



**Defence
Infrastructure
Organisation**

**Defence Infrastructure Organisation
(DIO)
&
British Defence Singapore Support Unit
(BDSSU)**

BOOKLET 2

CONDITIONS OF CONTRACT

**LUMP SUM FIRM PRICE CONTRACT FOR THE
SENOKO OFD SECURITY UPGRADE PROJECT
INVITATION TO TENDER (ITT NO): DIOCB1/226**

AT

SENOKO OIL FUEL DEPOT

CONDITIONS OF CONTRACT

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ADMINISTRATION

1. DEFINITIONS/INTERPRETATIONS

1.1 In these conditions “the Contract” means the agreement concluded between the Authority and the Contractor including all specifications, plans, drawings and other documents which are relevant to the Contract and also such of these conditions as are included in the terms and conditions of the Contract.

1.2 The following provisions shall have effect with respect to the interpretation of the Contract except where the context otherwise requires:

1.2.1 the ‘Accepted Risks’ means the risks that are retained by the Authority as follows and to the extent that these are not provided for in the Contract Price or are specifically excluded from the Contractor’s policies of insurance:

- i. Pressure waves caused by the speed of aircraft or other aerial devices;
- ii. Ionising radiations or contamination by radioactivity from any nuclear fuel or from nuclear waste from the combustion of nuclear fuel;
- iii. The radioactive, toxic, explosive or other hazardous properties of any explosive nuclear assembly (including any nuclear component); and
- iv. War, invasion, act of foreign enemy, hostilities (whether or not war has been declared), civil war, rebellion, insurrection, or military or usurped power;

1.2.2 ‘The Authority’ means the UK Secretary of State for Defence;

1.2.3 ‘The Authority’s Requirements’ means the statements, drawings, and other documents included in the Contract which define the Authority’s requirements;

1.2.4 ‘CDM Regulations’ means the Construction (Design and Management) Regulations 2015;

1.2.5 ‘Change Order’ means any Instruction which makes any alteration or addition to, or omission from the works, or any change in the Design Brief or the Design as approved in accordance with Condition 62 (Change Control Procedures).

1.2.6 ‘Company’ means and includes any body corporate;

1.2.7 ‘Construction Documents’ means any Design Document which the PM has confirmed as satisfactory in accordance with Condition 47 (Design);

1.2.8 ‘The Contract’ means the Conditions of Contract, Design Brief, the Tender, the Authority’s written acceptance and any other documents/advice/instruction issued by the Authority and accepted by the Contractor.

1.2.9 ‘The Contract Agreement’ means the formal agreement executed by the Authority and the Contractor recording the terms of the Contract;

1.2.10 ‘The Contract Price’ means the FIRM PRICE (that is a lump sum price for the whole of the Contract exclusive of VAT) accepted by the Authority when awarding the Contract;

- 1.2.11 'The Contractor' means the person or persons whose tender is accepted by the Authority;
- 1.2.12 'The Contractor's Proposals' means the statements, drawings, and other documents included in the Contract which define how the Contractor is to implement the Authority's Requirements;
- 1.2.13 'The Date or Dates for Completion' means the agreed completion date or dates;
- 1.2.14 'Days' means calendar days;
- 1.2.15 'The Design' means the design proposals contained in the Contractor's Tender as accepted by the Authority together with the Construction Documents;
- 1.2.16 'The Design Brief' means the technical document issued in the Invitation to Tender;
- 1.2.17 'Design Document' means any plan, sketch, drawing, calculation, specification or any other document whatsoever prepared in the performance of the Contract;
- 1.2.18 'The Final Account' means the document agreed by the Authority showing the calculation of the Final Sum in accordance with Condition 80 (Final Account);
- 1.2.19 'The Final Sum' means the amount payable under the Contract by the Authority to the Contractor for the full and entire execution and satisfactory completion of the Design and Works;
- 1.2.20 'Group' means, and includes, a company and every holding company of that company for the time being, and every subsidiary for the time being of every such holding company;
- 1.2.21 'The Health and Safety Plan' means, where the CDM Regulations apply, the plan provided to the Principal Contractor and developed by him to comply with Regulation 15 of the CDM Regulations and, for the purpose of Regulation 10 of the CDM Regulations, received by the Authority before any construction work under the Contract has started; and any further development of that plan by the Principal Contractor during the progress of the Works;
- 1.2.22 'Holding company' shall have the meaning given in Section 736 of the Companies Act 1985, as substituted by Section 144 of the Companies Act 1989;
- 1.2.23 'Instruction' means any instruction given in accordance with Condition 63 (PMs Instructions);
- 1.2.24 'The Maintenance Period' means the period, as specified in Condition 88 (Defects in Maintenance period);
- 1.2.25 'Milestone' means the satisfactory completion of each of the phases of the Works described in the Milestone Payment Schedule;
- 1.2.26 'The Milestone Payment Schedule' means the Milestones, the Milestone completion dates and the value of each Milestone to be paid to the Contractor by the Authority during the performance of the Works.
- 1.2.27 'Principal Designer' means the Commanding Officer/PM, or his appointed representative, or any other such person as may be appointed in that capacity for the time being by the Authority pursuant to Regulation 6(5) of the CDM Regulations.

