Data Processor” shall have the same meaning as set out in the Data Protection Act 1998;

“Data Protection Legislation” means the Data Protection Act 1998, the EU Data Protection Directive 95/46/EC, the Regulation of Investigatory Powers Act 2000, the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000 (SI 2000/2699), the Electronic Communications Data Protection Directive 2002/58/EC, the Privacy and Electronic Communications (EC Directive) Regulations 2003 and all applicable laws and regulations relating to processing of personal data and privacy, including where applicable the guidance and codes of practice issued by the Information Commissioner;

“Data Subject” shall have the same meaning as set out in the Data Protection Act 1998;

“Default” means any breach of the obligations of the relevant party (including but not limited to fundamental breach or breach of a fundamental term) or any other default, act, omission, negligence or statement of the relevant party, its employees, servants, agents or Sub-contractors in connection with or in relation to the subject-matter of this Agreement and in respect of which such party is liable to the other;

“DEFCON” means conditions of contract promulgated by the Ministry of Defence;

“Firm” means firm price, i.e. not subject to variation in any respect;

“Fixed” means fixed price which are subject to variation;

“Framework Agreement” means the agreement of that name entered into by the Authority and the Participating Contractors, effective commencement date 1 April 2009;

“Government Provision” means any statutory provision, warrant, order, scheme, regulation or condition of service applicable to a Servant of the Crown providing for continuance of pay or for payment of sick pay, or any allowance to or for the benefit of Servants of the Crown, or their families or dependants, during or in respect of sickness, injury or disablement suffered by such Servants of the Crown;

“IPT Leader/Project Manager” means the person specified as such in the Tasking Order Form;

“Loss of Property” includes damage to property, caused by the Contractor as a result of its negligence or misconduct, and, subject to any express statement to the contrary, applies to property belonging to the Authority or any other person;

“Milestone/Stage” shall bear the meaning given to it in paragraph 4 of Schedules 2 and 3;

“Participating Contractor(s)” means the Contractor(s) listed at Annex A who has undertaken to participate in the Framework Agreement for Technical Support and abide by its terms and conditions;

“Parties” means the Authority and the Participating Contractors to this Framework Agreement;

“Personal Data” shall have the same meaning as set out in the Data Protection Act 1998;

“Personal Injury” includes sickness and death, caused as a direct result of the Contractor, and, subject to any express statement to the contrary, applies to personal injury whether suffered by a Servant of the Crown or any other person;

“Process” has the meaning given to it under the Data Protection Legislation but, for the purposes of this Agreement, it shall include both manual and automatic processing;

“Regulations” means “The Public Contracts Regulations 2006”;

“Rejected Work” means Work which the Tasking Authority has rejected under DEFCON 524, as it does not conform with the requirements of the Tasking Order (the Contract);

“Security Aspects Letter” means such notification that the Tasking Authority gives to the Contractor where the Tasking Order involves disclosure or generation of information marked Restricted or above;

“Servant of the Crown” includes any person who is a servant of the Crown when any relevant Personal Injury or Loss of Property occurred, even if he has ceased to be such before any payment in respect of the Personal Injury or Loss of Property is made and, where he has ceased to be such by reason of his death, includes his personal representative;

“Services” means any of the services to be provided by the Contractor under the Tasking Order (this definition will take precedence over the definition of “Services” given at 1s) in DEFCON 501);

“Task” means any specific package of Work placed under Clauses 7 or 8 (of the General Terms and Conditions), which the Contractor is required to perform pursuant to this Agreement;

“Tasking Authority” means the organisation (e.g. an Integrated Project Team) that wishes to place a Task;

“Tasking Order” means a draft or final Tasking Order Form along with any other supporting documentation between the Authority and the Contractor relating to the carrying out of a Task entered into under Clauses 7 or 8 of the General Terms and Conditions, and containing those terms described in Clause 2.2.2 of the General Terms and Conditions;

“Tasking Order Form” means the form to be included in each Tasking Order, a copy of which is contained in Schedules 2 and 3;

“Technical Support” means applied technical knowledge in the broad areas of Technical Studies, Project Support and Engineering Support defined at clause 5.1 of the General Terms and Conditions;

“Tenderer” means a Participating Contractor who has been invited to bid for a draft Tasking Order;

“Urgent Operational Requirement” means the procedure used to address a capability gap by the rapid purchase of new or additional equipment or the enhancement of, or essential modification to, existing equipment and may involve bringing forward the planned procurement of equipment from the future Equipment Programme. To be considered a formal UOR, the requirement must be given a Defence Capability Requirements Scrutiny alpha-numeric reference;

“Work” means the provision of any supplies or the performance of any services by the Contractor under a Tasking Order;

“Working Day” means any day other than a Saturday, Sunday or public holiday in the United Kingdom.

## 1.2 **Precedence of documents**

If there is any inconsistency between the terms of this Agreement and any Tasking Order, a descending order of precedence shall be accorded to:

The General Terms and Conditions of this Agreement;

Tasking Order Form (Schedules 2 & 3);

The Terms of Tasking Order (Schedule 1);

DEFFORM 111 (Schedule 4);

The remainder of the terms of the Tasking Order;

The Modifications to Government Publications (Schedule 5); and

Any other document incorporated by express reference as part of the entire Framework Agreement,

So that the provision in the higher ranked document, to the extent of the inconsistency, shall prevail.

## 2. **Scope & Structure of the Document**

2.1 In consideration of the payment of £1 by the Authority to each of the Participating Contractors, the Parties have entered into this Agreement on the terms set out below.

### 2.2 **This Agreement consists of:**

2.2.1 The Framework Agreement General Terms and Conditions setting out the rights and obligations of each party relating to the placement of Tasks by the Authority with the Contractor, including the process for issue of Tasking Orders at Clauses 7 and 8 of this Agreement; and

2.2.2 The terms and conditions (Schedule 1) which are to be included in and apply to each Tasking Order placed under this Agreement.

2.3 The terms of the overall framework are contained in Clauses 1 to 19 of the General Terms and Conditions of this Agreement.

The terms of each Tasking Order will be:

- (A) the overall framework described in Clause 2.2.1;
- (B) the specification, and any other requirements of the Tasking Order that are specific to the Task in question and which have been agreed by the parties in writing in relation to the relevant Tasking Order;
- (C) the terms of the Tasking Order (Schedule 1);
- (D) the provisions set out in the Mechanism 1 – Sole Source Route Tasking Order Form (Schedule 2), including those alternative provisions which the Authority specifies in its draft Tasking Order submitted pursuant to Clause 6.1 of Schedule 1;

or

- (E) the provisions set out in the Mechanism 2 – Competition Tasking Order Form (Schedule 3), including those alternative provisions which the Authority specifies in its draft Tasking Order submitted pursuant to Clause 6.1 of Schedule 1; and
- (F) the DEFFORM 111 (Schedule 4).

2.4 Notwithstanding Clauses 2.1, 2.2 and 2.3, no guarantee is given by the Authority to the Participating Contractors as to the number of Tasking Orders (if any) or the quantity of Work or value of Work that is likely to be placed with the Participating Contractor under this Agreement or any guarantee of any work at all.

### **3. Application of DEFCONs**

3.1 Subject to the express modification of individual Government publications pursuant to Schedule 5 hereto, the following Government publications are incorporated in, and shall be read and construed as part of this Agreement:

DEFCON 501 (Edn 04/04) Definitions and Interpretations

DEFCON 502 (Edn 06/08) Specifications (for the avoidance of doubt, the process to be followed for amendments to specifications shall be that set out in Clause 6 of Schedule 1 to this Agreement).

DEFCON 503 (Edn 07/05) Amendments to Contract

DEFCON 509 (Edn 09/97) Recovery of Sums Due

DEFCON 513 (Edn 05/08) Value Added Tax

DEFCON 515 (Edn 10/04) Bankruptcy and Insolvency

DEFCON 516 (Edn 06/04) Racial Discrimination

DEFCON 518 (Edn 9/97) Transfer

DEFCON 520 (Edn 07/05) Corrupt Gifts and Payments of Commission

DEFCON 521 (Edn 10/04) Subcontracting To Supported Employment Agencies

DEFCON 522 (Edn 07/99) Payment

DEFCON 523 (Edn 03/99) Payment of Bills Using the Bankers Automated Clearing Service (BACS) System

DEFCON 526 (Edn 08/02) Notices

DEFCON 527 (Edn 9/97) Waiver

DEFCON 529 (Edn 9/97) Law (English) **Note: For overseas suppliers, 'DEFCON 646 (Edn 10/98) Law & Jurisdiction (Foreign Suppliers)' will be used in place of DEFCON 529.**

DEFCON 530 (Edn 07/04) Dispute Resolution (English Law)

DEFCON 531 (Edn 05/05) Disclosure of Information

DEFCON 534 (Edn 06/97) Prompt Payment (Subcontracts)

DEFCON 537 (Edn 6/02) Rights of Third Parties

DEFCON 538 (Edn 06/02) Severability

DEFCON 566 (Edn 08/06) Change of Control of Contractor

DEFCON 606 (Edn 10/97) Change and Configuration Control Procedure

DEFCON 608 (Edn 10/98) Access and Facilities to be Provided by the Contractor

DEFCON 609 (Edn 10/98) Contractor's Records

DEFCON 610A (Edn 12/02) – Enabling Contracts Duration Period (Tasking Contracts)

DEFCON 610B (Edn 12/02) – Enabling Contracts Duration Period (Spares/Repairs Contracts)

DEFCON 615B (Edn 03/04) – Orders for Articles/Services Under Enabling Contracts Following Contractor's Quotations

DEFCON 632 (Edn 02/07) Third Party Intellectual Property Rights – Commercial and Non-Commercial Articles and Services

DEFCON 681 (Edn 06/02) Decoupling Clause - Subcontracting With The Crown

DEFCONs incorporated by Clause 3 of the Framework Agreement into the main body of this Agreement shall be construed so that references in a DEFCON to a contract shall denote this Agreement.

