



MOD Terms and Conditions for Less Complex Requirements

1 Definitions - In the Contract:

The Authority means the Secretary of State for Defence of the United Kingdom of Great Britain and Northern Ireland, (referred to in this document as "the Authority"), acting as part of the Crown;

Business Day means 09:00 to 17:00 Monday to Friday, excluding public and statutory holidays;

Contract means the agreement concluded between the Authority and the Contractor, including all terms and conditions, associated purchase order, specifications, plans, drawings, schedules and other documentation, expressly made part of the agreement in accordance with Clause 2.c;

Contractor means the person, firm or company specified as such in the purchase order;

Contractor Commercially Sensitive Information means the information listed as such in the purchase order, which is information notified by the Contractor to the Authority, which is acknowledged by the Authority as being commercially sensitive;

Contractor Deliverables means the goods and / or services including packaging (and supplied in accordance with any QA requirements if specified) which the Contractor is required to provide under the Contract in accordance with the schedule to the purchase order;

Effective Date of Contract means the date stated on the purchase order or, if there is no such date stated, the date upon which both Parties have signed the purchase order;

Firm Price means a price excluding Value Added Tax (VAT) which is not subject to variation;

Hazardous Contractor Deliverable means a Contractor Deliverable or a component of a Contractor Deliverable that is itself a hazardous material or substance or that may in the course of its use, maintenance, disposal, or in the event of an accident, release one or more hazardous materials or substances and each material or substance that may be so released;

Legislation means in relation to the United Kingdom any Act of Parliament, any subordinate legislation within the meaning of section 21 of the Interpretation Act 1978, any exercise of Royal Prerogative or any enforceable community right within the meaning of Section 2 of the European Communities Act 1972.

Notices means all notices, orders, or other forms of communication required to be given in writing under or in connection with the Contract;

Parties means the Contractor and the Authority, and Party shall be construed accordingly;

Transparency Information means the content of this Contract in its entirety, including from time to time agreed changes to the Contract, and details of any payments made by the Authority to the Contractor under the Contract.

2 General

a. The Contractor shall comply with all applicable Legislation, whether specifically referenced in this Contract or not.

b. Any variation to the Contract shall have no effect unless expressly agreed in writing and signed by both Parties.

c. If there is any inconsistency between these terms and conditions and the purchase order or the documents expressly referred to therein, the conflict shall be resolved according to the following descending order of priority:

- (1) the terms and conditions;
- (2) the purchase order; and
- (3) the documents expressly referred to in the purchase order.

d. Neither Party shall be entitled to assign the Contract (or any part thereof) without the prior written consent of the other Party.

e. Failure or delay by either Party in enforcing or partially enforcing any provision of the Contract shall not be construed as a waiver of its rights under the Contract.

f. The Parties to the Contract do not intend that any term of the Contract shall be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a Party to it.

g. The Contract and any non-contractual obligations arising out of or in connection with it shall be governed by and construed in accordance with English Law, and subject to Clause 15 and without prejudice to the dispute resolution procedure set out

therein, the Parties submit to the exclusive jurisdiction of the English courts. Other jurisdictions may apply solely for the purpose of giving effect to this Clause 2.g and for enforcement of any judgement, order or award given under English jurisdiction.

3 Application of Conditions

a. The purchase order, these terms and conditions and the specification govern the Contract to the entire exclusion of all other terms and conditions. No other terms or conditions are implied.

b. The Contract constitutes the entire agreement and understanding and supersedes any previous agreement between the Parties relating to the subject matter of the Contract.

4 Disclosure of Information

Disclosure of information under the Contract shall be managed in accordance with DEFCON 531 (SC1).

5 Transparency

a. Subject to Clause 5.b, but notwithstanding Clause 4, the Contractor understands that the Authority may publish the Transparency Information to the general public. The Contractor shall assist and cooperate with the Authority to enable the Authority to publish the Transparency Information.

b. Before publishing the Transparency Information to the general public in accordance with Clause 5.a, the Authority shall redact any information that would be exempt from disclosure if it was the subject of a request for information under the Freedom of Information Act 2000 or the Environmental Information Regulations 2004, including the Contractor Commercially Sensitive Information.

c. The Authority may consult with the Contractor before redacting any information from the Transparency Information in accordance with Clause 5.b. The Contractor acknowledges and accepts that its representations on redactions during consultation may not be determinative and that the decision whether to redact information is a matter in which the Authority shall exercise its own discretion, subject always to the provisions of the Freedom of Information Act 2000 or the Environmental Information Regulations 2004.

d. For the avoidance of doubt, nothing in this Clause 5 shall affect the Contractor's rights at law.

6 Notices

a. A Notice served under the Contract shall be:

- (1) in writing in the English Language;
- (2) authenticated by signature or such other method as may be agreed between the Parties;
- (3) sent for the attention of the other Party's representative, and to the address set out in the purchase order;
- (4) marked with the number of the Contract; and
- (5) delivered by hand, prepaid post (or airmail), facsimile transmission or, if agreed in the purchase order, by electronic mail.

b. Notices shall be deemed to have been received:

- (1) if delivered by hand, on the day of delivery if it is a Business Day in the place of receipt, and otherwise on the first Business Day in the place of receipt following the day of delivery;
- (2) if sent by prepaid post, on the fourth Business Day (or the tenth Business Day in the case of airmail) after the day of posting;
- (3) if sent by facsimile or electronic means:
 - (a) if transmitted between 09:00 and 17:00 hours on a Business Day (recipient's time) on completion of receipt by the sender of verification of the transmission from the receiving instrument; or
 - (b) if transmitted at any other time, at 09:00 on the first Business Day (recipient's time) following the completion of receipt by the sender of verification of transmission from the receiving instrument.

7 Intellectual Property

- a. The Contractor shall as its sole liability keep the Authority fully indemnified against an infringement or alleged infringement of any intellectual property rights or a claim for Crown use of a UK patent or registered design caused by the use, manufacture or supply of the Contractor Deliverables.
- b. The Authority shall promptly notify the Contractor of any infringement claim made against it relating to any Contractor Deliverable and, subject to any statutory obligation requiring the Authority to respond, shall permit the Contractor to have the right, at its sole discretion to assume, defend, settle or otherwise dispose of such claim. The Authority shall give the Contractor such assistance as it may reasonably require to dispose of the claim and will not make any statement which might be prejudicial to the settlement or defence of the claim

8 Supply of Contractor Deliverables and Quality Assurance

- a. This Contract comes into effect on the Effective Date of Contract.
- b. The Contractor shall supply the Contractor Deliverables to the Authority at the Firm Price stated in the Schedule to the purchase order.
- c. The Contractor shall ensure that the Contractor Deliverables:
 - (1) correspond with the specification;
 - (2) are of satisfactory quality (within the meaning of the Sale of Goods Act 1979, as amended) except that fitness for purpose shall be limited to the goods being fit for the particular purpose held out expressly by or made known expressly to the Contractor and in this respect the Authority relies on the Contractor's skill and judgement; and
 - (3) comply with any applicable Quality Assurance Requirements specified in the purchase order.
- d. The Contractor shall apply for and obtain any licences required to import any material required for the performance of the Contract in the UK. The Authority shall provide to the Contractor reasonable assistance with regard to any relevant defence or security matter arising in the application for any such licence.