1.2.28 'Pricing Document' means that document submitted as part of the Tender as accepted by the Authority;

1.2.29 'Principal Contractor' means the Contractor, or such other contractor or organisation as may be appointed as the Principal Contractor for the time being by the Authority pursuant to Regulation 6(5) of the CDM Regulations.

1.2.30 'Products' means materials (including naturally occurring materials) and goods (including components, equipment and accessories) intended for permanent incorporation in the works;

1.2.31 The 'PM' means the Project Manager, or his locally appointed representative, who is the person employed in that capacity named in the Contract and appointed by the Authority to act on his behalf in carrying out those duties described in the Contract (subject to the exclusions set out therein), or such other person as may be appointed in that capacity for the time being, and advised, by the Authority;

1.2.32 The 'Programme' means the programme referred to in Condition 59 (Programme);

1.2.33 The 'Site' means the land or place detailed in the Contract, together with such other land or places as may be allotted or agreed by the parties from time to time, for the purpose of carrying out the Contract;

1.2.34 'Subsidiary' shall have the meaning given in Section 736 of the Companies Act 1985, as substituted by Section 144 of the Companies Act 1989;

1.2.35 'Tender' means the tender submission of the Contractor including his Design and Pricing Document (including Milestone Payment Schedule if appropriate), and any amendments thereto, agreed prior to the Authority's acceptance;

1.2.36 'Things' comprise 'Things for incorporation', which means goods and materials intended to form part of the completed Works, and 'Things not for incorporation' which means goods and materials provided or used to facilitate execution of the Works but not for incorporation in them;

1.2.37 The 'Works' means the works described or shown in the Design including all modified or additional works to be executed under the Contract;

1.2.38 The 'Works Contracts Officer' (WCO) is the commercially delegated officer exercising the contract authority on behalf of the Authority. He acts as the focal point for the contract ensuring that the contractor performs and delivers the requirements of the contract specification and conditions.

1.3 The headings to these Conditions shall not affect their interpretation. Any reference to legislation shall be deemed to include a reference to any amendment or re-enactment thereof for the time being in force. Words in the singular include the plural, and *vice versa*. Words in the masculine include feminine and neuter.

1.4 Any notices or order to be given under the Contract shall be in writing. They may be given to the Contractor by delivery to his agent or may be posted to the registered office or last known place of business of the Contractor. A postal notice shall be deemed to have been served on the date when in the ordinary course of post it would have been delivered.

1.5 The Contractor shall give the Authority at least 14 days notice to consider any action required, or to make any decisions.

1.6 Except in relation to Condition 68 (Extensions of Time), any period of time in these Conditions within which the Authority, the Contractor, or PM, is to take action or decide anything may be extended by agreement, notwithstanding that the period of time has expired.

1.7 For the purposes of this Contract, and for all other purposes, periods of time shall include Saturdays and Sundays, but shall be reckoned as follows;

1.7.1 Where an act is required to be done within a specified period after or from a specified date, the period begins immediately after that date.

2. Contract Documents

2.1 In case of discrepancy between these Conditions and other documents forming part of the Contract these Conditions shall prevail.

2.2 In the case of discrepancy between the Design Brief and the Contractor's Proposal, the Design Brief shall prevail.

2.3 The Authority has, subject to the Provisions of the Contract, accepted the Contractor's Proposal and Pricing Document but does not by its acceptance warrant to the Contractor that the Contractor's Proposal is necessarily in accordance in all respects with the Design Brief. The Contractor shall ensure that any Specification, Model, Drawing, Sketch or Plan is in accordance with the Design Brief.

2.4 The Contractor shall provide free to the PM a maximum of up to 6 copies of the Construction Documents when requested. The issue of the Construction Documents by the Contractor shall be made promptly, timely during the progress in accordance with the Programme. The Contractor shall keep one copy of all Construction Documents on the Site and the PM or his representative shall have access to them at all reasonable times.