#### 4. Commencement & Termination of this Agreement

- 4.1 The effective date for commencement of the Agreement shall be 1 April 2009 and, subject to Clauses 4.3 to 4.5 below, shall remain in force for a period of two years or until such time as it may be determined pursuant to clause 4.2 below.
- 4.2 In consideration of the placement of this Framework Agreement with the Participating Contractor, the Participating Contractor grants to the Authority the irrevocable option, exercisable at any time up to 28 February 2011, to extend the duration of this Framework Agreement for an additional 1 year period commencing 1 April 2011 to 31 March 2012, or part thereof, at the agreed Firm Hourly Labour Rates detailed at Annex F3 to this Framework Agreement which are subject to the discounts offered at Annexes F5 and F6.
- 4.3 Where this Agreement expires under Clause 4.1 above, and the Work under any Tasking Order is not due to be completed, or all Work has not been completed prior to such expiry, then the incomplete Work shall be completed in accordance with the requirements of the relevant Tasking Order unless the Authority reasonably directs the Contractor otherwise.
- 4.4 Where the Authority has issued a draft Tasking Order in accordance with Clause 7.1.1 or Clause 8.1.1, and one or more Participating Contractors has submitted a tender proposal in accordance with Clause 7.1.2 or 8.1.2 prior to the expiry of the Agreement under Clause 4.1 the terms of this Agreement shall continue to apply in relation to the evaluation of such a tender proposal. The issue of a final Tasking Order in relation to such a tender proposal, and any Work, shall be completed in accordance with the terms of that final Tasking Order and this Agreement notwithstanding the expiry of this Agreement.
- 4.5 Clause 4.4 above shall cease to apply where the Authority, in relation to a tender proposal to which Clause 4.4 applies, does not issue a final Tasking Order relating to that tender proposal within six months of the date of the expiry of this Agreement.

#### 5. Scope of Work

- 5.1 The scope of the Agreement shall cover the provision of Technical Support outside of an existing prime contract comprising:

Technical Studies - research based activities including studies, prototyping and technical demonstrations;

Project Support – based activities including technical support, research, concept and development, and in-service support activities;

Engineering Support –task based activities including PDS, repair, calibration, analysis and integration.

The scope of this Agreement **does not include** *Manpower Substitution* (i.e. the use of agency workers to fill gapped Authority posts).

- 5.2 During the term of this Agreement, the Contractor shall undertake all Work placed in accordance with the procedure described in Clauses 7 and 8.

## **6. Selection of the Procurement Mechanism**

6.1 All Participating Contractors who have registered their capabilities under the Market Knowledge Matrix narrow area(s) of capability required for the proposed Tasking Order, and who are capable of performing the proposed Tasking Order as set out in the Tasking Order Form will be invited to participate in the competition relating to that requirement, provided that it is not considered by the Authority that the requirement would qualify for exemption under the Public Contracts Regulations 2006 on the grounds of:

- (A) Security and Secrecy Exemption
- (B) “Warlike Stores” Exemptions under Article 296 of the EU Combined Treaties
- (C) Research and Development Services Exemption and any other requirements that are exempt under the EC Public Procurement Regulations

or, competition is not practicable because the requirement involves proprietary issues.

6.2 Participating Contractors to the Agreement may be invited to tender for tasks that may require Tenderers (either the Participating Contractor itself and/or individual employees) to have the necessary security clearance for access to Protectively Marked material. When a draft Tasking Order form, with defined assets requiring security protection, is received by a Tenderer, he must have or be prepared to acquire the necessary clearance for that task or he will be deemed to be unable to participate in the task at that level.

## **7. Mechanism 1 - Sole Source Route**

### **7.1 Draft Tasking Orders**

7.1.1 The Authority shall prepare a draft Tasking Order containing sufficient detail as to the required Task to enable a Tenderer to provide the information required pursuant to Clause 7.2 (including, without limitation, the alternative provisions described in Section 2 of the Tasking Order Form (Schedule 2) to the extent that they are relevant to the Work and, to the extent practicable, acceptance criteria in respect of the particular Task) and issue it to the Tenderer requesting the Tenderer to submit a proposal for the relevant Task.

7.1.2 The Tenderer shall complete and submit to the Authority Annex B to Schedule 2 (in accordance with the timescales outlined in this Clause) in order to either decline or submit a proposal for a draft Tasking Order. Where the Tenderer decides to submit a proposal it shall, by the response deadline indicated on the draft Tasking Order form (which shall allow a reasonable response period) or within a longer period if agreed with the Authority prior to the passing of this deadline, submit a proposal to the Authority in accordance with Clause 7.1.1 offering to undertake the Task.

### **7.2 Contractors Proposal & Placement of Work**

7.2.1 The proposal submitted by the Tenderer in accordance with Clause 7.1.2 shall contain all the information requested by the Authority in the draft Tasking Order, and where appropriate any further information discussed and agreed between the Authority and the Tenderer following the issue of the draft Tasking Order, and, in particular, shall contain:

- (A) full pricing details, on the pricing basis requested by the Authority including a full price breakdown;
- (B) firm dates for commencement and completion of the Task;

- (C) a proposed Milestone payment scheme (where appropriate) including Milestone descriptions and dates; and
- (D) details of compliance with the Terms and Conditions included in the Tasking Order.

7.2.2 The Authority will evaluate the proposal submitted by the Tenderer and shall either:

- (A) Approve the proposal through the issue of a final Tasking Order;
- (B) Reject the proposal, giving reasons for such rejection, and if appropriate, indicating whether an amended proposal may be submitted; or

pending (A) or (B) enter into a process of dialogue and/or negotiation as may be necessary to reach an agreed Tasking Order Form.

7.2.3 The Contractor shall not commence any Task until authorised by the Commercial Officer or his authorised representative in accordance with Clause 7.2.2(A).

7.2.4 Each Tasking Order shall be identified by means of a unique Task Identification Number - TIN. The Framework Agreement Number and TIN shall be shown on all correspondence relating to that Tasking Order.

## **8. Mechanism 2 - Competition**

### **8.1 Draft Tasking Orders**

8.1.1 The Authority shall prepare a draft Tasking Order containing sufficient detail as to the required Task to enable a Tenderer to provide the information required pursuant to Clause 8.3.1 (including, without limitation, the alternative provisions described in Section 2 of the Tasking Order Form (Schedule 3) to the extent that they are relevant to the Work and, to the extent practicable, acceptance criteria in respect of the particular Task) and issue it to the Tenderers inviting them to compete for the requirement.

8.1.2 Where a Tenderer decides to take part in the competition for the requirement on the basis outlined in Clause 8.1.1, it shall, by the response deadline indicated on the draft Tasking Order form (which shall allow a reasonable response period), submit a tender proposal to the Authority under the cover of Annex B to Schedule 3 and in accordance with Clause 8.3, offering to undertake the Task.

8.1.3 Any request for an extension of the period for tendering must be received at least 5 Working Days before the due date for return, but no undertaking can be given that an extension will be granted. Correspondence connected with the tender which requires attention before the due date, or communications stating that no tender will be submitted, should be sent in a separate envelope bearing no external reference to the draft Tasking Order or return date, addressed to the addressees as stated on the relevant draft Tasking Order.

### **8.2 Participant Selection for Competition**

8.2.1 For competitions where the requirements would be exempt on the grounds set out in Clause 6.1, the Authority reserves the right to select appropriate participants at its discretion.

### **8.3 Contractors Tender & Placement of Work**

- 8.3.1 The Tenders submitted by the selected Tenderers in accordance with Clause 8.1 shall contain all the information requested by the Authority in the draft Tasking Order, and where appropriate any further information discussed and agreed between the Authority and the Tenderers following the issue of the draft Tasking Order, and, in particular, shall contain:
- (A) Full pricing details, on the pricing basis requested by the Authority, including a full price breakdown;
  - (B) Firm dates for commencement and completion of the Task;
  - (C) A proposed Milestone payment scheme (where requested) including Milestone descriptions and dates; and
  - (D) Details of compliance with the terms and conditions included in the Tasking Order Form.
- 8.3.2 The Authority will evaluate the proposals submitted by the Tenderers competing for the requirement and shall either, at its complete discretion:
- (A) Approve the best proposal(s), judged on the basis of overall value for money, through the issue of a final Tasking Order;
  - (B) Reject all of the proposals and, if appropriate, indicate whether an amended proposal may be submitted;
- 8.3.3 The Contractor shall not commence any Task until authorised by the Commercial Officer or his authorised representative in accordance with Clause 8.3.2(A).
- 8.3.4 Each Tasking Order shall be identified by means of a unique Task Identification Number - TIN. The Framework Agreement Number and TIN shall be shown on all correspondence relating to that Tasking Order.

### **9. Urgent Operational Requirements**

- 9.1 Where an Urgent Operational Requirement (UOR) arises the Authority will place the Tasking Order through either Mechanism 1 – Sole Source Route or Mechanism 2 – Competition as modified by the clauses 9.2 and 9.3.
- 9.2 For UOR's that are to be let under Clause 7 Mechanism 1 – Sole Source Route the Authority will issue the Tasking Order in line with the process described at Annex B to the Agreement which will modify and take precedence over the process of issuing a Tasking Order described in Clause 7 of this Agreement. For this purpose the provisions of Clause 7.1.2 shall not apply and the Authority will be free to specify a timeframe for the submission of proposals in response to the draft Tasking Order by amendment to the appropriate section on the Tasking Order.
- 9.3 For UOR's that are to be let under Clause 8 Mechanism 2 – Competition the Authority will issue the Tasking Order in line with the process described at Annex C to the Agreement which will modify and take precedence over Clause 8 of this Agreement. For this purpose the provisions of Clause 8.1.2 shall not apply and the Authority will be free to specify a timeframe for the submission of tenders in response to the draft Tasking Order by amendment to the appropriate section on the Tasking Order.

## 10. Pricing

- 10.1 The pricing of any proposal submitted by a Tenderer pursuant to Clause 7. Mechanism 1 – Sole Source Route or Clause 8 Mechanism 2 - Competition shall be calculated in accordance with the provisions of the Tasking Order Form (Schedule 2 or 3 respectively).