9 Supply of Hazardous Contractor Deliverables

- a. The Contractor shall establish if the Contractor Deliverables are, or contain, Dangerous Goods as defined in the Regulations set out in this Clause 9. Any that do shall be packaged for UK or worldwide shipment by all modes of transport in accordance with the following unless otherwise specified in the Schedule to the purchase order:
 - (1) the Technical Instructions for the Safe Transport of Dangerous Goods by Air (ICAO), IATA Dangerous Goods Regulations;
 - (2) the International Maritime Dangerous Goods (IMDG) Code;
 - (3) the Regulations Concerning the International Carriage of Dangerous Goods by Rail (RID); and
 - (4) the European Agreement Concerning the International Carriage of Dangerous Goods by Road (ADR).
- b. Certification markings, incorporating the UN logo, the package code and other prescribed information indicating that the package corresponds to the successfully designed type shall be marked on the packaging in accordance with the relevant regulation.
- c. As soon as possible and in any event within the period specified in the purchase order (or if no such period is specified no later than one month prior to the delivery date), the Contractor shall provide to the Authority's representatives in the manner and format prescribed in the purchase order:
 - (1) confirmation as to whether or not to the best of its knowledge any of the Contractor Deliverables are Hazardous Contractor Deliverables; and
 - (2) for each Hazardous Contractor Deliverable, a Safety Data Sheet containing the data set out at Clause 9.d, which shall be updated by the Contractor during the period of the Contract if it becomes aware of any new relevant data.

d. Safety Data Sheets if required under Clause 9.c shall be provided in accordance with the REACH Regulations (EC) No 1907/2006 and any additional information required by the Health and Safety at Work etc. Act 1974 and shall contain:

- (1) Information required by the Chemicals (Hazardous Information and Packaging for Supply) (CHIP) Regulations 2009 and / or the Classification, Labelling and Packaging (CLP) Regulation 1272/2008 (whichever is applicable) or any replacement thereof; and
 - (2) where the Hazardous Contractor Deliverable is, contains or embodies a radioactive substance as defined in the Ionising Radiation Regulations SI 1999/3232, details of the activity, substance and form (including any isotope); and
 - (3) where the Hazardous Contractor Deliverable has magnetic properties, details of the magnetic flux density at a defined distance, for the condition in which it is packed.
- e. The Contractor shall retain its own copies of the Safety Data Sheets provided to the Authority in accordance with Clause 9.d for 4 years after the end of the Contract and shall make them available to the Authority's representatives on request.
 - f. Nothing in this Clause 9 reduces or limits any statutory or legal obligation of the Authority or the Contractor.

10 Delivery / Collection

- a. The purchase order shall specify whether the Contractor Deliverables are to be delivered to the consignee by the Contractor or collected from the consignor by the Authority.
- b. Title and risk in the Contractor Deliverables shall pass from the Contractor to the Authority on delivery or on collection in accordance with Clause 10.a.
- c. The Authority shall be deemed to have accepted the Contractor Deliverables thirty (30) days after title and risk has passed to the Authority unless it has rejected the Contractor Deliverables within the same period.

11. Marking of Contractor Deliverables

- a. Each Contractor Deliverable shall be marked in accordance with the requirements specified in the purchase order or if no such requirement is specified, the Contractor shall mark each Contractor Deliverable clearly and indelibly in accordance with the requirements of the relevant DEF-STAN 05-132 as specified in the contract or specification. In the absence of such requirements, the Contractor Deliverables shall be marked with the MOD stock reference, NATO Stock Number (NSN) or alternative reference number shown in the Contract.
- b. Any marking method used shall not have a detrimental effect on the strength, serviceability or corrosion resistance of the Contractor Deliverables.
- c. The marking shall include any serial numbers allocated to the Contractor Deliverable.
- d. Where because of its size or nature it is not possible to mark a Contractor Deliverable with the required particulars, the required information should be included on the package or carton in which the Contractor Deliverable is packed, in accordance with condition 12 (Packaging and Labelling (excluding Contractor Deliverables containing Ammunition or Explosives)).

12 Packaging and Labelling of Contractor Deliverables (Excluding Contractor Deliverables Containing Ammunition or Explosives)

The Contractor shall pack or have packed the Contractor Deliverables in accordance with any requirements specified in the purchase order and Def Stan 81-041 (Part 1 and Part 6).

13 Progress Monitoring, Meetings and Reports

The Contractor shall attend progress meetings and deliver reports at the frequency or times (if any) specified in the purchase order and shall ensure that its Contractor's representatives are suitably qualified to attend such meetings.

14 Payment

- a. Payment for Contractor Deliverables will be made by electronic transfer and prior to submitting any claims for payment under clause 14b 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 14a, 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 14b 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 14c 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 this 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.

15 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 15.a the dispute shall be referred to arbitration and 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.

16 Termination for Corrupt Gifts

The Authority may terminate the Contract with immediate effect, without compensation, by giving written notice to the Contractor at any time after any of the following events:

a. where the Authority becomes aware that the Contractor, its employees, agents or any sub-contractor (or anyone acting on its behalf or any of its or their employees):

- (1) has offered, promised or given to any Crown servant any gift or financial or other advantage of any kind as an inducement or reward;
- (2) commits or has committed any prohibited act or 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;
- (3) has entered 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 it or on its behalf, or to its 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.

b. In exercising its rights or remedies to terminate the Contract under Clause 16.a. 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 committing the prohibited act;
- (2) give 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 its or their behalf;
 - (b) requiring the Contractor to procure the dismissal of an employee (whether its own or that of a Subcontractor or anyone acting on its behalf) where the prohibited act is that of such employee.

c. Where the Contract has been terminated under Clause 16.a. the Authority shall be entitled to purchase substitute Contractor Deliverables from elsewhere and recover from the Contractor any costs and expenses incurred by the Authority in obtaining the Contractor Deliverables in substitution from another supplier.

