

authorised and the specific intellectual property involved.

Notification of Intellectual Property Rights (IPR) Restrictions

r. Where any of the conditions listed below (1 to 3) have been added to the Conditions of the Contract as project specific DEFCONs at Clause 44, or where required by Clauses 33.a. - 33.q., the Contractor warrants and confirms that all Intellectual Property Rights restrictions and associated export restrictions relating to the use or disclosure of the Contractor Deliverables that are notifiable under those Conditions, or of which the Contractor is or should reasonably be aware as at Effective Date of Contract, are disclosed in Schedule 10 (Notification of Intellectual Property Rights (IPR) Restrictions).

- (1) DEFCON 15 - including notification of any self-standing background Intellectual Property;
- (2) DEFCON 90 - including copyright material supplied under clause 5;
- (3) DEFCON 91 - limitations of Deliverable Software under clause 3b.

s. The Contractor shall promptly notify the Authority in writing if they become aware during the performance of the Contract of any required additions, inaccuracies or omissions in Schedule 10.

t. Any amendment to Schedule 10 shall be made in accordance with Condition 6.

Pricing and Payment

34.Contract Price

- a. The Contractor shall provide the Contractor Deliverables to the Authority at the Contract Price. The Contract Price shall be a Firm Price unless otherwise stated in Schedule 3 (Contract Data Sheet).
- b. Subject to clause 34.a the Contract Price shall be inclusive of any UK custom and excise or other duty payable. The Contractor shall not make any claim for drawback of UK import duty on any part of the Contract Deliverables supplied which may be for shipment outside of the UK.

35.Payment and Recovery of Sums Due

- a. Payment for Contractor Deliverables will be made by electronic transfer and prior to submitting any claims for payment under clause 35.b the Contractor will be required to register their details (Supplier on-boarding) on the Contracting, Purchasing and Finance (CP&F) electronic procurement tool.
- b. Where the Contractor submits an invoice to the Authority in accordance with clause 35.a, the Authority will consider and verify that invoice in a timely fashion.
- c. The Authority shall pay the Contractor any sums due under such an invoice no later than a period of 30 days from the date on which the Authority has determined that the invoice is valid and undisputed.
- d. Where the Authority fails to comply with clause 35.b and there is undue delay in considering and verifying the invoice, the invoice shall be regarded as valid and undisputed for the purpose of clause 35.c after a reasonable time has passed.
- e. The approval for payment of a valid and undisputed invoice by the Authority shall not be construed as acceptance by the Authority of the performance of the Contractor's obligations nor as a waiver of its rights and remedies under the Contract.
- f. Without prejudice to any other right or remedy, the Authority reserves the right to set off any amount owing at any time from the Contractor to the Authority against any amount payable by the Authority to the Contractor under the Contract or under any other contract with the Authority, or with any other Government Department.