3. Licences

3.1 The Contractor shall have the necessary licence(s) appropriate for the performance of this contract.

4. Spare

5. Spare

AUTHORITY POLICY

6. Patents

6.1 The Contractor shall pay any royalty, licence fee or other expense for the supply or use of any patent, process, drawing, model, plan, invention or information used or necessary for, or in connection with, the design or construction of the Works.

6.2 Where the use or supply of any patent etc in accordance with sub-paragraph 6.1 above gives rise to any claim or proceedings against the Authority, the Contractor shall reimburse the Authority any costs and expenses incurred by the Authority in respect of that claim or proceedings.

6.3 The Authority shall reimburse the Contractor the amount of royalty etc incurred in accordance with paragraph 6.1 which;

6.3.1 was necessarily incurred in order to comply with a Change Order, and

6.3.2 was not reasonably contemplated under the Contract.

7. Discrimination

7.1 The Contractor shall not unlawfully discriminate within the meaning and scope of the provisions and meaning of the **Equality Act 2010** or any statutory modification or re-enactment of it.

7.2 The Contractor shall take all reasonable steps to ensure the observance of the provisions of Paragraph 7.1 by all his servants, agents, sub-contractors and employees.

8. Corruption

8.1 The Contractor shall not by himself or in conjunction with any other person;

8.1.1 Corruptly solicit, receive or agree to receive, for himself or for any other person;
or

8.1.2 Offer or agree to give to any person in the Authority's service, or any consultant or contractor who has a contract with the Authority;

any gift or consideration of any kind as an inducement or reward for doing or not doing anything, or for showing favour or disfavour to any person, in relation to this Contract or any other contract to which the Authority is a party.

8.2 The Contractor shall not enter into this or any other contract with the Authority in connection with which commission has been paid or agreed to be paid by him or on his behalf or to his knowledge unless, before any such Contract is made, particulars of any such commission, and of the terms and conditions of any agreement for the payment thereof, have been disclosed in writing to the Authority.

8.3 The Authority may by notice determine the Contract if:

8.3.1 He is reasonably satisfied that the Contractor or anyone employed by him or acting on his behalf (whether with or without the knowledge of the Contractor) is in breach of this Condition; or

8.3.2 The Contractor is convicted of any offence under the Prevention of Corruption Acts 1889 to 1916 or the Bribery Act 2010.

and, (without prejudice to any powers conferred by Condition 83 (Recovery of Sums from the Contractor), shall be entitled to recover from the Contractor the amount or value of any such gift or consideration.

8.4 Any decision by the Authority that the Contractor is in breach of this Condition shall be final and conclusive for the purposes of Condition 91 (Determination).

8.5 The Contractor shall confirm, by completing the Supplier Statement Relating to Good Standing (Booklet 1 Annex F), that its directors or any other person who has powers of representation, decision or control of the Contractor has not been convicted of any of the offences listed at Booklet 1 Annex F.

9. Vesting

9.1 The Works and any Things on the Site in connection with the Contract, the ownership of which the Contractor is able to transfer, or which vest in him under any contract, shall become the property of and vest in the Authority.

9.2 Subject to Conditions 13 (Loss or Damage) and 12 (Other Works), the Authority shall not be responsible or chargeable for any Thing lost, stolen, damaged, destroyed or removed from the Site, or which is in any way unfit or unsuitable for its purpose.

9.3 The Contractor shall be responsible for the protection and preservation of the Works and any Things brought on the Site until the completion of the Works or the determination of the Contract.

9.4 No Things shall be removed from the Site before completion of the Works without the written consent of the PM. The PM may instruct or permit the Contractor in writing at any time to remove from the Site any Things which are unused or which have been rejected by the PM, and the Contractor shall at his own expense forthwith remove them. Once so removed from the Site, the Things shall re-vest in the Contractor.

10. Assignment

10.1 The Contractor shall not, without the consent in writing of the Authority, assign or transfer the Contract, or any part, share or interest under it. No sum of money to become payable under the Contract shall be payable to any person other than the Contractor without the Authority's written consent. The Authority may assign or transfer the benefit of the Contract, or any part, share or interest under it.

11. Subletting

11.1 Except where the Authority accepted a sub-letting proposal prior to the award of Contract or the Contract specifies the sub-letting of work, the Contractor shall not sub-let any part of the Contract without the prior consent of the Authority. The Contractor shall provide such details of any sub-contractor he wishes to engage as the Authority may require.