The Participating Contractor's Firm hourly labour rates (i.e. not subject to variation in any respect), set out at Annex F1 and Annex F2, shall include all overhead, administration and profit elements (exclusive of VAT), and shall apply for the duration of the Framework Agreement i.e. 1 April 2009 to 31 March 2011. These Firm hourly labour rates shall apply to any emergent work required during this period, arising following award of a task (i.e. additional work that emerges during the course of a Tasking Order, and which was unidentified at the outset).

In his response to any sole source draft Tasking Orders, where the Tenderer has agreed non-competitive rates with the MoD Cost Assurance Service (CAS) he shall submit either his agreed relevant CAS rate(s) or his agreed FATS/3 rate(s), whichever is the lower for the Task in question. The type of rates (i.e. FATS or CAS) applied to a Task at the outset shall be used for the entire Task, including any and all emergent work placed under that Task.

Where the Agreement Option Period has been invoked (as per Clause 4.2) then the Participating Contractor's Option Period Firm hourly labour rates at Annex F3 (shown as a percentage uplift on the Year 2 Firm hourly labour rates set out at Annex F2), shall apply for the duration of the Option Period, i.e. 1 April 2011 to 31 March 2012. These Option Period Firm hourly labour rates shall apply to any emergent work required during this period, arising following award of a task.

For Tasking Orders of a duration which extends beyond Year 2 of this Framework Agreement (i.e. beyond 1 April 2010 to 31 March 2011), the maximum percentage uplifts at Annex F4 shall be applied to the Firm Hourly Labour Rates at Annex F2.

- 10.2 The mechanism for pricing a proposal submitted by a Tenderer pursuant to Clause 7 Mechanism 1 – Sole Source Route shall be achieved by use of either the Firm hourly labour rates provided under this Agreement, as set out in Annex F1 (for the period 1 April 2009 to 31 March 2010) and Annex F2 (for the period 1 April 2010 to 31 March 2011), and, if the Option Period has been invoked, Annex F3 (for the period 1 April 2011 to 31 March 2012), or his CAS rate (whichever is the lower for the task in question), with the objective of securing best value for money while paying the Contractor a fair and reasonable price. As stated at Clause 10.1 above, the type of rates (i.e. FATS or CAS) applied to a Task at the outset shall be used for the entire Task, including any and all emergent work placed under that Task.

All aspects of the Tasking Order as described by completion of Schedule 2 of this Agreement, including appropriate pricing conditions, should be agreed in advance of the Contractor starting any work.

For any tasks priced using FATS rates, and where the Task contains a manpower element valued at £25,000 or above, any applicable agreed discounts (shown at Annex F5) shall apply to:

- the Firm hourly labour rates provided at Annex F1;
- the Firm hourly labour rate percentage uplifts at Annex F2 and F3; and
- the Firm hourly labour rate agreed between the Authority and the Contractor within the maximum percentage uplift at Annex F4.

For each labour grade of the broad areas of capability detailed at Annex F1 the Firm hourly labour rates for each broad area are applicable to each of the narrow areas of

capability beneath that broad area in the Market Knowledge Matrix, and shall apply to all labour functions.

For the purposes of defining levels of discounts applicable to Tasking Orders and amendments, the following shall apply:

- A) Any tasking item appearing on the original tasking form will attract the discount applicable for that level of spend.
- B) Any new item added to the Task by amendment that does not cause the total cumulative cost of the entire manpower element of the Task to break into the next level of discount shall be costed at the level of discount applicable for that level of cumulative expenditure.
- C) Any new item added to the Task by amendment that causes the total cumulative cost of the entire manpower element of the Task to break into the next level of discount shall be costed at the higher level of discount applicable for that level of expenditure. Discounts will not be applied retrospectively.

An example of the application of discounts is contained within Annex F5.

- 10.3 Where a Task extends beyond Year 2 of this Framework Agreement (i.e. 1 April 2010 to 31 March 2011), then variation of price (VOP) may be applied at the Authority's discretion. Where a price is fixed, i.e. subject to variation, the arrangements for VOP as a result of changes in economic conditions will be agreed and recorded on the Tasking Order Form.
- 10.4 The mechanism for pricing a proposal submitted by a Tenderer pursuant to Clause 8 Mechanism 2 – Competition shall be by effective competitive tendering in accordance with the procedure set out in Clause 8 using the Firm hourly labour rates provided under this Agreement, as set out in Annex F1 (for the period 1 April 2009 to 31 March 2010) and Annex F2 (for the period 1 April 2010 to 31 March 2011), and, if the Option Period has been invoked, Annex F3 (for the period 1 April 2011 to 31 March 2012).

All aspects of the Tasking Order as described by completion of Schedule 3 of this Agreement, including appropriate pricing conditions, should be agreed in advance of the Contractor starting any work.

For any tasks which contain a manpower element valued at £25,000 or above, any applicable agreed discounts (shown at Annex F5) shall apply to:

- the Firm hourly labour rates provided at Annex F1;
- the Firm hourly labour rate percentage uplifts at Annex F2 and F3; and
- the Firm hourly labour rate agreed between the Authority and the Contractor within the maximum percentage uplift at Annex F4.

For each labour grade of the broad areas of capability detailed at Annex F1, the Firm hourly labour rates for each broad area are applicable to each of the narrow areas of capability beneath that broad area in the Market Knowledge Matrix, and shall apply to all labour functions.

- 10.5 Claims for Travel and Subsistence for travel away from the Tasking Order place of work, i.e. the Contractor's premises or a nominated Government Establishment, shall be in accordance with the actual limits listed below. Where the Authority has agreed to pay Travel and Subsistence as it arises, then the Contractor shall be reimbursed the actual expenditure that is reasonably and properly incurred on behalf of himself or his employees under the contract together with an appropriate rate of profit.

- (A) The Contractor may claim up to a maximum of £90 per night for accommodation. The Contractor may claim up to a maximum of £10 for lunch and/or £20 for an evening meal. Any price in excess of these limits will require justification and the approval of the Commercial Officer placing the Tasking Order.
- (B) For any car journeys made in the performance of the Tasking Order, the Contractor may claim 40 pence per mile. Claims including vehicle insurance are inadmissible.
- (C) The above limits for Travel and Subsistence shall remain unchanged throughout the duration of the Framework Agreement.
- (D) In exceptional circumstances and with the prior authorisation of the Authority, where it is deemed to be in the public interest, the Contractor may request reimbursement for short-term car hire to meet specifically the performance of the Task.
- (E) For Air, Sea and Rail travel, if possible the Contractor shall use any benefits obtained as a direct consequence of the Contractor's performance under the Framework Agreement (e.g. Air Miles) to offset the costs of further travel required in performance of Tasking Order(s) placed under this Framework Agreement.

## **11. Payment**

- 11.1 Save as may be agreed for a specific Task, the Authority shall pay the Contractor for each Task in accordance with the terms of the relevant Tasking Order after satisfactory completion of all Work required under that Tasking Order in accordance with the terms of that Tasking Order.
- 11.2 The Authority shall not be responsible for any payments to the Contractor not specified in this Agreement or any Tasking Order
- 11.3 The Authority enters into this Agreement, and each Tasking Order hereunder on the strict understanding that the Contractor shall be responsible for the payment of all taxes lawfully due from or collectable by the Contractor, including but not limited to its own National Insurance contributions, income taxes and VAT. The Contractor shall defend and indemnify the Authority for all and any claims which may be brought against the Authority as a result of the failure of the Contractor to pay such taxes.

### **Interim Payments**

- 11.4 Where interim payments have been agreed against the price payable for specific Work with firm deliverables, the Contractor shall be entitled to claim Stage payments in accordance with DEFCON 522 (Edn 7/99) for each Stage under the agreed Stage payment scheme (in accordance with paragraph 4 of the Tasking Order Form (Schedules 2 and 3)). The Contractor shall have satisfactorily completed or performed the part of the Work to which the Stage payment relates when:

- (A) The Contractor has completed all Work comprised in the Stage for which the interim payment is sought;
- (B) The Stages have been completed sequentially unless otherwise agreed between the parties;
- (C) The Contractor shall have complied with all its contractual obligations that impinge on progress of the relevant Work covered by the Stage payment scheme including, where required under the Tasking Order, the provision of information required by the Authority for the purpose of assessing contractual performance;

provided that the Authority shall not be obliged to make a payment to the Contractor in respect of a completed stage if:

- (D) The Authority shall have reasonable cause to believe that the Contractor will be unlikely to render complete performance of its obligations in respect of the entire Task.

- 11.5 Where the Authority intends to rely on Clause 11.4(D) as the basis for rejecting any claim for an interim payment which the Contractor may make, the Authority shall give to the Contractor notice in writing of its intention together with the Authority's reasons for the rejection.
- 11.6 Save as hereby expressly provided; the entitlement of the Contractor to retain all interim payments is conditional on complete performance of the Tasking Order. Where the Authority terminates the Tasking Order or any Work thereunder otherwise than in accordance with DEFCON 656 (Edn 03/06), the Authority shall, without prejudice to any other right or remedy it may possess, be entitled to recover in full all interim Stage payments made in respect of the Tasking Order or Work (as appropriate) made before termination, other than Work which has been performed in accordance with the Tasking Order and been accepted by the Authority.
- 11.7 In the event of repayment in full to the Authority under the provisions of Clause 11.6 then all that which vested in the Authority under the provisions of DEFCON 649 (Edn 07/99) if applicable by virtue of the Tasking Order form, shall re-vest in and become the absolute property of the Contractor.

## **12. Delivery And Acceptance/Rejection**

- 12.1 The required delivery/completion date applicable to the Work shall be specified in the relevant Tasking Order (in accordance with paragraph 1 of DEFCON 507 (Edn 10/98) Delivery).
- 12.2 Where necessary, the time and procedure for acceptance of an Article shall be specified in the relevant Tasking Order (in accordance with paragraph 1 of DEFCON 525 (Edn 10/98) Acceptance).
- 12.3 Where necessary, the period of time allowed for the Contractor to remove an Article, following notification of rejection, is to be specified in the relevant Tasking Order (in accordance with paragraph 4 of DEFCON 524 (Edn 10/98) Rejection).