36. Value Added Tax

- a. The Contract Price excludes any UK output Value Added Tax (VAT) and any similar EU (or non-EU) taxes chargeable on the supply of Contractor Deliverables by the Contractor to the Authority.
- b. If the Contractor is required by UK VAT law to be registered for UK VAT (or has registered voluntarily) in respect of their business activities at the time of any supply, and the circumstances of any supply are such that the Contractor is liable to pay the tax due to HM Revenue and Customs (HMRC), the Authority shall pay to the Contractor in addition to the Contract Price (or any other sum due to the Contractor) a sum equal to the output VAT chargeable on the tax value of the supply of Contractor Deliverables, and all other payments under the Contract according to the law at the relevant tax point.
- c. The Contractor is responsible for the determination of VAT liability. The Contractor shall consult their Client Relationship Manager or the HMRC Enquiries Desk (and not the Authority's Representative (Commercial)) in cases of doubt. The Contractor shall notify the Authority's Representative (Commercial) of the Authority's VAT liability under the Contract, and any changes to it, within twenty (20) Business Days of becoming aware the liability is other than at the standard rate of VAT. In the event of any doubt about the applicability of the tax in such cases, the Authority may require the Contractor to obtain, and pass to the Authority, a formal ruling from HMRC. The Contractor shall comply promptly with any such requirement. Where the Contractor obtains a ruling from HMRC, they shall supply a copy to the Authority within three (3) Business Days of receiving that ruling unless they propose to challenge the ruling. Where the Contractor challenges the ruling they shall supply to the Authority a copy of any final decisions issued by HMRC on completion of the challenge within three (3) Business Days of receiving the decision.
- d. Where supply of Contractor Deliverables comes within the scope of UK VAT, but the Contractor is not required by UK VAT law to be registered for UK VAT (and has not registered voluntarily), the Authority shall be responsible for assessing and paying over directly to HMRC any UK output VAT due in respect of the Contractor Deliverables. The Contractor shall be responsible for ensuring they take into account any changes in VAT law regarding registration.
- e. Where Contractor Deliverables are deemed to be supplied to the Authority outside the UK, the Contractor may be required by the laws of the country where the supply takes place to register there for EU (or non-EU) turnover or similar tax. In that event, the Authority shall pay to the Contractor in addition to the Contract Price (and any other sum due to the Contractor under the Contract) a sum equal to the tax the Contractor is liable to pay to the tax authorities of the country in question in relation to the Contractor Deliverables within thirty (30) calendar days of a written request for payment of any such sum by the Contractor.
- f. In relation to the Contractor Deliverables supplied under the Contract the Authority shall not be required to pay any sum in respect of the Contractor's input VAT (or similar EU or non-EU or both input taxes). However, these input taxes will be allowed where it is established that, despite the Contractor having taken all reasonable steps to recover them, it has not been possible to do so. Where there is any doubt that the Contractor has complied with this requirement the matter shall be resolved in accordance with Condition 39 (Dispute Resolution).
- g. Should HMRC decide that the Contractor has incorrectly determined the VAT liability, in accordance with clause 36.b above, the Authority will pay the VAT assessed by HMRC. In the event that HMRC so determines, the Contractor shall pay any interest charged on any assessment or penalties or both directly to HMRC. Such interest or penalties or both shall not be recoverable from the Authority under the Contract or any other contract. The Contractor shall supply the Authority with a copy of all correspondence between HMRC and the Contractor's advisors regarding the VAT assessment within three (3) Business Days of a written request from the Authority for such correspondence.

37. Debt Factoring

- a. Subject to the Contractor obtaining the prior written consent of the Authority in accordance with

Condition 11 (Assignment of Contract), the Contractor may assign to a third Party ("the Assignee") the right to receive payment of the Contract Price or any part thereof due to the Contractor under the Contract (including interest which the Authority incurred through late payment under the Late Payment of Commercial Debts (Interest) Act 1998 ("the Act")). Any assignment of the right to receive payment of the Contract Price (or any part thereof) under this Condition 37 shall be subject to:

- (1) reduction of any sums in respect of which the Authority exercises its right of recovery under clause 35.f;
 - (2) all related rights of the Authority under the Contract in relation to the recovery of sums due but unpaid; and
 - (3) the Authority receiving notification under both clauses 37.b and 37.c.(2).
- b. In the event that the Contractor obtains from the Authority the consent to assign the right to receive the Contract Price (or any part thereof) under clause 37.a, the Contractor shall notify the Authority in writing of the assignment and the date upon which the assignment becomes effective.
- c. The Contractor shall ensure that the Assignee:
- (1) is made aware of the Authority's continuing rights under clauses 37.a.(1) and 37.a.(2); and
 - (2) notifies the Authority of the Assignee's contact information and bank account details to which the Authority shall make payment, subject to any reduction made by the Authority in accordance with clauses 37.a.(1) and 37.a.(2).
- d. The provisions of Condition 35 (Payment and Recovery of Sums Due) shall continue to apply in all other respects after the assignment and shall not be amended without the prior approval of the Authority.

38.Subcontracting and Prompt Payment

- a. Subcontracting any part of the Contract shall not relieve the Contractor of any of the Contractor's obligations, duties or liabilities under the Contract.
- b. Where the Contractor enters into a subcontract, they shall cause a term to be included in such subcontract:
- (1) providing that where the Subcontractor submits an invoice to the Contractor, the Contractor will consider and verify that invoice in a timely fashion;
 - (2) providing that the Contractor shall pay the Subcontractor any sums due under such an invoice no later than a period of thirty (30) days from the date on which the Contractor has determined that the invoice is valid and undisputed;
 - (3) providing that where the Contractor fails to comply with clause 38.b.(1) above, and there is an undue delay in considering and verifying the invoice, that the invoice shall be regarded as valid and undisputed for the purposes of clause 38.b.(2) after a reasonable time has passed; and
 - (4) requiring the counterparty to that subcontract to include in any subcontract which it awards, provisions having the same effect as clauses 38.b.(1) to 38.b.(4).