17 Material Breach

In addition to any other rights and remedies, the Authority shall have the right to terminate the Contract (in whole or in part) with immediate effect by giving written notice to the Contractor where the Contractor is in material breach of its obligations under the Contract. Where the Authority has terminated the Contract under Clause 17 the Authority shall have the right to claim such damages as may have been sustained as a result of the Contractor's material breach of the Contract.

18 Insolvency

The Authority shall have the right to terminate the contract if the Contractor is declared bankrupt or goes into liquidation or administration. This is without prejudice to any other rights or remedies under this Contract.

19 Limitation of Contractor's Liability

a. Subject to Clause 19.b the Contractor's liability to the Authority in connection with this Contract shall be limited to £5m (five million pounds).

b. Nothing in this Contract shall operate to limit or exclude the Contractor's liability:

(1) for:

- a. any liquidated damages (to the extent expressly provided for under this Contract);
- b. any amount(s) which the Authority is entitled to claim, retain or withhold in relation to the Contractor's failure to perform or under-perform its obligations under this Contract, including service credits or other deductions (to the extent expressly provided for under this Contract);
- c. any interest payable in relation to the late payment of any sum due and payable by the Contractor to the Authority under this Contract;
- d. any amount payable by the Contractor to the Authority in relation to TUPE or pensions to the extent expressly provided for under this Contract;

(2) under Condition 7 of the Contract (Intellectual Property), and DEFCONs 91 or 638 (SC1) where specified in the contract;

(3) for death or personal injury caused by the Contractor's negligence or the negligence of any of its personnel, agents, consultants or sub-contractors;

(4) for fraud, fraudulent misrepresentation, wilful misconduct or negligence;

(5) in relation to the termination of this Contract on the basis of abandonment by the Contractor;

(6) for breach of the terms implied by Section 2 of the Supply of Goods and Services Act 1982; or

(7) for any other liability which cannot be limited or excluded under general (including statute and common) law.

c. The rights of the Authority under this Contract are in addition to, and not exclusive of, any rights or remedies provided by general (including statute and common) law.

20 The project specific DEFCONs and DEFCON SC variants that apply to this Contract are:
DEFCON 531 (SC1)

20 The special conditions that apply to this Contract are:
DEFCON 16 Repair and Maintenance Information (Edn 10/04)
DEFCON 21 Retention of Records (Edn 01/58)
DEFCON 76 Contractor's Personnel at Government Establishments (Edn 12/06)
DEFCON 658 Cyber (Edn 10/17)

21 The processes that apply to this Contract are:

All potential suppliers must complete the Supplier Assurance Questionnaire (SAQ) via the Supplier Cyber Protection Service (Octavian) to demonstrate their compliance with the required cyber risk level. This is a self-assurance process and no validation of the SAQ return is required. You can find further information on the SAQ by searching for DCPD on GOV.UK

The risk assessment reference for this requirement is **RAR-UKJ786R9**

If you intend to sub-contract any part of the contract, you must complete a Risk Assessment to assess the cyber risk level of that sub-contract. All potential sub-contractors must complete a SAQ and ensure they have the necessary security controls in place before the sub-contract is awarded. It is the contractors responsibility to manage this process.

Schedule 1 – Additional Definitions of Contract

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

Application

1. This Condition applies to deliverable Information identified in a Contract Data Requirement as being subject to DEFCON 16.

Definitions

2. For the purposes of this Condition, the following definitions apply:

- a) 'Contract Data Requirement' means a data requirement referred to in the Schedule of Requirements the format and content of which is set out or referenced in DEFFORM 315.
- b) 'Information' means technical data relating to Articles, processes or materials whether in human readable form or in machine readable form, or in any other form (but excluding software subject to DEFCON 91 for which the Authority is otherwise licensed).
- c) 'Intellectual Property' includes patents, registered designs, design rights, topography rights, copyright, database rights and other rights in Information.
- d) 'Article' means part or the whole of any article which the Contractor is required under the Contract to supply or in connection with which he is required under the Contract to carry out any service and any other article or part thereof to the same design as that article.
- e) 'Repair and Maintenance' means activity to maintain Articles in an operable condition including:
 - i. maintenance of records of defects and reliability;
 - ii. the identification of replacements for Articles that become obsolete;
 - iii. the preparation and application of procedures and arrangements (including safety procedures) for removing Articles from and re-installing them in an operational system, and for handling, storing, transporting, packaging and labelling Articles; Page 1 of 5 Repair and Maintenance InformationPage 2 of 5
 - iv. inspection and testing of Articles to check calibration and performance and to detect and identify faults;
 - v. dismantling Articles;
 - vi. preparation and application of repair schemes;
 - vii. reassembling Articles after repair, or incorporation of modifications, including the incorporation of replacement or new parts;
 - viii. testing and calibrating of Articles prior to, during or after re-assembly and after reinstallation in an operational system;
 - ix. reworking or reconditioning of Articles;but excluding redesign or manufacture of any replacement or new parts, or the design of any modification.
- f) 'for the Services of the United Kingdom Government' means anything done, in relation to Articles owned or used by the Authority, under the authority of, or to the order of, a Minister of the Crown in pursuance of authority vested in the Minister by Parliament.

Ownership

3. All Intellectual Property Rights in the Information subject to this Condition shall, subject to any rights of the Crown or any third party and to the terms of this Condition, belong to the Contractor.

Rights of Use

4. Subject to the provisions of this Condition and to the rights of third parties the Authority and any other United Kingdom Government Department shall have, during the period of the Contract and at all times thereafter, the right, anywhere in the world for the Services of the United Kingdom Government, to copy, in whole or in part, and use any Information to which this Condition applies:

Monitoring and Evaluation

- a) to monitor work under the Contract and to inspect, test and evaluate the delivered Information and Articles;

In Service Support

- b) to carry out Maintenance and Repair of Articles owned or in use by the Authority;

Jigs, Tools & Test Equipment

- c) to design, develop and produce jigs, tools and test equipment for the in-service support of Articles;

Disposal of Articles

- d) to dismantle, scrap or otherwise destroy any Articles;

Operation

- e) to operate Articles.

Sales

5. If the Authority sells, hires, leases or otherwise disposes of any Article, the Authority may supply relevant user handbooks and maintainer information supplied under the Contract (or copies thereof) to the recipient and permit the recipient to copy and use such information for operation and maintenance of any such Article.

Conditions of Use

6. The rights set out in Clauses 4 and 5 of this Condition may be exercised by the Authority itself, any other United Kingdom Government Department or any agent acting on behalf of, or a contractor in pursuance of a contract with, the Authority or any such Department.