11.2 The Contractor shall ensure that each sub-contract entered into will enable him to fulfil his obligations under the Contract. To the appropriate extent the Contractor shall require the sub-contractor to assume towards the Contractor the obligations and responsibilities which the Contractor owes to the Authority under the Contract and give the sub-contractor rights remedies and redress against the Contractor equivalent to those given to the Contractor against the Authority under the Contract.

11.3 Without prejudice to the obligations of the Contractor under any of the provisions of the Contract, the Contractor shall, whenever requested to do so by the Authority, take any necessary action to ensure that a person who has entered into a sub-contract complies with and performs all obligations imposed upon him.

11.4 Where for any reason a sub-contract is determined or assigned because of the default or failure of the sub-contractor, the Contractor shall, at his own expense secure completion of the subcontract works.

11.5 The Contractor shall be responsible for any sub-contractor or supplier employed by him in connection with the Works.

11.6 The Contractor shall make good any loss suffered or expense incurred by the Authority by reason of any default or failure, whether total or partial, on the part of any sub-contractor or supplier.

12. Other Works

12.1 The Authority shall have power at any time to execute other works (whether or not in connection with the Works) on the Site at the same time as the Works are being executed. The Contractor shall give reasonable facilities for these works.

12.2 The Contractor shall not be responsible for damage done to other works except for damage caused by the negligence, omission or default of his workpeople, agents or subcontractors. Any damage done to the Works in the execution of other works shall, for the purposes of Condition 13 (Loss or Damage), be deemed to be damage which is wholly caused by the neglect or default of the Authority or of any other contractor or agent of the Authority.

13. Loss or Damage

13.1 This Condition applies to any loss or damage that arises out of, or is in any way connected with, the execution or purported execution of the Contract.

13.2 The Contractor shall without delay and at his own cost reinstate, replace or make good to the satisfaction of the Authority, or if the Authority agrees, compensate the Authority for any loss or damage.

13.3 Where a claim is made, or proceedings are brought against the Authority in respect of any loss or damage, the Contractor shall reimburse the Authority any costs or expenses which the Authority may reasonably incur in dealing with, or in settling, that claim or proceedings.

13.4 The Authority shall notify the Contractor as soon as possible of any claim made, or proceedings brought, against the Authority by a third party in respect of any loss or damage.

13.5 The Authority shall reimburse the Contractor for any costs or expenses, which the Contractor incurs in accordance with sub-paragraphs 13.2 and 13.3 above to the extent that the loss or damage is caused by:

13.5.1 The neglect or default of the Authority or of any contractor or agent of the Authority;

13.5.2 Any accepted risk; or

13.5.3 Any other circumstances which are outside the control of the Contractor or any of his subcontractors or suppliers and which could not have been reasonably contemplated under the Contract, provided that this sub-paragraph shall not apply where the loss or damage is loss or damage falling within 13.6.3 below.

13.6 In this Condition loss or damage includes:

13.6.1 Loss or damage to property;

13.6.2 Personal injury to or the sickness or death of any person;

13.6.3 Loss or damage to the Works or to any Things on the Site; and

13.6.4 Loss of profits or loss of use suffered because of any loss or damage.

14. Rights of Third Parties

14.1 Notwithstanding anything to the contrary elsewhere in the Contract, no right is granted to any person who is not a party to the Contract to enforce any term of the Contract in his own right and the parties to the Contract declare that they have no intention to grant any such right.

15. NOT USED

16. Disclosure of Information

16.1 'Information' means any information in any written or other tangible form disclosed to one party by or on behalf of the other party under or in connection with the Contract.

16.2 Subject to paragraph 16.5 and 16.6 each party:

16.2.1 shall treat in confidence all Information it receives from the other;

16.2.2 shall not disclose any of that Information to any third party without the prior written consent of the other party, which consent shall not unreasonably be withheld, except that the Works Contractor may disclose Information in confidence, without prior consent, to such persons and to such extent as may be necessary for the performance of the Contract;

16.2.3 shall not use any of that Information otherwise than for the purpose of the Contract; and

16.2.4 shall not copy any of that Information except to the extent necessary for the purpose of exercising its rights of use and disclosure under the Contract.

16.3 The Works Contractor shall take all reasonable precautions necessary to ensure that all Information disclosed to the Works Contractor by or on behalf of the Authority under or in connection with the Contract:

16.3.1 is disclosed to its employees and supply chain members, only to the extent necessary for the performance of the Contract; and

16.3.2 is treated in confidence by them and not disclosed except with prior written consent or used otherwise than for the purpose of performing work or having work performed for the Authority under the Contract or any subcontract under it.