Termination

39.Dispute Resolution

- a. The Parties will attempt in good faith to resolve any dispute or claim arising out of or relating to the Contract through negotiations between the respective representatives of the Parties having authority to settle the matter, which attempts may include the use of any alternative dispute resolution procedure on which the Parties may agree.
- b. In the event that the dispute or claim is not resolved pursuant to clause 39.a the dispute shall be referred to arbitration. Unless otherwise agreed in writing by the Parties, the arbitration and this clause 39.b shall be governed by the Arbitration Act 1996. For the purposes of the arbitration, the

arbitrator shall have the power to make provisional awards pursuant to Section 39 of the Arbitration Act 1996.

c. For the avoidance of doubt, anything said, done or produced in or in relation to the arbitration process (including any awards) shall be confidential between the Parties, except as may be lawfully required in judicial proceedings relating to the arbitration or otherwise.

40. Termination for Insolvency or Corrupt Gifts

Insolvency:

a. The Authority may terminate the Contract, without paying compensation to the Contractor, by giving written Notice of such termination to the Contractor at any time after any of the following events:

Where the Contractor is an individual or a firm:

- (1) the application by the individual or, in the case of a firm constituted under English law, any partner of the firm to the court for an interim order pursuant to Section 253 of the Insolvency Act 1986; or
- (2) the court making an interim order pursuant to Section 252 of the Insolvency Act 1986; or
- (3) the individual, the firm or, in the case of a firm constituted under English law, any partner of the firm making a composition or a scheme of arrangement with them or their creditors; or
- (4) the presentation of a petition for bankruptcy order against the individual or, in the case of a firm constituted under English law, any partner of the firm unless it is withdrawn within three (3) Business Days from the date on which the Contractor is notified of the presentation; or
- (5) the court making a bankruptcy order in respect of the individual or, in the case of a firm constituted under English law, any partner of the firm; or
- (6) where the Contractor is either unable to pay their debts as they fall due or has no reasonable prospect of being able to pay debts which are not immediately payable. The Authority shall regard the Contractor as being unable to pay their debts if:
 - (a) they have failed to comply with or to set aside a Statutory demand under Section 268 of the Insolvency Act 1986 within twenty-one (21) days of service of the Statutory Demand on them; or
 - (b) execution or other process to enforce a debt due under a judgement or order of the court has been returned unsatisfied in whole or in part.
- (7) the presentation of a petition for sequestration in relation to the Contractor's estates unless it is withdrawn within three (3) Business Days from the date on which the Contractor is notified of the presentation; or
- (8) the court making an award of sequestration in relation to the Contractor's estates.

Where the Contractor is a company registered in England:

- (9) the presentation of a petition for the appointment of an administrator; unless it is withdrawn within three (3) Business Days from the date on which the Contractor is notified of the presentation; or
- (10) the court making an administration order in relation to the company; or
- (11) the presentation of a petition for the winding-up of the company unless it is withdrawn within three (3) Business Days from the date on which the Contractor is notified of the presentation; or
- (12) the company passing a resolution that the company shall be wound-up; or
- (13) the court making an order that the company shall be wound-up; or
- (14) the appointment of a Receiver or manager or administrative Receiver.

Where the Contractor is a company registered other than in England, events occur or are carried out which, within the jurisdiction to which they are subject, are similar in nature or effect to those specified

in clauses 40.a.(9) to 40.a.(14) inclusive above.

b. Such termination shall be without prejudice to and shall not affect any right of action or remedy which shall have accrued or shall accrue thereafter to the Authority and the Contractor.

Corrupt Gifts:

c. The Contractor shall not do, and warrants that in entering the Contract they have not done any of the following (hereafter referred to as 'prohibited acts'):

- (1) offer, promise or give to any Crown servant any gift or financial or other advantage of any kind as an inducement or reward;
 - (a) for doing or not doing (or for having done or not having done) any act in relation to the obtaining or execution of this or any other Contract with the Crown; or
 - (b) for showing or not showing favour or disfavour to any person in relation to this or any other Contract with the Crown.