7. The rights granted to the Authority, and to any other United Kingdom Government Department, under this Condition are additional to any rights under any other contract. The rights include the right to copy and to issue any Information the subject of this Condition as necessary to prospective tenderers for the purposes of establishing their interest in tendering and of preparing tenders for anything to be done or proposed to be done pursuant to Clause 4.

8. Except as provided in Clauses 9 and 10 below or otherwise provided in the Contract, the Contractor shall not be entitled to receive any royalty or other payment in respect of the exercise of the rights granted under Clauses 4 or 5 of this Condition notwithstanding the existence of any Intellectual Property owned or controlled by the Contractor covering the Articles.

9. Subject to the rights of the Crown arising otherwise than under this Condition and provided that the Contractor has met in a timely manner any obligations included in the Contract to inform the Authority of the existence of any relevant United Kingdom patent or registered design, the Contractor shall be entitled to claim payment under the provisions of Sections 55-59 of the Patents Act 1977 or the First Schedule to the Registered Designs Act 1949 in respect of any patented invention or registered design owned or controlled by the Contractor and used in the exercise of the rights granted under Clauses 4 and 5 of this Condition. The terms to be agreed or settled for the use of any such patented invention or registered design shall not include payment of compensation under Section 57A of the Patents Act 1977 or paragraph 2A of the First Schedule to the Registered Designs Act 1949 in respect of any invention or design covering the Articles, or described in any Information, that is deliverable under the Contract and is subject to this Condition.

10. Nothing in Clauses 8 and 9 of this Condition shall affect the rights of the Contractor in or grant to the Authority or any other United Kingdom Government Department any rights in, any Intellectual Property not covering the Articles.

Contracted Repair and Maintenance

11. In the event that the Contract does not provide for repair, reworking or reconditioning of Articles involving Information other than that used for routine servicing, and where an order is to be placed for the conduct of such repair, reworking or reconditioning outside an establishment or depot of the Authority, the Authority undertakes to invite the Contractor to tender provided that he is still eligible to perform such work for the Authority.

Liability

12. In the event that Information to which this Condition applies is used by or for the Authority otherwise than for the purpose for which the Information was supplied in accordance with the relevant Contract Data Requirement, the Contractor shall have no liability whatsoever for any direct or indirect consequences, including losses, damages or injuries caused to the Authority or any third party, arising from its use.

Release of Information and Confidentiality

13. The Authority shall ensure that Information released under this Condition to any third party is limited to that necessary for the task on which the third party is engaged.

14. All Information which is provided to the Authority subject to this Condition is disclosed in confidence and shall only be copied, disclosed and used in accordance with the provisions of this Condition. The Authority shall ensure that all disclosures of Information to any third party shall be under express conditions of confidentiality between the Authority and the third party, and shall procure at the request of the Contractor, a direct confidentiality agreement in the form of DEFFORM 94.

Clarification of Information

15. At the request of the Authority, or any other United Kingdom Government Department, at any time during the period for which the Contractor is required by this or any subsequent contract to retain the Information the Contractor shall subject to the availability of resources and within the United Kingdom, provide assistance to the Authority, the other Department or their agents or contractors in exercising the rights granted under this Condition. Such assistance shall be limited Repair and Maintenance InformationPage 5 of 5

to that required for a third party of similar skill to the Contractor in the relevant area of technology to interpret any Information supplied under the terms of this Condition. The Contractor shall be entitled to payment by the Authority or other United Kingdom Government Department on fair and reasonable terms for such assistance provided.

Marking

16. Any Information supplied subject to this Condition may be marked by the Contractor with a copyright and/or other restrictive legend provided that the legend acknowledges the Authority's rights under this Condition. Any such marking shall be perpetuated in any copies of the Information made by the Authority or any other United Kingdom Government Department or its agents or contractors.

Interpretation

17. The Clause headings in this Condition are for convenience only and shall not affect the interpretation of the Condition.

18. This Condition shall constitute an agreement to the contrary for the purposes of Section 48(5) of the Copyright, Designs, and Patents Act 1988

DEFCON 21 Retention of Records (Edn 01/58)

Application

1. This Condition applies to deliverable Information identified in a Contract Data Requirement as being subject to DEFCON 21.

Definitions

2. For the purpose of this Condition, the following definitions apply:

a) 'Contract Data Requirement' means a data requirement referred to in the Schedule of Requirements the format and content of which is set out or referenced in DEFFORM 315.

b) 'Information' means technical data relating to Articles, processes or materials whether in human readable form or in machine readable form, or in any other form (but excluding software subject to DEFCON 91 or for which the Authority is otherwise licensed).

c) 'Intellectual Property' includes patents, registered designs, design rights, topography rights, copyright, database rights and any other rights in Information.

Maintenance of Control Copy

3. During the period of the Contract and thereafter for not less than two years, or such other period as may be specified in the Contract:

a) the Contractor shall maintain at least one copy (hereinafter called the 'Control Copy') of all deliverable Information to which this Condition applies;

b) the Control Copy shall be maintained in media and formats agreed to by the Authority, and it shall not be altered by the Contractor in any way which changes the build standard except as authorised in writing by the Authority. The Control Copy shall be deemed to be the property of the Authority, and the Authority may take possession of it notwithstanding any administration, receivership, winding-up or liquidation of the Contractor or any transfer of its assets to any third party; and

c) copies of Information held on the Control Copy shall be supplied as required from time to time by the Authority at the Authority's expense.

4. If the Contractor enters into another contract with the Authority regarding

maintenance of the Control Copy, the Contractor's obligation under Clause 3 of this Condition shall be governed by that contract at the end of the period referred to in Clause 3 of this Condition. Otherwise he may destroy or amend the Control Copy as he sees fit, but before destroying the Control Copy he shall offer to supply it to the Authority and give the Authority 60 days to request such supply.

Intellectual Property

5. Nothing in this Condition shall affect the ownership of, or user rights in, any Intellectual Property.

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

1. Reference in this Condition to:

a) 'Government Establishment' or 'site' shall be deemed to include any of Her Majesty's Ships or Vessels and Service Stations;

b) 'Officer in Charge' shall be deemed to include Officers Commanding Service Stations, Ships' Masters or Senior Officers, and Heads of Government Establishments; and

c) 'Contractor's Representative(s)' shall be deemed to include the Contractor's employees, agents and subcontractors.