## **13. Monitoring of Performance**

### **13.1 The FATS Tasking Feedback Forms**

- 13.1.1 Upon the Contractor's completion of the Tasking Order, the Contractor is to provide to the Authority's Commercial Officer an electronic copy of the Authority FATS Tasking Feedback Form (Annex D1 to Schedule 1), for completion by the Authority.
- Upon completion, the Authority is to send a signed hard copy of this form to the Contractor, for his onward transmission to the DE&S Technical, Professional and Consulting (TPAC) Team.
- 13.1.2 The Contractor is to complete the Contractor FATS Tasking Feedback Form (Annex D2 to Schedule 1), and is to send this completed form, together with the Authority's completed Annex D1, to the DE&S TPAC Team.
- 13.1.3 The process outlined at Clauses 13.1.1 and 13.1.2 above is to be completed within one calendar month of the Contractor's completion and delivery of the Tasking Order.
- 13.2 In addition to the records referred to in DEFCON 604 (which by virtue of Clause 2 of the Terms of the Tasking Order (Schedule 1) are incorporated in each Tasking Order), and in DEFCON 605 when applied to the Work, the Contractor shall maintain such records in respect of this Agreement as the Authority may reasonably require (including information described in Clause 11.4 of these General Terms and Conditions, and also Clause 23 of Schedule 1) and shall on request, produce them for inspection by the Authority. The Contractor shall permit all such records to be examined and, if necessary, copied by or on behalf of the Authority. The Contractor shall also make such periodical statistical and accounting returns as the Authority may reasonably demand.
- 13.3 Except where expressly stated otherwise in a relevant Tasking Order, the records referred to in Clause 13.2 shall be retained by the Contractor for a period of at least 4 years after the termination or expiry of this Agreement or, should this Agreement expire first, the relevant Tasking Order.
- 13.4 The Contractor shall make available the records and returns referred to in Clause 13.2 for the use of the Authority when requested by the Authority.
- 13.5 The Contractor shall, as reasonably required by the Authority, make written submissions or oral presentations concerning the Work done under this Agreement and any Tasking Order. Formal and informal meetings between the Authority and the Contractor and other directly appointed contractors (if appropriate) will be held as determined by the Authority. The Authority shall make the necessary arrangements for these meetings and shall advise the Contractor in advance of the date and venue for the meeting. For meetings held at Authority premises, a record of discussion will be made by the Authority and will be provided to the Contractor. For meetings at the Contractor's premises the Contractor shall provide secretarial support and shall prepare agenda and a record of discussions accordingly. A copy of the agenda and minutes shall be provided to the Authority as soon as possible after their preparation.
- 13.6 Any formal progress meetings required under a particular Tasking Order shall be specified in the specification of task contained in that Tasking Order.
- 13.7 The Contractor shall keep the Project Manager informed of any industrial relations problems likely to affect performance of work under any Tasking Order and, without prejudice to its obligations to perform the Work in accordance with the Tasking Order, use all reasonable endeavours to avoid industrial disputes or stoppages involving staff employed or engaged by it to perform the Work.

## **S&CPM Process**

- 13.8 The Contractor and the Authority agree to monitor performance under this Framework Agreement in accordance with the Supplier Development Scheme, Supplier and Customer Performance Measurement (S&CPM) Process. The S&CPM Process will be implemented in applicable tasks as indicated on the Tasking Order Forms.
- 13.9 This S&CPM Process requirement is over and above the Monitoring of Performance detailed elsewhere under this Clause 13.

## **14. Sub-Contracting**

- 14.1 In seeking value for money, the Contractor shall consider the scope for subcontracting at all times.
- 14.2 The Authority may, at its discretion, in the draft Tasking Order direct the Contractor to subcontract part of the Work to a nominated subcontractor. The Authority shall give reasonable consideration to any representations which the Contractor may make in relation to the appropriateness of the nominated subcontractor provided that such representations are supported by evidence.
- 14.3 Notwithstanding Clauses 14.1 and 14.2, the Contractor shall be responsible for all acts and omissions of any subcontractor or agent of the Contractor (including the Ministry of Defence, where it is appointed as an agent or subcontractor of the Contractor) and, to this end, any act or omission of that subcontractor or agent shall be regarded for the purposes hereof and of any Tasking Order as an act or omission of the Contractor.
- 14.4 The Contractor shall ensure that each subcontract contains requirements functionally equivalent to the requirements of this Agreement to the extent necessary to secure the Authority's rights and remedies hereunder.

## **15. Personal Injury & Loss of Property**

- 15.1 This Clause 15 applies to Personal Injury or Loss of Property which arises as a result of the Contractor's negligence or default or that of its employees (acting in the course of their employment), agents or subcontractors in connection with the performance or purported performance of this Agreement, and in each Tasking Order placed hereunder, by the Contractor. However, this Clause 15 shall not apply in the case of an Aviation Product Occurrence or Grounding where DEFCON 684 has been agreed as part of the Tasking Order.
- 15.2 Subject to the following provisions of this Clause 15, the Contractor shall:
- (A) Compensate the Authority –
    - (1) For any such Loss of Property suffered by the Authority; and
    - (2) For any such costs or expenses reasonably incurred by the Authority in connection with any Loss of Property;
  - (B) Indemnify and defend the Crown and Servants of the Crown against all claims, actions, and proceedings made or brought against the Crown or Servants of the Crown in respect of Personal Injury or Loss of Property to which this Clause applies

and against all liabilities, damages, costs and expenses suffered or incurred in connection therewith;

- (C) Indemnify and defend the Crown against any loss consequent upon the making of any payment by the Crown to indemnify and defend in whole or in part, a Servant of the Crown against any such claim, action, proceeding, liability, damage, costs or expenses; and
- (D) Indemnify and defend the Crown against any loss consequent upon the making of any payment by the Crown to a Servant of the Crown in respect of Loss of Property to which this Clause applies suffered or incurred by that Servant of the Crown and against any payment made under any Government Provision in connection with any Personal Injury to which this Clause applies which is incurred by any Servant of the Crown.

- 15.3 The Authority shall immediately notify the Contractor of any claim, action or proceedings made or brought in respect of any Personal Injury or Loss of Property to which this Clause applies.
- 15.4 The Contractor shall, (subject to Clauses 15.5 and 15.6) be responsible for dealing with or settling that claim, action or proceeding.
- 15.5 The Authority shall in any event deal with any such claim, action or proceeding which involves a Government Provision or which is made by or against a Servant of the Crown, and Clause 15.4 shall not apply to any such claim, action or proceeding.
- 15.6 If, when the Contractor or its insurers are dealing with any such claim, action or proceeding, any matter or issue arises which involves, or may involve, any privilege or special right of the Crown (including a matter relating to the discovery or production of documents) the Contractor or its insurers shall consult the Authority before taking any further action on the matter and shall act in relation thereto as may be required by the Authority; and if either the Contractor or its insurers fail to comply with this Clause, Clause 15.4 shall cease to apply.

## **16. Confidentiality**

The provisions of this Clause are supplemental to DEFCON 531

- 16.1 Both DEFCON 531 and the provisions of this Clause apply to:
  - (A) This Agreement (including the issue of draft Tasking Orders, proposals and the placement of Work under Clauses 7 and 8);
  - (B) Any Information disclosed by either party prior to the issue of a draft Tasking Order and in contemplation of Work being placed by the Authority under a Tasking Order; and
  - (C) Any Task placed under this Agreement, provided that Information provided to a party for the purpose of tendering for a Tasking Order shall only be used for that tendering purpose in accordance with Clause 25 of Schedule 1 below, and Information provided to a party for performing a Task placed on it under this Agreement shall only be used for the performance of that Task.
- 16.2 Subject to its requirements of continued access to Information necessary to exercise its rights of disclosure and use hereunder including under any Tasking Order, and to the

obligations set out herein in respect of any Controlled Information (Definition in Clause 20 Schedule 1), the recipient of any Information shall:

- (A) Upon the expiry or termination of the Agreement; or
- (B) Upon the expiry or termination of any Tasking Order (for the purposes of which Information is disclosed); or
- (C) If the Authority decides not to proceed with the issue of a Tasking Order (for the purposes of which Information is disclosed, including the procedure described under Clauses 7 and 8),

in accordance with any reasonable directions given and/or a reasonable request made by the other party promptly:

- (1) Return to the other party the Information and all copies thereof; or
- (2) Take such other measures in respect of the Information and all copies thereof as may be required elsewhere in the Tasking Order.

16.3 The provisions of DEFCON 531 and of this Clause shall survive the expiry or termination of the Agreement or any Tasking Order in accordance with 16.2(A) or 16.2(B) or the decision not to proceed in accordance with 16.2(C).

## **17. Conflict of Interest**

17.1 In the event that the Contractor is in a position which would present a conflict of interest, or it is reasonably foreseeable that it would present a conflict of interest, in respect to the prioritisation of Work, for example, an Urgent Operational Requirement, or where conflict may arise due to the Contractor being required to act in an advisory role to the Authority that impacts on his ability to tender for Work under this Agreement or undertake the requirements of other Work, as a consequence of:

- (A)
  - (1) the Authority issuing a draft Tasking Order pursuant to Clauses 7 and 8; or
  - (2) the placement of a Tasking Order by the Authority with the Contractor; and
- (B) any other work which the Contractor has separately been requested to perform, or of which the Contractor has commenced performance, whether for the Authority (either directly or indirectly and whether or not a contract has yet been placed) or any third party, including without limitation:
  - (1) Work under a separate Tasking Order; or
  - (2) any contract, or subcontract, connected with an MOD project for work which is not covered by this Agreement,

Then the Contractor shall immediately notify the Authority.