- (2) enter into this or any other Contract with the Crown in connection with which commission has been paid or has been agreed to be paid by them or on their behalf, or to their knowledge, unless before the Contract is made particulars of any such commission and of the terms and conditions of any such agreement for the payment thereof have been disclosed in writing to the Authority.

d. If the Contractor, their employees, agents or any Subcontractor (or anyone acting on their behalf or any of their employees) does any of the prohibited acts or commits any offence under the Bribery Act 2010 with or without the knowledge or authority of the Contractor in relation to this Contract or any other contract with the Crown, the Authority shall be entitled:

- (1) to terminate the Contract and recover from the Contractor the amount of any loss resulting from the termination;
- (2) to recover from the Contractor the amount or value of any such gift, consideration or commission; and
- (3) to recover from the Contractor any other loss sustained in consequence of any breach of this Condition, where the Contract has not been terminated.

e. In exercising its rights or remedies under this Condition, the Authority shall:

- (1) act in a reasonable and proportionate manner having regard to such matters as the gravity of, and the identity of the person performing, the prohibited act;
- (2) give all due consideration, where appropriate, to action other than termination of the Contract, including (without being limited to):
 - (a) requiring the Contractor to procure the termination of a subcontract where the prohibited act is that of a Subcontractor or anyone acting on their behalf;
 - (b) requiring the Contractor to procure the dismissal of an employee (whether their own or that of a Subcontractor or anyone acting on their behalf) where the prohibited act is that of such employee.

f. Recovery action taken against any person in Her Majesty's service shall be without prejudice to any recovery action taken against the Contractor pursuant to this Condition.

41. Termination for Convenience

a. The Authority shall have the right to terminate the Contract in whole or in part at any time by giving the Contractor at least twenty (20) Business Days written notice (or such other period as may be stated in Schedule 3 (Contract Data Sheet)). Upon expiry of the notice period the Contract, or relevant part thereof, shall terminate without prejudice to the rights of the parties already accrued up to the date of termination. Where only part of the Contract is being terminated, the Authority and the Contractor shall owe each other no further obligations in respect of the part of the Contract being terminated, but will continue to fulfil their respective obligations on all other parts of the Contract not

being terminated.

b. Following the above notification the Authority shall be entitled to exercise any of the following rights in relation to the Contract (or part being terminated) to direct the Contractor to:

- (1) not start work on any element of the Contractor Deliverables not yet started;
- (2) complete in accordance with the Contract the provision of any element of the Contractor Deliverables;
- (3) as soon as may be reasonably practicable take such steps to ensure that the production rate of the Contractor Deliverables is reduced as quickly as possible;
- (4) terminate on the best possible terms any subcontracts in support of the Contractor Deliverables that have not been completed, taking into account any direction given under clauses 41.b.(2) and 41.b.(3) of this Condition.

c. Where this Condition applies (and subject always to the Contractor's compliance with any direction given by the Authority under clause 41.b):

- (1) The Authority shall take over from the Contractor at a fair and reasonable price all unused and undamaged materiel and any Contractor Deliverables in the course of manufacture that are:
 - (a) in the possession of the Contractor at the date of termination; and
 - (b) provided by or supplied to the Contractor for the performance of the Contract, except such materiel and Contractor Deliverables in the course of manufacture as the Contractor shall, with the agreement of the Authority, choose to retain;
- (2) the Contractor shall deliver to the Authority within an agreed period, or in absence of such agreement within a period as the Authority may specify, a list of:
 - (a) all such unused and undamaged materiel; and
 - (b) Contractor Deliverables in the course of manufacture, that are liable to be taken over by, or previously belonging to the Authority, and shall deliver such materiel and Contractor Deliverables in accordance with the directions of the Authority;
- (3) in respect of Services, the Authority shall pay the Contractor fair and reasonable prices for each Service performed, or partially performed, in accordance with the Contract.

d. The Authority shall (subject to clause 41.e below and to the Contractor's compliance with any direction given by the Authority in clause 41.b above) indemnify the Contractor against any commitments, liabilities or expenditure which would otherwise represent an unavoidable loss by the Contractor by reason of the termination of the Contract, subject to:

- (1) the Contractor taking all reasonable steps to mitigate such loss; and
- (2) the Contractor submitting a fully itemised and costed list of such loss, with supporting evidence, reasonably and actually incurred by the Contractor as a result of the termination of the Contract or relevant part.

e. The Authority's total liability under the provisions of this Condition shall be limited to the total price of the Contractor Deliverables payable under the contract (or relevant part), including any sums paid, due or becoming due to the Contractor at the date of termination.

f. The Contractor shall include in any subcontract over £250,000 which it may enter into for the purpose of the Contract, the right to terminate the subcontract under the terms of clauses 41.a to 41.e except that:

- (1) the name of the Contractor shall be substituted for the Authority except in clause 41.c.(1);
- (2) the notice period for termination shall be as specified in the subcontract, or if no period is specified twenty (20) Business Days; and
- (3) the Contractor's right to terminate the subcontract shall not be exercised unless the main Contract, or relevant part, has been terminated by the Authority in accordance with the provisions of this Condition 41.