16.4 The Works Contractor shall ensure that his employees are aware of his arrangements for discharging the obligations at paragraph 16.2 and 16.3 before they receive Information and take such steps as may be reasonably practical to enforce such arrangements.

16.5 Paragraph 16.2 and 16.3 shall not apply to any Information to the extent that either party:

16.5.1 exercises rights of use or disclosure granted otherwise than in consequence of, or under, the Contract;

16.5.2 has the right to use or disclose the Information in accordance with other conditions of the Contract; or

16.5.3 can show:

16.5.3.1 that the Information was or has become published or publicly available for use otherwise than in breach of any provision of the Contract or any other agreement between the parties;

16.5.3.2 that the Information was already known to it (without restrictions on disclosure or use) prior to it receiving it under or in connection with the Contract;

16.5.3.3 that the Information was received without restriction on further disclosure from a third party who lawfully acquired it and who is himself under no obligation restricting its disclosure; or

16.5.3.4 from its records that the same information was derived independently of that received under or in connection with the Contract; provided the relationship to any other Information is not revealed.

16.6 Neither party shall be in breach of this Condition where it can show that any disclosure of Information was made solely and to the extent necessary to comply with a statutory, judicial or parliamentary obligation. Where such a disclosure is made, the party making the disclosure shall ensure that the recipient of the Information is made aware of and asked to respect its confidentiality. Such disclosure shall in no way diminish the obligations of the parties under this Condition.

16.7 Nothing in this Condition shall affect the parties' obligations of confidentiality where information is disclosed orally in confidence.

16.8 The Authority shall not be in breach of this condition where it can show that any disclosure of Information was made solely and to the extent necessary to comply with its obligations under the Freedom of Information Act 2000 and the Environmental Information Regulations 2004.

17. Authorisation by the Crown for use of third-party intellectual property rights

17.1 Notwithstanding any other provisions of the Contract and for the avoidance of doubt, award of the Contract by the Authority and placement of any contract task under it does not constitute an authorisation by the Crown under Sections 55 and 56 of the Patents Act 1977 or Section 12 of the Registered Designs Act 1949. The Contractor acknowledges that any such authorisation by the Authority under its statutory powers must be expressly provided in writing, with reference to the acts authorised and the specific intellectual property involved.

CONTRACT PERSONNEL

18. Delegations and Representatives

18.1 Any decision to be made by the Authority under the Contract may be made by any person or persons authorised to act for him for that purpose. The PM shall be deemed authorised to act generally for the Authority subject to any exclusions set out in the Contract.

18.2 The PM may expressly delegate in writing to named representatives any of his powers and duties. Where a Clerk of Works or Resident Engineer is appointed he shall exercise the powers of the PM under Condition 71 (Quality) in respect of the Works and such other powers as the PM may delegate to him.

18.3 The appointment of representatives by the Authority, or PM, shall not prevent them from subsequently exercising directly any of the powers and duties conferred under the Contract.

18.4 The Contractor shall as soon as possible be notified of all powers and duties delegated, and the names of representatives, and of any subsequent changes.

19. Contractor's Agent

19.1 The Contractor shall employ a competent agent or agents to supervise the Design work and execution of the Works. The Works agent shall be in attendance at the Site during all working

hours and shall when required to do so attend at the office of the PM. Any Instructions given to the agent so appointed shall be deemed to have been given to the Contractor.

20. Contractor's Employees

20.1 The Contractor shall be responsible for the recruitment, management and payment of suitably qualified and experienced workforce in accordance with the Contract agreement, to fulfil the requirements of the Contract. The Contractor shall ensure that at all times there are sufficient personnel with appropriate competence, qualification and experience engaged in the execution of the Contract.

20.2 The Authority may at any time require the Contractor immediately to cease to employ in connection with the Contract any person, including the Contractor's agent, whose continued employment is in the opinion of the Authority undesirable. The Contractor shall replace any such person with a suitably qualified person without detriment to performance and at no additional cost to the Authority.

20.3 Other than for causes outside his control, the Contractor shall not make changes in personnel named in his tender in connection with the Contract without the prior approval of the PM.

21. Personal Data

21.1 In connection with the Personal Data received under the contract, each party undertakes to comply with its obligations under Data Protection Legislation and in particular, but without limitation, each Party shall take appropriate technical and organisational measures against unauthorised or unlawful Processing of Personal Data provided to it by the other Party, and against accidental loss, alteration, unauthorised disclosure of or damage to that Personal Data in accordance with DEFCON 532A. Full details of the compliance required to DEFCON 532A is at Annex B.