17.2 If in the reasonable opinion of the Authority, either following a notification under Clause 17.1, or at its own discretion, it decides, that there is a conflict of interest, the Authority reserves the right either:

- (A) Not to accept any proposal made by the Contractor pursuant to the draft Tasking Order issued by the Authority; or
- (B) Where the Authority has already placed a Tasking Order with the Contractor and the Contractor is seeking to perform the other work referred to in Clause 17.1(B) but has not commenced that work, either to:
  - (1) Require the Contractor to continue with the Tasking Order in its current form rather than accepting the other work; or
  - (2) To seek to amend the scope of Work or specification of the Tasking Order; or
  - (3) Terminate the Tasking Order and permit the Contractor to perform the other work in preference to the Work under the Tasking Order, making any fair and reasonable payment of compensation, in accordance with DEFCON 656, to the Contractor; or
  - (4) Where the Authority has already placed a Tasking Order with the Contractor and work has not yet commenced and the Contractor has commenced the other work described in Clause 17.1(B), either to:
    - (a) require the Contractor to continue with the Tasking Order in its current form rather than that other work; or
    - (b) to seek to amend the scope of Work or specification of the Tasking Order; or
    - (c) terminate the Tasking Order without compensation.

17.3 Any dispute in respect to any decision by the Authority pursuant to Clause 17.2 shall be subject to DEFCON 530.

## **18. Agency**

18.1 Nothing contained in this Agreement or in any Tasking Order shall be construed as giving rise to the relationship of principal and agent (save as expressly provided herein or therein), partnership or joint venture.

## **19. Publicity**

Neither the Participating Contractor nor its employees, officers, agents and sub-contractors shall, without the prior written consent of the Authority, make any public announcements or publish any articles or material relating to the tender process prior to Agreement; the Agreement itself; or any subsequent Tasks.

# SCHEDULE 1 - TERMS OF THE TASKING ORDER

## 1. Interpretation

### **Definitions**

In this Agreement, where the context admits:

(A) “Acceptance” means acceptance as defined in DEFCON 525;

(B) “Authority Site” includes any Government Establishment including Her Majesty's ships or vessels.

(C) “Agreement” means the Framework Agreement entered into between the Authority and the Participating Contractors, effective date of commencement 1 April 2009 pursuant to which the Tasking Order is issued;

### 1.2 **Construction of certain references**

In each Tasking Order, except where the context otherwise requires, expressions defined in the Framework Agreement shall bear the same meaning when used in each Tasking Order.

### 1.3 **Government Publications**

A reference in any Tasking Order to any government or Authority document or publication (including any DEFCON) shall be construed as a reference to the issue of such document or publication in force at the date of issue of that Tasking Order, unless otherwise stated in the Tasking Order.

## 2. Application of DEFCONs & General Conditions

2.1 Subject to the express modification of individual government publications pursuant to Schedule 5 hereto, the following DEFCONs and General Conditions are incorporated in, and shall be read and construed as part of, the Tasking Orders placed under this Agreement. The DEFCONs are:

DEFCON 5 (Edn 07/99) MOD Form 640 - Advice and Inspection Note

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

DEFCON 507 (Edn 10/98) Delivery

DEFCON 524 (Edn 10/98) Rejection

DEFCON 525 (Edn 10/98) Acceptance

DEFCON 528 (Edn 10/04) Overseas Expenditure and Import Licences

DEFCON 601 (Edn 10/04) Redundant Material

DEFCON 604 (Edn 11/04) Progress Reports

DEFCON 605 (Edn 06/97) Financial Reports

DEFCON 607 (Edn 05/08) Radio Transmissions

DEFCON 612 (Edn 10/98) Loss Of Or Damage To The Articles

DEFCON 616 (Edn 10/98) Competition/Alternative Sourcing

DEFCON 642 (Edn 06/97) Progress Meetings

DEFCON 656 (Edn 03/06) Break

DEFCONs incorporated into Schedule 1 by Clause 2 of Schedule 1 shall be construed so that references in a DEFCON to a contract shall denote the Task.

### **3. Rejected Work**

- 3.1 Rejected Work may, at the option of the Authority, be retained and paid for at such reduced prices as may be fair and reasonable.

### **4. Audit**

- 4.1 The Authority may conduct an audit for the following purposes:
- 4.1.1 To review the integrity, confidentiality and security of the Authority Data;
  - 4.1.2 To review the Contractor's compliance with the Data Protection Act 1998, the Freedom of Information Act 2000 and any other legislation applicable to the Services;
  - 4.1.3 To carry out technical audits of the Participating Contractor's declared areas of capability at any time throughout the duration of the Agreement. Each party shall bear their own costs for any technical audits. The Authority will provide, in writing by e-mail or by letter, 10 Working Days notification to the Participating Contractor that a technical audit is required. Any technical audits will be carried out by the Authority.

### **5. Quality Assurance**

- 5.1 The Contractor shall implement and maintain Quality Assurance Procedures in compliance with the requirements specified in Schedules 2 and 3 (the Tasking Order Form).

### **6. Amendments to Tasking Orders**

- 6.1 Once a Task has been placed with the Contractor by the issue of a Tasking Order, the Authority may require amendments to the Tasking Order, and the Contractor may request amendments to the Tasking Order. Any variation to the Tasking Order, including any technical changes, shall only be binding on the Authority if the variation is made in accordance with this Clause 6. The Authority shall not be liable for any additional or other work undertaken or expenditure incurred by the Contractor unless the variation is made in

accordance with this Clause 6. Any work undertaken by the Contractor outside the scope of the Tasking Order, as amended, shall be entirely at the Contractor's risk.

- 6.2 If the Authority notifies the Contractor that the Authority requires a change to the Tasking Order, the Contractor shall, within a period of 20 Working Days after receipt of the notice or such other period as may be mutually agreed, provide a change proposal for the revised scope of work as agreed between the Authority and the Contractor.
- 6.3 A Tasking Order change proposal shall contain all details of the variation, including a full cost breakdown. The Contractor shall provide evidence to support every aspect of a Tasking Order change proposal, and shall give the Authority access to its records where required in order to investigate the reasonableness of proposed prices or costs.
- 6.4 The Authority will evaluate a Tasking Order change proposal submitted under this Clause 6 and may either:
- (A) Approve the Tasking Order change proposal through the issue of an amendment to the Tasking Order;
  - (B) Reject the Tasking Order change proposal giving reasons for such rejection, and if appropriate, indicating whether an amended change proposal may be submitted; or
  - (C) Pending (A) or (B) enter into a process of dialogue and/or negotiation as may be necessary to reach an agreed Tasking Order Form.

## **7. Contractor's Representative**

- 7.1 The Contractor shall appoint a representative with whom the Project Manager/IPT Leader will liaise for matters concerning the performance of the Work. The Contractor shall delegate to its representative authority to deal with issues concerning performance of the Work on its behalf.

## **8. Personnel Requirements**

- 8.1 Where a Participating Contractor is already approved by the MOD to hold, process or store Protectively Marked material graded CONFIDENTIAL or above in pursuance of an existing MOD contract, the Authority will not normally require particulars of all personnel whom the Contractor intends to employ or engage to perform the Work under the Tasking Order. However, the Authority will define any personnel security assurance level required of those employed to complete the Work or visit any MOD Site involved in the Tasking Order and the Contractor will comply with the standard as defined.

Where the Contractor is not already approved as described above, as required by the Authority, subject to the Data Protection Act, full particulars of all personnel whom the Contractor intends to employ or engage to perform the Work is to be forwarded by the Contractor to the Authority in advance of their engagement. All personnel so employed or engaged will be subject to approval by the Authority

- 8.2 The Contractor shall ensure that in all conversations or correspondence with the Authority, or representatives of the Authority, and whenever acting on behalf of the Authority, its personnel shall make clear their identity and status as an employee of the Contractor.
- 8.3 If in the reasonable opinion of the Authority any of the Contractor's personnel is found at any time to be unable to perform, or unsuitable for, the Work, the Authority shall give the

Contractor written notice of this fact and may also request that such personnel be replaced by suitable personnel. On receipt of such notice the Contractor shall make all necessary arrangements for the personnel found to be unsuitable to be removed from the Work within a reasonable time or, where the Authority so requires, immediately, and shall replace that personnel with other personnel who shall be subject to approval by the Authority.

- 8.4 In the event that the Contractor is required to replace existing personnel, the Contractor shall, unless the requirement was for immediate removal of such personnel, provide a 10 Working Day overlap period for the replacement personnel.
- 8.5 The Contractor shall not charge the Authority for any Work performed by such replacement personnel for the first 10 Working Days of their employment or engagement, or for any other overlap period agreed under Clause 8.4, in connection with this Tasking Order. During this 10 Working Day period, or any other overlap period agreed under Clause 8.4, the Authority shall have the right to reject the replacement personnel offered by the Contractor if any such replacement personnel is deemed, by the Authority, at its discretion, to be unacceptable. Such personnel shall themselves be replaced by the Contractor and the provisions of this Clause 8.5 shall apply mutatis mutandis to this and any further replacements of personnel.
- 8.6 The Contractor shall take all reasonable steps to avoid changes of personnel assigned to and accepted by the Authority as suitable to perform the Work. Except where changes are unavoidable or of a temporary nature caused by sickness etc, the Contractor shall give at least 10 Working Days' notice to the Commercial Officer and Clause 8.5 shall apply to the replacement personnel.
- 8.7 The Authority will exercise its rights under this Clause in a reasonable manner.

## **9. Data Handling**

### **9.1 Authority Data**

9.1.1 The Contractor shall not delete or remove any proprietary notices contained within or relating to the Authority Data.

9.1.2 The Contractor shall not store, copy, disclose, or use the Authority Data except as necessary for the performance by the Contractor of its obligations under this Agreement or as otherwise expressly authorised in writing by the Authority.

9.1.3 To the extent that Authority Data is held and/or processed by the Contractor, the Contractor shall supply that Authority Data to the Authority as requested by the Authority in the Tasking Order Form.

9.1.4 The Contractor shall take responsibility for preserving the integrity of Authority Data and preventing the corruption or loss of Authority Data, as set out in the Security Aspect Letter or otherwise mutually agreed in the Tasking Order.