General

2. The following general provisions apply:

a) The Officer in Charge shall provide such available administrative and technical facilities for the Contractor's Representatives employed at Government Establishments for the purpose of the Contract as may be necessary for the effective and economical discharge of work under the Contract. These facilities will be provided free of charge unless otherwise stated in the Contract. The status to be accorded to the Contractor's Representatives for messing purposes will be at the discretion of the Officer in Charge.

b) Any land or premises (including temporary buildings) made available to the Contractor by the Authority in connection with the Contract shall be made available to the Contractor free of charge, unless otherwise stated in the Contract, and shall be used by the Contractor solely for the purposes of performing the Contract. The Contractor shall have the use of such land or premises as licensee and shall vacate the same upon completion of the Contract. Any utilities required by the Contractor shall be subject to the charges set out in the Contract.

c) The Contractor shall have no claim against the Authority for any additional cost or delay occasioned by the closure for holidays of Government Establishments, where this is made known to him prior to entering into the Contract.

Liability In Respect Of Damage To Government Property

3. Without prejudice to the provisions of DEFCON 611 (Issued Property) and of DEFCON 612 (Loss of or Damage to the Articles), where those conditions form part of the Contract, the Contractor shall, except as otherwise provided for in the Contract, make good or, at the option of the Authority, pay compensation for all damage occurring to any Government Property, which includes land or buildings, occasioned by the Contractor, or by any of his Representatives, arising from his or their presence on a Government Establishment in connection with the Contract, provided that this Condition shall not apply to the extent that the Contractor is able to show that any such damage was not caused or contributed to by any circumstances within his or their reasonable control.

4. The total liability of the Contractor under Clause 3 herein shall be subject to any limitation specified in the Contract.

Contractor's Property

5. All property of the Contractor and his Representatives shall be at the risk of the Contractor whilst it is on any Government Establishment, and the Authority shall accept no liability for any loss or damage howsoever occurring thereto or caused thereby, except as follows:

a) where any such loss or damage was caused or contributed to by any act, neglect or default of any Government Servant, agent or contractor then the Authority shall accept liability therefor to the extent to which such loss or damage is so caused or contributed to as aforesaid; and

b) where any property of the Contractor has been taken on charge by the Officer in Charge, and a proper receipt has been given therefor, then the Authority shall be liable for any loss or damage occurring to that property while held on such charge as aforesaid.

Contractor's Representatives

6. The Contractor shall submit in writing to the Authority for approval, initially and as necessary from time to time, a list of those of his Representatives who may need to enter a Government Establishment for the purpose of, or in connection with, work under the Contract, giving such particulars as the Authority may require, including full details of birthplace and parentage of any such Representative who:

a) was not born in the United Kingdom; or

b) if he was born in the United Kingdom, was born of parents either or both of whom were not born in the United Kingdom.

7. The Authority shall issue passes for those Representatives who are approved by it in accordance with Clause 6 herein for admission to a Government Establishment and a Representative shall not be admitted unless in possession of such a pass. Passes shall remain the property of the Authority and shall be surrendered on demand or on completion of the work.

8. Notwithstanding the provisions of Clauses 6 and 7 hereof if, in the opinion of the Authority, any Representative of the Contractor shall misconduct himself, or it shall not be in the public interest for any person to be employed or engaged by the Contractor, the Contractor shall remove such person without delay on being required to do so and shall cause the work to be performed by such other person as may be necessary.

9. The decision of the Authority upon any matter arising under Clauses 6 to 8 inclusive shall be final and conclusive.

Observance Of Regulations

10. The following provisions apply:

a) The Contractor shall ensure that his Representatives have the necessary probity (by undertaking the Government's Baseline Personnel Security Standard) and, where applicable, are cleared to the appropriate level of security when employed within the boundaries of a Government Establishment.

b) Where the Contractor requires information on the Government's Baseline Personnel Security Standard (the Standard) or security clearance for his Representatives or is not in possession of the relevant rules, regulations or requires guidance on them, he shall

apply in the first instance to the Project Manager/Equipment Support Manager.

c) On request, the Contractor shall be able to demonstrate to the Authority that the Contractor's processes to assure compliance with the standard have been carried out satisfactorily. Where that assurance is not already in place,

Contractor's Personnel At Government Establishments the Contractor shall permit the Authority to inspect the processes being applied by the Contractor to comply with the Standard.

d) The Contractor shall comply and shall ensure that his Representatives comply with the rules, regulations and requirements that are in force whilst at that Establishment which shall be provided by the Authority on request.

e) When on board ship, compliance with the rules, regulations, and requirements shall be in accordance with the Ship's Regulations as interpreted by the Officer in Charge. Details of those rules, regulations and requirements shall be provided on request by the Officer in Charge.

Transport Overseas

11. Where the Contractor's Representatives are required by the Contract to join or visit a Government Establishment overseas, transport between the United Kingdom and the place of duty (but excluding transport within the United Kingdom) shall be provided free of charge by the Authority whenever possible, normally by Royal Air Force or by MOD chartered aircraft. The Contractor shall make such arrangements through the Project Manager/Equipment Support Manager named for this purpose in the Contract. When such transport is not available within a reasonable time, or in circumstances where the Contractor wishes his Representatives to accompany materiel for installation which he is to arrange to be delivered, the Contractor shall make his own transport arrangements. The Authority shall reimburse the Contractor's costs for such transport of his Representatives on presentation of evidence supporting the use of alternative transport and of the costs involved. Transport of the Contractor's Representatives locally overseas which is necessary for the purposes of the Contract shall be provided wherever possible by the Authority and, where so provided, will be free of charge.

Medical Treatment Overseas

12. Out-patient medical treatment given to the Contractor's Representatives by a Service Medical Officer or other Government Medical Officer at a Government Establishment overseas shall be free of charge. Treatment in a Service hospital or medical centre, dental treatment, the provision of dentures or spectacles, conveyance to and from a hospital, medical centre or surgery not within the Establishment, and transportation of the Contractor's Representatives back to the United Kingdom, or elsewhere, for medical reasons, shall be charged to the Contractor at the appropriate local rate.

Contractor's Personnel At Government Establishments

Injuries, Disease And Dangerous Occurrences

13. The Contractor shall report any injury, disease or dangerous occurrence at any Government Establishment arising out of the performance of this Contract, which is required to be reported under the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995 (RIDDOR) to the Officer in Charge of the relevant Government Establishment. This would be in addition to any report, which the Contractor may be required to submit under RIDDOR to the relevant enforcing authority (e.g. Health and Safety Executive or Local Authority).

Dependants Of Contractor's Representatives

14. No assistance from public funds, and no messing facilities, accommodation or transport overseas shall be provided for dependants or members of the families of the Contractor's Representatives. Medical or necessary dental treatment may, however, be provided for dependants or members of families on repayment at current MOD rates.