22. Fair Dealing and Team Working

22.1 The Authority and the Contractor shall deal fairly, in good faith and in mutual co- operation, with one another, and the Contractor shall deal fairly, in good faith and in mutual co-operation, with all his subcontractors and suppliers.

22.2 Both parties accept that a co-operative and open relationship is needed for success, and that teamwork will achieve this. The project team for this purpose shall include, but shall not be limited to, the PM and his representatives; the Contractor's agent; and major subcontractors and suppliers engaged on the Works from time to time.

22.3 As soon as possible, the PM shall call a project team meeting and agree a programme of regular meetings with the Contractor in accordance with Condition 61 (Progress Meetings). Either the PM or the Contractor may also call additional meetings of the team, and if the other agrees may invite any other person needed for an effective meeting. The PM and the Contractor shall use the meetings jointly to develop proposals for reducing costs by solutions that will, so far as possible, be to the benefit of all affected by potential or actual problems. The meetings shall also consider the issues of advance warning of anything that might raise costs or harm final quality of the Works.

23. Freedom of Information and Transparency

23.1 Notwithstanding any other term of this Contract, including Condition 16 of Booklet 2 where applicable, the Contractor gives its consent to the Authority to publish the content of this Contract in its entirety, including from time to time agreed changes to the Contract, and details of any payments made by the Authority to the Contractor under the Contract ("the Transparency

Information”) to the general public. The Contractor shall assist and cooperate with the Authority to enable the Authority to publish the Transparency Information.

23.2 Before publishing the Transparency Information to the general public in accordance with clause 23.1 above, the Authority may redact any information that would be exempt from disclosure if it was the subject of a request for information under the Freedom of Information Act 2000 (“the Act”) or the Environmental Information Regulations 2004 (“the Regulations”).

23.3 The Authority may consult with the Contractor before redacting any information from the Transparency Information in accordance with clause 23.2 above. The Contractor acknowledges and accepts that its representations on redactions during consultation may not be determinative and that the decision whether to redact information is a matter in which the Authority shall exercise its own discretion, subject always to the provisions of the Act or the Regulations.

24. Spare

HEALTH, SAFETY & ENVIRONMENT

25. Health, Safety and the Environment

25.1 The Contractor shall carry out the work in accordance with the Authority’s Health and Safety Requirements and in compliance with any Environmental Law and any legislation repealing or replacing or re-enacting the said requirements and legislation herein referred to.

25.2 The Contractor shall throughout the performance of the Contract have full and proper regard to the health and safety of all persons entitled to enter the Establishment and shall keep the Establishment in such a manner so as to keep to a minimum any danger and/or hazard to such persons including any health and safety and or environmental risks to such persons.

25.3 In the event of a breach of this Condition the Contractor shall fully indemnify the Authority against all claims, losses, demands, costs, expenses and damages.

25.4 The Contractor may be required to attend safety training at the site, which may be arranged from time to time by the Authority. The Contractors attendance will be at no additional cost to the Authority.

25.5 In the event that the Authority is not satisfied that the Contractor is complying with this Condition, the Authority may serve a notice of dissatisfaction specifying the steps that the Contractor should take to comply with this Condition. In the event that the Contractor fails to comply with the Notice of Dissatisfaction within 5 working days from receipt thereof, the Authority shall be entitled to terminate the Contract in accordance with the provisions of Condition 91 (Determination).

25.6 The Contractor shall report any injury, illness, disease or dangerous occurrence 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 Authority. This shall be in addition to any report, which the Contractor may be required to submit under RIDDOR to the relevant authority.

25.7 Where the Contractor enters an Establishment for the purpose of performing work under the Contract he shall notify the Authority of;

25.7.1 Any Health and Safety hazards associated with the work to be performed by him or any of his Employees, Sub-contractors and all other Persons under his control ;

25.7.2 Any foreseeable risks to the health and safety of all persons associated with such hazards; and

25.7.3 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.

25.8 The Authority shall notify the Contractor of;

25.8.1 Any Health and Safety hazards which may be encountered by the Contractor or any of his Employees, Sub-contractors and all other Persons under his control, on the Establishment;

25.8.2 Any foreseeable risks to the health and safety of the Contractor or any of his Employees, Sub-contractors and all other Persons under his control, associated with such hazards; and

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

25.9 The Contractor shall notify his Employees, Sub-contractors and all other Persons under his control of the following and, where appropriate, provide adequate related instruction;

25.9.1 The hazards, risks and precautions notified by the Contractor to the Authority under Condition 25.7;

25.9.2 The hazards, risks and precautions notified to the Contractor by the Authority under Condition 25.8;

25.9.3 The precautions which, in his opinion, ought to be taken by his Employees, Sub-contractors and all other Persons under his control in order to control those risks.