9.1.5 The Contractor shall perform secure back-ups of all electronic Authority Data and shall ensure that up-to-date back-ups are stored off-site in accordance with the Authority's security provisions and the Business Continuity and Disaster Recovery Plan. The Contractor shall ensure that such back-ups are available to the Authority at all times upon request and are delivered to the Authority at monthly intervals, or as otherwise directed to by the Tasking Authority.

9.1.6 The Contractor shall ensure that any system on which the Contractor holds any Authority Data, including back-up data, is a secure system that satisfies the requirements of the Tasking Authority.

9.1.7 If the Authority Data is corrupted, lost or sufficiently degraded as a result of the Contractor's Default so as to be unusable, the Authority may:

9.1.7.1 Require the Contractor (at the Contractor's expense) to restore or procure the restoration of Authority Data to the extent and in accordance with the requirements specified in Annex H to this Schedule 1 (Business Continuity and Disaster Recovery Provisions) and the Contractor shall do so as soon as practicable, and within the time specified by the Authority in the Tasking Order Form; and/or

9.1.7.2 Itself restore or procure the restoration of Authority Data, and shall be repaid by the Contractor any reasonable expenses incurred in doing so to the extent and in accordance with the requirements specified in Annex H to Schedule 1 of this Agreement (Business Continuity and Disaster Recovery Provisions).

9.1.8 If at any time the Contractor suspects or has reason to believe that Authority Data has or may become corrupted, lost or sufficiently degraded in any way for any reason, then the Contractor shall notify the Authority immediately and inform the Authority of the remedial action the Contractor proposes to take.

## 9.2 **Protection of Personal Data**

9.2.1 With respect to the parties' rights and obligations under this Agreement, the parties agree that the Authority is the Data Controller and that the Contractor is the Data Processor.

9.2.2 The Contractor shall:

9.2.2.1 Process the Personal Data only in accordance with instructions from the Authority (which may be of a general nature, or specific instructions as set out in-the Tasking Order, or as otherwise notified by the Tasking Authority to the Contractor via Tasking Order amendment);

9.2.2.2 Process the Personal Data only to the extent, and in such manner, as is necessary for the provision of the Services or as is required by Law or any Regulatory Body;

9.2.2.3 Implement appropriate technical and organisational measures (which have been agreed with the Tasking Authority prior to commencement of the Tasking Order), to protect the Personal Data against unauthorised or unlawful processing and against accidental loss, destruction, damage, alteration or disclosure. These measures shall be appropriate to the harm which might result from any unauthorised or unlawful Processing, accidental loss, destruction or damage to the Personal Data and having regard to the nature of the Personal Data which is to be protected;

9.2.2.4 Take reasonable steps to ensure the reliability of any Contractor personnel who have access to the Personal Data, through a robust policy of ensuring the subject's identity and integrity;

9.2.2.5 Obtain prior written consent from the Tasking Authority in order to transfer the Personal Data to any sub-contractors, Affiliates or other third parties for the provision of the services. The Contractor shall also ensure that the method of transfer is approved by the Tasking Authority;

- 9.2.2.6 Ensure that all Contractor personnel required to access the Personal Data are informed of the confidential nature of the Personal Data and comply with the obligations set out in this clause 9.2;
- 9.2.2.7 Ensure that none of Contractor personnel publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Tasking Authority;
- 9.2.2.8 Notify the Tasking Authority (within five Working Days) if it receives:
- (A) A request from a Data Subject to have access to that person's Personal Data; or
  - (B) A complaint or request relating to the Tasking Authority's obligations under the Data Protection Legislation;
- 9.2.2.9 Provide the Tasking Authority with full co-operation and assistance in relation to any complaint or request made, including by:
- (A) Providing the Tasking Authority with full details of the complaint or request;
  - (B) Complying with a data access request within the relevant timescales set out in the Data Protection Legislation and in accordance with the Tasking Authority's instructions;
  - (C) Providing the Tasking Authority with any Personal Data it holds in relation to a Data Subject (within the timescales required by the Tasking Authority); and
  - (D) Providing the Tasking Authority with any information requested by the Tasking Authority;
- 9.2.2.10 Permit the Tasking Authority or the Tasking Authority representative (subject to reasonable and appropriate confidentiality undertakings), to inspect and audit, in accordance with Clause 4.1 of Schedule 1 (Audits), the Contractor's data Processing activities (and/or those of its agents, subsidiaries and Sub-contractors) and comply with all reasonable requests or directions by the Tasking Authority to enable the Tasking Authority to verify and/or procure that the Contractor is in full compliance with its obligations under the Tasking Order;
- 9.2.2.11 Provide a written description of the technical and organisational methods employed by the Contractor for processing Personal Data (within the timescales required by the Tasking Authority); and
- 9.2.2.12 Not Process MOD Restricted information, Personnel information or Personal Data outside of designated premises, nor outside of the United Kingdom, without the prior written consent of the Tasking Authority and, where the Tasking Authority consents to a transfer, to comply with:
- (A) The obligations of a Data Controller under the Eighth Data Protection Principle set out in Schedule 1 of the Data Protection Act 1998 by providing an adequate level of protection to any Personal Data that is transferred; and
  - (B) Any reasonable instructions notified to it by the Tasking Authority.

9.2.3 The Contractor shall comply at all times with the Data Protection Legislation and shall not perform its obligations under this Framework Agreement or any Tasking Order in such a way as to cause the Authority to breach any of its applicable obligations under the Data Protection Legislation.

## **10. Sub-Contracts**

10.1 The Contractor shall not place any subcontract connected with the performance of the Work and involving, or likely to involve, the creation of or the delivery to the Authority of Intellectual Property, without ensuring that the proposed subcontractor has entered into an agreement with the Authority in the form of DEFFORM 177 prior to the Contractor entering into any such subcontract, unless the subcontract provides that the Contractor shall own the IPR arising from the performance of work under the subcontract, and subject to these being licensed to the Authority by the Contractor under the terms applicable to the Task. Wherever possible, the Contractor shall supply the Commercial Officer with two copies of the agreement signed by the subcontractor. If in any circumstances, the Contractor is unable to comply with this Clause it shall report the matter to the Commercial Officer and await further instruction before placing the subcontract.

## **11. Contractor's Use Of The Authority's Information Technology**

- 11.1 The Contractor's employees, officers, agents and subcontractors may only use Authority-owned computer hardware and/or software, including connections to Internet and/or Intranet Services, with the express permission of the Authority, where they possess an appropriate Security Clearance, and only for the performance of the Work.
- 11.2 The Contractor's employees, officers, agents and subcontractors may only use their own or a third party's computer equipment and/or software, including any connections to Internet or Intranet Services, on an Authority Site, with the prior approval of the Authority and the said third party.
- 11.3 The Contractor shall ensure that its employees, officers, agents and subcontractors comply with the Authority's policy, procedures, and instructions in respect of computer hardware, software, and any connections to Internet and/or Intranet Services, which are available from the Authority.
- 11.4 The Contractor shall take all practicable and reasonable precautions to ensure its employees, officers, agents and subcontractors do not use computer hardware and/or software, including any connections to Internet and/or Intranet Services unlawfully or for unlawful purposes and shall indemnify the Authority against any claim made by a third party in this connection.
- 11.5 The Contractor shall not in so far as reasonably possible cause or allow its employees, officers, agents and subcontractors to bring the reputation of the Authority into disrepute by any action, activity or behaviour in connection with computer hardware on an Authority Site.
- 11.6 Failure by the Contractor to comply with this Clause 11 shall constitute a material breach of the Tasking Order entitling the Authority to exercise its rights of termination set out in paragraph 2 of Schedules 2 and 3 (Tasking Order Form).

## **12. Disclosure of Information Related To The Task**

- 12.1 Subject to DEFCON 659, if applicable by virtue of the Tasking Order, each party shall comply with the confidentiality obligations set out in Clause 16 of the General Terms and Conditions of the Agreement.
- 12.2 The Contractor shall procure that its employees, to whom any part of the Material may be disclosed, shall, where required by the Authority and where the Contractor's employees are or are likely to be working on the Authority's premises, sign a confidentiality undertaking in the form of Appendix 1 to this Schedule 1. The undertaking shall be signed in duplicate, one copy being retained by the individual concerned and one copy by the Contractor before any Work commences. Any replacement personnel employed by the Contractor who is to perform any of the Work shall, where required by the Authority and where the Contractor's employees are or are likely to be working on the Authority's premises, sign a similar undertaking before starting the Work.

## **13. Issue Of Government Information**

- 13.1 An amount of Government Furnished Information (GFI) (in documentary or magnetic media format) may need to be made available to the Contractor to assist it in performing the Work. The scope and scale of each issue shall be determined with the Project Manager prior to every such issue during the period of the Tasking Order and will be issued on appropriate loan terms, in accordance with DEFCON 611, which will be called up in the tasking order, as appropriate, for the periods indicated at the time of issue.
- 13.2 All such GFI will be issued by (or through) the Project Manager who will advise the Contractor of the terms of issue and period of loan at the time of each such issue.
- 13.3 The Contractor shall observe the instructions of the Project Manager concerning any GFI which the Contractor is authorised to demand from government sources to assist it in performing the Work.

## **14. Accommodation**

- 14.1 Where Work is carried out on Authority Sites the Authority shall provide, at no cost to the Contractor, and solely for the purposes of this Tasking Order, electrical power, heating, lighting and water.

Where work is carried out on Authority Sites the Authority may, on an ad hoc basis, at no cost to the Contractor and solely for the purposes of this Tasking Order, provide access to a printer, facsimile services, photocopying facilities and furniture.

Any specialist tools of trade, e.g. hardware and software, required by the Contractor to perform its duties under a Task shall be provided by the Contractor at no cost to the Authority.

## **15. Work At Authority Sites**

- 15.1 Where work under the Task involves regular attendance by the Contractor's personnel at an Authority Site, the following shall apply:

(A) Days and times of attendance shall be to the requirements of the Authority;

- (B) Payment shall not be made to the Contractor for any periods when the Authority Site is closed or for periods when the Contractor's personnel are absent for any reason, other than for Authority duty absences agreed under the Tasking Order.