Provision Of Funds Overseas

15. The Contractor shall, wherever possible, arrange for funds to be provided to his Representatives overseas through normal banking channels (e.g. by travellers cheques). If banking or other suitable facilities are not available, the Authority shall, upon request by the Contractor and subject to any reasonable limitation required by the Contractor, make arrangements for payments, converted at the prevailing rate of exchange (where applicable), to be made by the Establishment to which the Contractor's Representatives are attached. All such advances made by the Authority shall be recovered from the Contractor.

Health And Safety Hazard Control

16. Where the Contractor enters a Government Establishment for the purpose of performing work under the Contract:

a) The Contractor shall notify the Officer in Charge or the site project liaison officer or overseeing officer nominated in the Contract of:

i. any health and safety hazards associated with the work to be performed by him or any of his Representatives;

ii. any foreseeable risks to the health and safety of all persons associated with such hazards; and Contractor's Personnel At Government Establishments

iii. any precautions to be taken by him as well as any precautions which, in his opinion, ought to be taken by the Authority, in order to control such risks.

b) The Authority shall notify the Contractor of:

i. any health and safety hazards which may be encountered by the Contractor or any of his Representatives on the Government Establishment;

ii. any foreseeable risks to the health and safety of the Contractor or

any of his Representatives, associated with such hazards; and

iii. any precautions to be taken by the Authority as well as any precautions which, in its opinion, ought to be taken by the Contractor, in order to control such risks.

c) The Contractor shall notify his Representatives of and, where appropriate, provide adequate instruction in relation to:

i. the hazards, risks and precautions notified by him to the Authority under sub-Clause 16.a);

ii. the hazards, risks and precautions notified by the Authority to the Contractor under sub-Clause 16.b); and

iii. the precautions which, in his opinion, ought to be taken by his Representatives in order to control those risks.

d) The Contractor shall provide the Officer in Charge or the site project liaison officer or overseeing officer nominated in the Contract with:

i. copies of those sections of his own and, where appropriate, his Representatives' Safety Policies which are relevant to the risks notified under sub-Clause 16.a);

ii. copies of any related risk assessments;

and

Establishments

iii. copies of any notifications and instructions issued by him to his Representatives under sub-Clause 16.c).

e) The Authority shall provide the Contractor with:

i. copies of those sections of its own Safety Policies which are relevant to the risks notified under sub-Clause 16.b);

ii. copies of any related risk assessments;

and

iii. copies of any notifications and instructions issued by it to its employees similar to those called for from the Contractor under sub-Clause 16.c).

DEFCON 658 Cyber (Edn 10/17)

1. Definitions 1.1. In this Condition the following words and expressions shall have the meanings given to them, except where the context requires a different meaning:

"Associated Company" means:

(a) any associated company of the Contractor from time to time within the meaning of Section 449 of the Corporate Tax Act 2010 or any subordinate legislation; and

(b) any parent undertaking or subsidiary undertaking of the Contractor from time to time within the meaning of section 1162 Companies Act 2006 and it is further agreed that where the ownership of shares in any such undertaking have been pledged or transferred to a third party by way of security, the original parent shall still be considered a member of the subsidiary undertaking;

"Contractor Deliverables" shall have the meaning set out in DEFCON 501;

"Cyber Risk Level" means the level of Cyber Risk relating to this Contract or any Sub-contract assessed in accordance with the Cyber Security Model;

"Cyber Security Implementation Plan" means the plan referred to in Clause 3 of this Condition including but not limited to any risk-balance case and mitigation measures required by the Authority;

"Cyber Security Incident" means an event, act or omission which gives rise or may give rise to:

(a) unauthorized access to an information system or electronic communications network;

(b) disruption or change of the operation (including but not limited to takeover of control) of an information system or electronic communications network;

(c) destruction, damage, deletion or the change of MOD Identifiable Information residing in an information system or electronic communications network;

(d) removal or limiting the possibility to use MOD Identifiable Information residing in an information system or electronic communications network; or

(e) the appropriation, publication, dissemination or any other use of non-public MOD Identifiable Information by persons unauthorised to do so.

"Cyber Security Instructions" means DEFSTAN 05-138, together with any relevant ISN and specific security instructions relating to this Contract issued by the Authority to the Contractor; Cyber Page 2 of 8 "Cyber Security Model" and "CSM" mean the process by which the Authority ensures that MOD Identifiable Information is adequately protected from Cyber Incident and includes the CSM Risk Assessment Process, DEFSTAN 05-138 and the CSM Supplier Assurance Questionnaire;

"CSM Risk Assessment Process" means the risk assessment process which forms part of the Cyber Security Model and is used to measure the Cyber Risk Level for this Contract and any Sub-contract; "CSM Supplier Assurance Questionnaire" means the supplier assessment questionnaire which forms part of the Cyber Security Model and is to be used by the Contractor to demonstrate compliance with this Condition;

"Data" means any data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media.

"DEFSTAN 05-138" means the Defence Standard 05-138 as amended or replaced from time to time;

"Electronic Information" means all information generated, processed, transferred or otherwise dealt with under or in connection with the Contract, including but not limited to Data, recorded or preserved on any information system or electronic communications network;

"Good Industry Practice" means in relation to any undertaking and any circumstances, the exercise of skill, diligence, prudence, foresight and judgment and the making of any expenditure that would reasonably be expected from a skilled person in the same type of undertaking under the same or similar circumstances;

"ISN" means Industry Security Notices issued by the Authority to the Contractor whether directly or by issue on the gov.uk website at: <https://www.gov.uk/government/publications/industry-security-notices-isns>;

"JSyCC WARP" means the Joint Security Co-ordination Centre MOD Defence Industry Warning, Advice and Reporting Point or any successor body notified by way of ISN;

"MOD Identifiable Information" means all Electronic Information which is attributed to or could identify an existing or proposed MOD capability, defence activities or personnel and which the MOD requires to be protected against loss, misuse, corruption, alteration and unauthorised disclosure.

"NSA/DSA" means, as appropriate, the National or Designated Security Authority of the Contractor that is responsible for the oversight of the security requirements to be applied by the Contractor and for ensuring compliance with applicable national security regulations;

"Sites" means any premises from which Contractor Deliverables are provided in connection with this Contract or from which the Contractor or any relevant Sub-contractor manages, organises or otherwise directs the provision or the use of the Contractor Deliverables and/or any sites from which the Contractor or any relevant Sub-contractor generates, processes, Cyber Page 3 of 8 stores or transmits MOD Identifiable Information in relation to this Contract;

"Sub-contract" means any sub-contract at any level of the supply chain, whether awarded directly by the Contractor or indirectly by any lower tier Sub-contractor or Associated Company, which is entered into as a consequence of or in connection with this Contract;

"Sub-contractor" means a sub-contractor of the Contractor or any Associated Company whether a direct Sub-contractor or at any lower level of the supply chain who provides any Contractor Deliverables in connection with this Contract;

"Supplier Cyber Protection Service" means the CSM Risk Assessment Process and CSM Supplier Assurance Questionnaire.