25.10 The Contractor shall provide the Authority with;

25.10.1 Copies of those sections of his own, and where appropriate, his Employees, Sub-contractors and all other Persons in his control, Safety Policies which are relevant to the risks identified at Conditions 25.7 and 25.8.

25.10.2 Copies of any related risk assessments;

25.10.3 Copies of any notifications and instructions issued by him to his Employees, Sub-contractors and any other Persons under his control under Condition 25.9.

25.11 Any such notification or advice given by the Authority in accordance with this condition shall not in any way affect the Contractor's liability in respect of health and safety under the Contract and the Contractor, whilst complying with the matters notified by the Authority shall rely upon his own assessment and understanding of such risks. Any such matters so notified by the Authority shall not constitute an accepted risk.

26. Statutory Notices and Construction (Design and Management) (CDM) Regulations

26.1 The Contractor shall give all notices required by any Act of Parliament or by any regulations or byelaws made under any Act which may be required in connection with the Works. He shall pay any fees or charges required to be paid under any Act, regulations or byelaws in respect of the Works and supply all drawings and plans required in connection with any notice.

26.2 The Contractor shall bear full responsibility for compliance, and shall comply in all respects, with the Construction (Design and Management) Regulations 2015.

26.3 The Contractor shall perform all the functions and duties of the Principal Contractor.

26.4 For the avoidance of doubt, the Contractor shall have no right to claim for any additional time, loss, expense or other financial consequence arising from or in connection with any delay or disruption to the progress of the Works occasioned by activities necessary to comply with the Regulations.

27. Nuisance and Pollution

27.1 The Contractor shall take all reasonable precautions to prevent any nuisance or inconvenience to the owners, tenants or occupiers of any other property and to the general public, and shall secure the efficient protection of all streams and waterways against pollution.

28. Ozone-depleting Substances

28.1 The Contractor shall not, without the prior written consent of the Authority, specify in the Works Contractor's Design or use in the carrying out of the Works any products or other ozone-depleting substances referred to in the Montreal Protocol on substances that deplete the ozone layer, as amended and updated from time to time.

29. NOT USED

SECURITY

30. Site Admittance

30.1 The Contractor shall take all steps reasonably required by the Authority to prevent unauthorised persons being admitted to the Site. If the PM gives the Contractor notice that any person is not to be admitted to the Site, the Contractor shall take immediate action to prevent that person being admitted.

30.2 The Contractor shall give to the PM a list of names and addresses of all persons who are or may be at any time concerned with the Works or any part of them, specifying the capacities in which they are so concerned, and giving such other particulars as the PM may reasonably require.

30.3 The decision of the PM as to whether any person is to be admitted to the Site and as to whether the Contractor has furnished the information or taken the steps required of him by this condition shall be final and conclusive.

30.4 The Contractor shall bear the cost of any notice, Instruction or decision of the PM under this Condition.

31. Passes

31.1 The Contractor shall arrange for all employees, sub-contractors and suppliers that require admittance to site to be in possession of a valid security pass to the relevant Establishment. The Contractor is to allow sufficient time in his programme daily for non-pass holders to gain access. The Contractor shall submit to the Authority for his approval a list of the names of the workpeople and any other information the Authority reasonably requires in this respect. Any temporary passes issued specifically for the duration of the Works shall be returned at any time on the demand of the Authority and in any case on the completion of the Works.

32. Photographs

32.1 The Contractor shall not at any time take any photograph of the Site or the Works or any part of them, and shall take all reasonable steps to ensure that no such photographs shall at any time be taken or published or otherwise circulated by any of his employees, agents or subcontractors, unless the Contractor has obtained the prior written consent of the PM.

33. Official Secrets and Confidentiality

33.1 The Contractor shall take all reasonable steps to ensure that all persons employed by him or his subcontractors in connection with the Contract are aware of the Official Secrets Act 1989, and that this Act will apply to them during the execution of the Works and after the completion of the Works or earlier determination of the Contract.