The Contractor shall be responsible for all matters relating to pay, sick pay, holidays, disciplinary and grievance procedures in respect of his staff.

## **16. Safety**

- 16.1 The Contractor shall be responsible for the observance by itself, its employees, agents and subcontractors of all safety precautions necessary for the protection of its employees, agents, subcontractors and any other persons, including all precautions to be taken under statutory provisions or any other directions of any local or other authority having the force of law. The Contractor shall co-operate fully with the Authority to ensure the proper discharge of these duties.

## **17. Supply Of Information About Substances Referred To In The Montreal Protocol**

- 17.1 As a signatory to the Montreal Protocol on Substances that deplete the Ozone Layer, the Authority is committed to the reduction of the production and consumption of those substances under the Protocol. Therefore, the Authority wishes to know which substances at Appendix 2 to this Schedule 1, if any, are contained in any Work. Accordingly, the Contractor shall, prior to commencing any work pursuant to this Task, provide to the Authority a list specifying:

- (A) All substances listed at Appendix 2 to the Schedule 1 (adopting the nomenclature used therein) contained in the Article(s) (including the packaging thereof, whether or not specified in the Schedule of Requirements),
- (B) The quantity of each of the substances at Appendix 2 to Schedule 1 contained in the Articles, and
- (C) Where in the Articles (including packaging) the substances listed at Appendix 2 to Schedule 1 are contained,
- (D) Or confirmation of a 'Nil Return' in respect of (A), (B) and (C) above.

## **18. Exclusion Of Representations And Warranties**

- 18.1 Both parties hereby acknowledge that, when entering into any Tasking Order, they will not be doing so in reliance upon any information, representations, warranties or promises, express or implied, given prior to the execution of the Tasking Order other than those expressly incorporated in the Tasking Order. Having freely entered into the Tasking Order, both parties agree that they will have no remedy in respect of any other information, representation, warranty or promise except in the case of fraud.

## **19. Deleted**

## **20. Controlled Information**

- 20.1 This Clause 20 shall apply in addition to and notwithstanding DEFCON 531 or any other confidentiality condition of the Tasking Order under this Agreement

- 20.2 For the purposes of this Clause “Controlled Information” shall have the meaning given at Clause 1.1 of the General Terms and Conditions of this Agreement
- 20.3 The Contractor shall:
- (A) Hold the Controlled Information and not use it other than for the purpose of discharging its obligations under the Tasking Order;
  - (B) Not copy the Controlled Information except as strictly necessary for the purpose of discharging its obligations under the Tasking Order, and only with the prior written authorisation of the Authority which shall not be unreasonably withheld;
  - (C) Not disclose the Controlled Information to any third party unless 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:
    - (1) Controlled Information is disclosed to its employees only to the extent necessary for the purpose of discharging its obligations under the Tasking Order;
    - (2) Employees to whom Controlled Information is disclosed are made aware of and required to comply with the terms of this Condition.
- 20.4 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 Tasking Order and for two years following completion of the Task.
  - (C) Make a 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 Tasking Order, 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.
- 20.5 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 Tasking Order and this Agreement 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 Tasking Order;

- (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.

## **21. Liquidated Damages**

- 21.1 Where Liquidated Damages are invoked on the Tasking Order Form, it is recognised by the Parties that in the event that any such Task or element thereof, which the contractor is required under this Contract to undertake for the Authority, being not delivered at the time or times specified in the Tasking Order required the Authority will suffer loss and damage thereby.
- 21.2 Accordingly, if any such task is not executed or delivered within the time or times specified in the Tasking Order, the Contractor shall be liable to pay to the Authority as liquidated damages for delay in delivery in relation to each element of the Task specified in the Tasking Order, the per day amount agreed in the appropriate section of the Tasking Order up to the maximum amount stated.
- 21.3 The provisions of this the Clause 21 are without prejudice to any other rights of the Authority under the contract and in particular, those under DEFCON 614 (Default). Accordingly, damages shall be payable hereunder in respect of any material period during which the contract subsists, notwithstanding its ultimate determination under DEFCON 614.
- 21.4 No payment or concession to the Contractor by the Authority or other act or omission of the Authority shall in any way affect the rights of the Authority to recover the said liquidated damages unless a waiver of the Authority's right to recover any such damages has been expressly stated in writing by the Authority.

## **22. Force Majeure**

- 22.1 This clause is applicable where Clause 21 above applies.
- 22.2 If, by reason of any acts of nature, war, hostilities or of any fire at any of the Contractor's premises or those of his suppliers the Contractor shall have been delayed in completing the delivery or execution of the Task as specified in the Tasking Order, the Contractor shall, immediately upon becoming aware that any such delay has been caused, give to the Authority notice in writing of his claim for an extension of time for the completion of the delivery or execution of the Task 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 he 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.
- 22.3 The maximum extension of time granted under this condition for the Task shall be limited to that specified in the appropriate section of the Tasking Order.

## **23. Supplier Development Scheme – Supplier And Customer Performance Measurement Process**

- 23.1 The Contractor and the Authority agree to monitor performance under the Contract in accordance with the Supplier Development Scheme, Supplier and Customer Performance Measurement (S&CPM) Process.
- 23.2 Where the nature and value of a given draft Tasking Order exceeds £500,000, the S&CPM Process shall apply. This will be indicated on the draft Tasking Order Form. In these cases, Annex E shall form part of the Contractor's proposal or tender. The proposal will form the basis of the agreement between the Contractor and the Project Manager of the Performance Indicators that will be identifiers for that Task and captured in the Performance Review Agreement for that Task.
- 23.3 When tendering for a Task, under Clauses 7 or 8 of the Framework Agreement, where the value of the draft Tasking Order exceeds £500,000 the Participating Contractor shall be required to submit an outline proposal of Performance Indicators (PI) that could be included in the Performance Review Agreement, for consideration by the Customer as part of his proposal or tender response. This PI Proposal shall be tailored to the Participating Contractor's recommended solution or bid in response to the MOD Task Requirement, and shall contain Performance Indicators against which the Participating Contractor is prepared to be measured, and against which he would wish to measure the Customer, should he be awarded the Task. This Performance Indicator proposal shall be submitted in the format set-out at Annex E to the Framework Agreement. In support of each Performance Indicator proposed, the Participating Contractor shall be required to outline the means and method of measurement, and the evidence that would be used to validate achieved performance for the awarded Task.

The Performance Review Agreement's Performance Indicator Proposal will not, of itself, form part of the assessment criteria for Tasks awarded under the Framework Agreement but may be used by the MOD IPT/Project Team as an indicator of robustness, risk and confidence in the Participating Contractor's proposed solution.

The Authority is not obliged to accept any or all of the Participating Contractor's proposed Performance Indicators.

- 23.4 The Performance Review Agreement shall be agreed between the Authority and the Contractor, and submitted to the MOD Directorate of Supplier Relations, within One Month of acknowledgement of the final Tasking Order.

## **24. Principles Governing Selection of Intellectual Property Conditions on Tasking Order Forms**

- 24.1 The Contractor acknowledges that the Authority shall secure rights in the intellectual property (IP) generated or delivered under each Task.

**In order to be incorporated into a Tasking Order, the specific intellectual property conditions appropriate to a given Task are to be indicated on the relevant Tasking Order Form.**

Each DEFCON or DEFFORM as applied to a Tasking Order shall be in its latest Edition published before that Order is placed, unless otherwise stated in the Order.

- 24.2 The principles set out below identify the circumstances that govern the selection of relevant intellectual property conditions.

	<b>Circumstance</b>	<b>DEFCON / DEFFORM</b>
1	<b>Technology and research</b> work including: (a) Concept demonstration (b) Risk reduction (c) Test and evaluation	Select DEFCON 705 on Tasking Order Form
2	Where a task is <b>shared funded</b> .	The Authority will agree with the Contractor the Intellectual Property Rights (IPR) terms and conditions on a case by case basis at the tasking level.
3	<b>Acquisition support work</b> which is providing:  (a) Independent advice to the Authority on third party specified development programmes, equipment, processes, technical reports, repair and maintenance schemes; or  (b) Tender assessment and evaluation; or  (c) Independent advice to equipment capability managers but not underlying research and technology work conducted for the purpose of providing such advice.	Select DEFCON 703 on the Tasking Order Form
4	<b>Test and evaluation results</b> on Authority or third party equipment (but not underlying test and evaluation techniques and methods).	Select DEFCON 703 on the Tasking Order Form
5	<b>Policy advice work</b> , and consultancy work relating to policy or organisation.	Select DEFCON 703 on the Tasking Order Form.
6	Work on the development, creation or writing of <b>national or international standards</b> .	Select DEFCON 703 on the Tasking Order Form.
7	Work on preparation of <b>procurement specifications and user requirements documents</b> but not underlying research and technology work conducted for the purpose of providing such specifications.	Select DEFCON 703 on the Tasking Order Form.
8	<b>Work central to the operation of Government</b> or to the formulation of Government policy, for which the results are intended to be openly published or released by MoD, in accordance with Government requirements.	Select DEFCON 703 on the Tasking Order Form
9	<b>Work of a highly sensitive nature</b> where ownership by the Authority is required to control disclosure and use of the results, or is required to comply with obligations owed to other governments	Select DEFCON 703 on the Tasking Order Form.
10	<b>Post design services</b> work on equipment the IPR in which is owned by a third party not being a subcontractor of the Contractor	Select DEFCON 703 on the Tasking Order Form
11	Contracts for the <b>operation of a Government owned facility</b>	Select DEFCON 703 on the Tasking Order Form
12	In respect of <b>data outputs from infrastructure projects</b> where MOD reasonably requires control over such data.	Select DEFCON 703 on the Tasking Order Form.
13	Limited circumstances, other than those covered in (3) to (12) above, where the Authority demonstrates a sound IPR-based reason for MOD ownership of the IPR for example <ul style="list-style-type: none"> <li>• Where the Contractor has stated that he is unable or unwilling to exploit the results of the Contract;</li> <li>• Where the work comprises a comparatively minor task which builds on substantial Authority owned or Authority supplied (third party owned) IPR; or</li> <li>• Where the work is based upon information made</li> </ul>	Select DEFCON 703 on the Tasking Order Form.