2. Authority Obligations 2.1. The Authority shall: 2.1.1. determine the Cyber Risk Level appropriate to this Contract and, where the Contractor has not already been notified of the Cyber Risk level prior

to the date of this Contract, shall provide notification of the relevant Cyber Risk level and the appropriate Cyber Security Instructions to the Contractor as soon as is reasonably practicable; and 2.1.2. notify the Contractor as soon as reasonably practicable where the Authority reassesses the Cyber Risk Level relating to this Contract .

3. Contractor Obligations 3.1. The Contractor shall, and shall procure that its Sub-contractors shall: 3.1.1. comply with DEFSTAN 05-138; 3.1.2. complete the CSM Risk Assessment Process in accordance with the Authority's instructions, ensuring that any change in the Cyber Risk Level is notified to any affected Sub-contractor, and complete a further CSM Risk Assessment or CSM Supplier Assurance Questionnaire where a change is proposed to the Contractor's supply chain which has or may have an impact on the Cyber Risk Level of this Contract or on receipt of any reasonable request by the Authority;

3.1.3. carry out the CSM Supplier Assurance Questionnaire no less than once in each year of this Contract commencing on the first anniversary of completion of the CSM Supplier Assurance Questionnaire;

3.1.4. having regard to the state of technological development, implement and maintain all appropriate technical and organisational security measures to discharge its obligations under this Condition in accordance with Good Industry Practice *provided always that where there is a conflict between the Contractor's obligations under 3.1.1 above and this 3.1.4 the Contractor shall notify the Authority in accordance with the notification provisions in DEFSTAN 05-138 as soon as it becomes aware of the conflict and the Authority shall determine which standard or measure shall take precedence;*

3.1.5. comply with all Cyber Security Instructions notified to it by the Authority as soon as reasonably practicable;

3.1.6. notify the JSyCC WARP in accordance with ISN 2014/02 as amended or updated from time to time and the Contractors NSA/DSA, and in the case of a Sub-contractor also notify the Contractor, immediately in writing as soon as they know or believe that a Cyber Security Incident has or may have taken place providing full details of the circumstances of the incident and any mitigation measures already taken or intended to be taken;

3.1.7. in coordination with its NSA/DSA, investigate any Cyber Security Incidents fully and promptly and co-operate with the Authority and its agents and representatives and its NSA/DSA to take all steps to mitigate the impact of the Cyber Security Incident and minimise the likelihood of any further similar Cyber Security Incidents. For the avoidance of doubt, this shall include complying with any reasonable technical or organisational security measures deemed appropriate by the Contractors NSA/DSA in the circumstances and taking into account the Cyber Risk Level; and

3.1.8. consent to the Authority recording and using information obtained in relation to the Contract for the purposes of the Cyber Security Model whether on the Supplier Cyber Protection Service or elsewhere. For the avoidance of doubt such information shall include the cyber security accreditation of the Contractor and / or Sub-contractor as appropriate; and

3.1.9. include provisions equivalent to 7.1 of this Condition in all Sub-contracts imposing provisions equivalent to this Condition 3 (the "equivalent provisions") and, where a Sub-contractor breaches terms implementing this Condition in a Sub-contract, the Contractor shall, and shall procure that its Sub-contractors shall, in exercising their rights or remedies under the relevant Sub-contract: 3.1.9.1. notify the Authority of any such breach and consult with the Authority regarding any remedial or other measures which are proposed as a consequence of such breach, taking the Authority's views into consideration; and

3.1.9.2. have regard to the equivalent provisions.

PROVIDED ALWAYS THAT where the Contractor has notified the Authority that it or one or more of its Sub-contractors cannot comply with 3.1.1 to 3.1.9 above the Authority and Contractor will seek to agree a Cyber Security Implementation Plan and where the Authority has agreed a Cyber Security Implementation Plan with the Contractor, the Contractor shall, and shall procure that its Sub-contractors shall, comply with such Cyber Security Implementation Plan until implementation is agreed to have been achieved whereupon 3.1.1 to 3.1.9 above shall apply in full. In the event that a Cyber Security Implementation Plan cannot be agreed the Cyber

provisions of DEFCON 530 or any agreed alternative dispute resolution procedure shall apply.

4. Management Of Sub-Contractors 4.1. The Authority agrees that the Contractor shall be entitled to rely upon the self-certification by a Sub-contractor of its compliance with its obligations pursuant to Condition 3.1. In the event that a Sub-contractor is found to be in breach of its obligations in Condition 3.1, and where the Contractor has relied upon the Sub-contractor's self-certification, the Contractor shall not be held to be in breach of this Condition.

4.2. Where the Contractor becomes aware that a Sub-contractor is not complying with its obligations, the Contractor shall notify the Authority and provide full details of the Sub-contractor's non-compliance as soon as reasonably practicable and shall consult with the Authority as to the appropriate course of action which may include but not be limited to the agreement of a remedial plan or termination of the Sub-contract having regard to Condition 3.1.9.

4.3. Having regard to the Authority's views, the Contractor shall take all reasonable measures to address any non-compliance of a Sub-contractor in accordance with the reasonable timescales required by the Authority. Where the Contractor fails to do so, this shall amount to a breach of this Condition and the provisions of 7.2 or 7.3 as appropriate shall apply.

4.4. The Contractor shall, and shall procure that its Sub-contractors shall, include provisions equivalent to this Condition 4 in all Sub-contracts which flow down the obligations set out in Condition 3.1 of this Contract.

5. Records 5.1. The Contractor shall keep and maintain, and shall ensure that any Sub-contractor shall keep and maintain, until 6 years after termination or expiry of this Contract, or as long a period as may be agreed between the Parties, full and accurate records including but not limited to: 5.1.1. details of all MOD Identifiable Information relating to the Contractor Deliverables provided under this Contract; and

5.1.2. copies of all documents required to demonstrate compliance with DEFSTAN 05-138 and this Condition, including but not limited to any information used to inform the CSM Risk Assessment Process and to carry out the CSM Supplier Assurance Questionnaire, together with any certificates issued to the Contractor and/or Sub-contractor.