	available to the Authority by a third party in confidence and exploitation of the results of the work by the Contractor would prejudice that confidence.	
14	Any other Tasks in any field giving rise to IP MOD where ownership of the IPR is agreed between the Authority and the Contractor	Select DEFCON 703 on the Tasking Order Form.
15	Work requiring delivery and/or use of Contractor background information.	The Authority will agree with the Contractor the IPR terms and conditions on a case by case basis at the tasking level.
16	<b>Design and/or development of equipment</b> for in-Service use, including post design service activities and any modification, upgrade or other change to the design of in-Service equipment or equipment intended to enter into Service use.	Select DEFCONs [14 or 14a], DEFCONs 15, 21 and associated DEFFORM 315 CDRs, and DEFCON 126 on the Tasking Order Form.
17	Where any task requires the <b>modification of equipment</b> , the original development of which was subject to DEFCON 15 (Edn 8/74) or DEFCON 15A (Edn 8/74)	The Authority will agree with the Contractor IPR conditions appropriate to that task.
18	<b>Support documentation</b> (repair, maintenance, overhaul, operation and disposal) relating to in-Service equipment or equipment intended to enter into Service use.	Select DEFCONs [14 or 14a] and DEFCONs 16, 21 and associated DEFFORM 315 CDRs on the Tasking Order Form.
19	Where any Task requires the <b>development of repair and maintenance information</b> against equipment, the original development of which was subject to DEFCON 15 (Edn 8/74) or DEFCON 15A (Edn 8/74).	The Authority will agree with the Contractor IPR conditions appropriate to that task.
20	<b>Deliverable Software and Software Documentation</b> and other Software generated under the Tasking Order (as defined in DEFCON 91)	Select DEFCONs [14 or 14a] and DEFCON 91 on the Tasking Order Form.
21	Any other copyright and/or database right work generated and/or delivered under the Tasking Order.	Select DEFCONs [14 or 14a] and DEFCON 90 on Tasking Order Form.
22	<b>Commercial software</b> purchased by the Authority where the Contractor has a Standard Software Licence Agreement (SLA) for the purchase of such software with the Secretary of State for Defence.	The Tasking Order Form should refer to the appropriate SLA and Schedule
23	<b>Commercial software</b> purchased by the Authority where the Contractor has a DEFFORM 701 – Head Agreement for the purchase of such software with the Secretary of State for Defence.	The Tasking Order Form should refer to the appropriate DEFFORM 701 Agreement And Schedule.
24	<b>Commercial software</b> purchased by the Authority where the Contractor has no pre-existing licence agreement for the purchase of such software with the Secretary of State for Defence	The Authority will agree with the Contractor IPR conditions appropriate to that task.

24.3 Where DEFCON 705 applies to a line item of work involving technology development beyond TRL5 (as described at Annex G), the further DEFCONs 15 and 91 may also apply but shall only become effective to replace the rights granted to the Authority under DEFCON 705 to the extent that the Contractor accepts further contract(s) or subcontract(s) with the Authority that contain those further DEFCONs and which relate to the further development activity involving that work.

24.4 For the avoidance of doubt, whenever DEFCON 705 applies to a Task and the Contractor subcontracts any part of the Task to a subcontractor, the Contractor shall comply with the provisions of Clause 4(a) of DEFCON 705, provided that the Contractor may seek ownership of the subcontract results in accordance with the provisions of Clause 4b of DEFCON 705 where the sub-contractor has stated in writing to the Contractor that he is

unable or unwilling to exploit the results of the Contract or where the work demonstrably comprises a minor task which builds on substantial Contractor owned IPR. In either case the Contractor must be able to demonstrate compliance to the Authority. Any other circumstances where the Contractor proposes to apply Clause 4b shall be only with the prior written consent of the Authority.

24.5 There may be tasks for which substitute IPR clauses may exceptionally be required and these will be incorporated in the "additional conditions" box on the Tasking Order form.

24.6 In the event that no boxes have been ticked in the Intellectual Property Rights section of the Tasking Order Form, then all intellectual property generated under the Task shall be subject to the terms of DEFCON 703.

## **25. Material Issued With Draft Tasking Order**

25.1 **ITT Material** means information (including for example, drawings, handbooks, manuals, instructions, specifications and notes of pre-Tender clarification meetings, in whatever form or medium), patterns and samples, issued to the Tenderer by the Authority or on its behalf, or to which the Tenderer has been given access, for the purposes of responding to any draft Tasking Order Form. ITT Material remains the property of the Authority or other owners and is released solely for the purpose of tendering. The Tenderer shall notify the MOD Commercial Branch without delay if any additional ITT Material is required for the purpose of responding to a draft Tasking Order.

25.2 **Return of ITT Material** In the event that the Tenderer in receipt of ITT Material decides not to participate in the submission of a tender, the ITT Material shall be returned to its place of issue without delay. If a tender is submitted to the Authority, the ITT Material may be retained by the Tenderer until the result of the competition is known. In the event that the Tenderer's bid is unsuccessful the ITT Material shall be returned to its place of issue without delay.

25.3 **Intellectual Property Rights in ITT Material** The Intellectual Property Rights in ITT Material may belong to the Authority or a third party. The ITT Material may only be used for the purpose of responding to any draft Tasking Order and shall not be copied, or disclosed to anyone other than employees of the Tenderer involved in the preparation of the tender, without the prior written approval of the Authority. If the Tenderer discloses the ITT Material other than to employees involved in the tender preparation, or uses the ITT Material other than for the purpose of tendering, the Authority, or the third party owner, may suffer damage for which compensation may be sought from the Tenderer.

25.4 **Confidentiality Agreements** Some or all of the ITT Material issued in connection with a draft Tasking Order may already be the subject of Confidentiality Agreements. The provisions of such Agreements are in addition to, and not in substitution for, any obligations arising from receipt of or access to ITT Material under the terms of this draft Tasking Order and the provisions of sub-paragraphs 25.1, 25.2 and 25.3.

## **26. Notification Of Inventions Etc.**

26.1 In his response to a draft Tasking Order the Tenderer shall notify the Tasking Authority of:

- (A) i. any invention or design the subject of Patent or Registered Design rights (or application therefore) of which the Tenderer is aware which is owned by a third party and which appears to be relevant to the performance of any resultant

contract or to subsequent use by the Authority of anything required to be done or delivered under any resultant contract;

- ii. whether he is subject to any restriction (including any export requirement or restriction) as to disclosure or use or obligation to make payments in respect of any other intellectual property (including technical information) required for the purpose of any resultant contract or subsequent use by the Authority of anything required to be done or delivered under any resultant contract;
- iii. any allegation of infringement of intellectual property rights made against the Tenderer which pertains to the performance of any resultant contract or subsequent use by the Authority of anything required to be done or delivered under any resultant contract;
- iv. any patent or registered design, (or application therefore) owned or controlled by the Tenderer and which appears to be relevant to the Articles or Services required under any resultant contract, and use of which by or on behalf of the Authority may give rise to a claim under Sections 55 and 56 of the Patents Act 1977, or Section 12 of the Registered Designs Act 1949;

(B) The Tenderer shall at the request of the Authority give the Authority particulars of every restriction and obligation referred to in sub-paragraph a)ii. of this Clause, and shall give the Authority any information for an authorisation to be given under Section 2 of the Defence Contracts Act 1958;

(C) If the information required under this Clause has been provided previously, the Contractor may satisfy these requirements by giving details of the previous notification.

## **27. Export Control**

27.1 For the avoidance of doubt in the Tender his response to a draft Tasking Order the Tenderer shall ensure that he makes the Authority aware of any export constraints that may affect the ability of the Authority to exercise the rights as specified under the draft Tasking Order. If the Tenderer is successful he shall obtain all required export licences as may be required to fulfil the final Tasking Order and consistent with the rights specified under the final Tasking Order. The Authority shall provide such assistance to obtaining any export licence as is reasonable in the circumstances.

## **28. Freedom Of Information And Environmental Information Regulations**

28.1 (A) The Freedom of Information Act 2000 ("the FOIA") and the Environmental Information Regulations 2004 ("the EIR") provides a statutory right of access to information held by or on behalf of public authorities such as MOD. The FOIA and EIR applies to all information that MoD holds and it makes no distinction about who originated it.

(B) Requests for information under the FOIA or the EIR received by the MoD will normally be responded to within 20 working days. Whilst there can be no guarantees, there are exemptions and exceptions in the FOIA and EIR that will protect commercially sensitive information.

(C) In order to enable the MOD to meet the normal response time, in any draft Tasking Order submission the Tenderer is requested to identify which parts of his submission are commercially sensitive and specify the reason for its sensitivity when forwarding material

to MOD. The Tenderer should also include details of a named individual within the Company whom MOD may contact in cases of FOIA or EIR enquiries related to his submission.

(D) Where MOD is contemplating disclosure of information supplied in the draft Tasking Order submission, MOD will consult the Tenderer to ascertain the degree of harm that would arise from disclosure. Should MOD decide to disclose against the wishes of the Tenderer, the Tenderer will be given prior notification of the disclosure.

## **29. Work At Government Establishments**

29.1 The Contractor is reminded of his obligations under DEFCON 76 to notify the Authority of any health and safety hazards, risks associated with such hazards, or precautions which should be taken emanating from such risks, resulting from Work to be performed at Government Establishments under any Tasking Order.

## **30. Consultation With Credit Reference Agencies**

30.1 The Authority may consult credit reference agencies to assess the creditworthiness of a client/supplier. Information on creditworthiness may be used by MOD to support and influence decisions to enter into business with a client/supplier.

## **31. Additional Conditions**

31.1 Where additional terms and conditions are applicable to the Tasking Order, these will be included in the Tasking Order Form, in the Additional Conditions box and relevant attachment. This box will also be used to record any periods of time agreed at the Tasking level under DEFCONs 524, 525, 656 and any other agreements reached at the Tasking level.