5.2. The Contractor shall, and shall ensure that any Sub-contractor shall on request provide the Authority, the Authority's representatives and/or the Contractors NSA/DSA such access to those records as may be required in connection with this Contract.

6. Audit 6.1. Except where an audit is imposed on the Authority by a regulatory body or there is a Cyber Security Incident in which case the Contractor agrees, and shall procure that its Sub-contractors agree, that the Authority and its representatives, in coordination with the Contractors NSA/DSA or the

NSA/DSA on behalf of the Authority, may conduct such audits as it considers in its absolute opinion necessary, the Authority, its representatives and/or the Contractors NSA/DSA may, not more than twice in any calendar year and for a period of 6 years following the termination or expiry of this Contract, whichever is the later, conduct an audit for the following purposes: 6.1.1. to review and verify the integrity, confidentiality and security of any MOD Identifiable Information;

6.1.2. to review the Contractor's and/or any Sub-contractor's compliance with its obligations under this Condition; and 6.1.3. to review any records created during the provision of the Contractor Deliverables, including but not limited to any documents, reports and minutes which refer or relate to the Contractor Deliverables for the purposes of 6.1.1 and 6.1.2 above.

6.2. The Authority shall use its reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the Contractor and/or Sub-contractor or delay the provision of the Contractor Deliverables and supplier information received by the Authority in connection with the audit shall be treated as confidential information.

6.3. The Contractor shall, and shall ensure that any Sub-contractor shall on demand provide the Authority and any relevant regulatory body, including the Contractor's NSA/DSA, (and/or their agents or representatives), together "the Auditors", with all reasonable co-operation and assistance in relation to each audit, including but not limited to: 6.3.1. all information requested by the Authority within the permitted scope of the audit;

6.3.2. reasonable access to any Sites controlled by the Contractor or any Associated Company and any Sub-contractor and to any equipment used (whether exclusively or non-exclusively) in the performance of the Contract and, where such Sites and/or equipment are outwith the control of the Contractor, shall secure sufficient rights of access for the Auditors as shall be necessary to allow audits to take place; and

6.3.3. access to any relevant staff.

6.4. The Authority shall endeavour to (but is not obliged to) provide at least 15 calendar days notice of its intention to conduct an audit.

6.5. The Parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this Condition, unless the audit identifies a material breach of the terms of this Condition by the Contractor and/or Sub-contractor in which case the Contractor shall reimburse the Authority for all the Authority's reasonable costs incurred in the course of the audit.

7. Breach of Obligations 7.1. In exercising its rights or remedies under this Condition, the Authority shall: 7.1.1. act in a reasonable and proportionate manner having regard to such matters as the gravity of any breach or potential breach and the Cyber Risk Level of this Contract; and

7.1.2. give all due consideration, where appropriate, to action other than termination of the Contract, including but not limited to a remedial period if this is appropriate in all the circumstances.

7.2. Where the Cyber Risk Level of this Contract is assessed to be a moderate or high, and the Contractor breaches the terms of this Condition, the Authority shall be entitled:

7.2.1 to terminate the Contract (whether in whole or in part) and to claim damages in accordance with DEFCON 514 as though such breach is a material breach; and

7.2.2 where the Contract has not been terminated, to recover from the Contractor any other loss sustained in consequence of any breach of this Condition, subject to any provision which is agreed elsewhere in this Contract.

7.3. Where the Cyber Risk Level of this Contract is assessed to be very low or low, and the Contractor breaches the terms of this Condition, the Authority shall be entitled: 7.3.1. to recover from the Contractor the amount of any loss sustained in consequence of any breach of this Condition, subject to any provision which is agreed elsewhere in this Contract; and

7.3.2. where the Contractor does not comply with any reasonable instructions issued by the Authority or the Contractors NSA/DSA within the time period specified to remedy such breach or prevent further breaches, the Authority shall be entitled to terminate this Contract (whether in whole or in part) and to claim damages in accordance with DEFCON 514 as though such breach is a material breach.

7.4. Where the Contractor commits an act of fraud, negligence or wilful misconduct in respect of its obligations under this Condition the Authority shall be entitled to terminate this Contract (whether in whole or in part) and to claim damages in accordance with DEFCON 514 as though such breach is a material breach.

8. General 8.1. On termination or expiry of this Contract the provisions of this Condition excepting 3.1.2 and 3.1.3 above shall continue in force so long as the Contractor and/or Sub-contractor holds any MOD Identifiable Information relating to this Contract.

8.2. Termination or expiry of this Contract shall not affect any rights, remedies, obligations or liabilities of the Parties under this Condition that have accrued up to the date of termination or expiry, including but not

limited to the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry.

8.3.

8.3.1. The Contractor agrees that the Authority has absolute discretion to determine changes to DEFSTAN 05-138 and/or the Cyber Risk Level. In the event that there is such a change to DEFSTAN 05-138 or the Cyber Risk Level, then either Party may seek an adjustment to the Contract Price for any associated increase or decrease in costs and the Contractor may request an extension of

time for compliance with such revised or amended DEFSTAN 05-138 or Cyber Risk Level *provided always that* the Contractor shall seek to mitigate the impact on time and cost to the extent which it is reasonably practicable to do so and *further provided that* such costs shall not be allowed unless they are considered to be appropriate, attributable to the Contract and reasonable in all the circumstances.

8.3.2. Subject to 8.3.1 above, where the Contractor seeks such adjustment or extension, the Authority will proceed in accordance with DEFCON 620 or any agreed alternative change control procedure to determine the request for adjustment or extension. The Contractor must deliver a Contractor Change Proposal to the Authority within 8 weeks of the occurrence of the change in DEFSTAN 05-138 or Cyber Risk Level or such longer period as may be agreed by the Parties, identifying the impact of that change and accompanied by full details of the request for adjustment. For the avoidance of doubt, the Authority shall not be required to withdraw any Authority Notice of Change which may have been issued insofar as it relates to DEFSTAN 05-138 or the Cyber Risk Level whether or not the Contractor Change Proposal is rejected. In the event that the Contractor does not agree with the Authority's determination, then the provisions of DEFCON 530 or any agreed alternative dispute resolution procedure shall apply.

8.4. The Contractor shall not recover any costs and/or other losses under or in connection with this Condition where such costs and/or other losses are recoverable or have been recovered by the Contractor elsewhere in this Contract or otherwise. For the avoidance of doubt this shall include but not be limited to the cost of implementing any upgrades or changes to any information system or electronic communications network whether in response to a Cyber Security Incident or otherwise, where the Contractor is able to or has recovered such sums in any other provision of this Contract or has recovered such costs and/or losses in other contracts between the Contractor and the Authority or with other bodies.