33.2 Any information concerning the Contract obtained either by the Contractor or by any person employed by him in connection with the Contract is confidential and shall not be used or disclosed by the Contractor or by any such person except for the purposes of the Contract

34. Contractors Personnel – Security

34.1 All contractors' personnel may need to be security cleared to an appropriate level. The Authority will retain the right to veto any individual's employment for reasons of security and has the right to require any member of the contractors' staff to be removed from the site or theatre.

35. Cyber Security

35.1 The Authority will determine and review the level of Cyber Risk applicable to this Contract at regular intervals throughout the life of the Contract. CYBER DEFCON 658 Edition 10/17 can be found at Annex C, Booklet 2.

36. Spare

INSURANCE

37. Insurance

37.1 The Contractor shall, by such existing or new policies as he sees fit, effect and/or maintain for the duration of the Contract and the longest maintenance period:

37.1.1 Employers' liability insurance in respect of persons in his employment;

37.1.2 Insurance against loss or damage to the Works and Things for which the Contractor is responsible under the terms of the Contract; and

37.1.3 Insurance against personal injury to any persons and loss and/or damage to property arising from or in connection with the Works which is not covered by sub-paragraphs 37.1.1 and 37.1.2 above;

37.1.4 Professional indemnity insurance;

equivalent to that included in Details of Insurance as agreed and accepted, prior to the award of Contract, by the Authority.

37.2 The Contractor shall effect and maintain for the duration of the Contract, and the longest maintenance period, any Additional Insurance required by the Authority. The cost of effecting and

maintaining such Additional Insurance will, as considered appropriate and agreed by the Authority, be incorporated into the Contract Price prior to acceptance of the Contractor's offer.

37.3 The Authority shall have the right to receive, on request, a copy of insurance(s) held or proposed by the Contractor. The Contractor shall within 14 Days from the date of award of the Contract, and also within 14 Days of any subsequent renewal or expiry date of relevant insurance(s), where the expiry date is prior to the Contract completion date, send to the Authority a certificate from his insurer or his broker attesting that appropriate insurance policies have been effected.

37.4 If, without the approval of the Authority, the Contractor fails to effect and maintain insurance as described in the Details of Insurance and/or the Additional Insurance, or obtains a different policy of insurance, the Authority may effect appropriate insurance cover and deduct the cost of doing so from any payment due to the Contractor under the Contract. Where the Contractor affects the required insurance by annually renewable policy, or policies, then, if the Works are not complete at renewal date or dates, the Contractor shall give notice to the Authority that the policy or policies have been renewed. Should the policy or policies no longer exist or are known to the Contractor to be ineffective the Contractor shall produce evidence to the Authority that fully equivalent and appropriate cover has been arranged.

37.5 For the avoidance of doubt, it is agreed that nothing in this Condition shall relieve the Contractor from any of his obligations and liabilities under the Contract.

38. Professional Indemnity Insurance for Design

38.1 The Contractor shall maintain professional indemnity insurance covering all liability hereunder in respect of defects or insufficiency in design, upon customary and usual terms and conditions prevailing for the time being in the insurance market, and with reputable insurers lawfully carrying on such insurance business (in an amount not less than that required by the Contract) for any one occurrence or series of occurrences arising out of any one event, for a period beginning now and ending 12 years (or such other period as is required by the Contract) after certification under Condition 70 (Certifying Completion) of the completion of the Works or the last Section thereof in respect of which completion is certified, or the determination of the Contract for any reason whatsoever, including (without limitation) breach by the Authority, whichever is the earlier, provided always that such insurance is available at commercially reasonable rates. The said terms and conditions shall not include any term or condition to the effect that the Contractor must discharge any liability before being entitled to recover from the insurers, or any other term or condition which might adversely affect the rights of any person to recover from the insurers pursuant to the Third Parties (Rights Against Insurers) Act 1930 or the Third Parties (Rights Against Insurers) Act (Northern Ireland) 1930. The Contractor shall not, without the prior approval in writing of the Authority, settle or compromise with the insurers any claim which the Contractor may have against the insurers and which relates to a claim by the Authority against the Contractor, or by any act or omission lose or prejudice the Contractor's right to make or proceed with such a claim against the insurers.

38.2 Any increased or additional premium required by insurers by reason of the Contractor's own claims record, or other acts, omissions, matters or Things particular to the Contractor shall be deemed to be the Contractor's responsibility.

38.3 The Contractor shall be fully responsible for maintaining the agreed level of insurance cover. However the Authority will seek to effect appropriate insurance cover to the agreed levels where the Contractor fails to do so and will recover any additional costs so incurred from the Contractor. Where the Authority instructs the Contractor to effect any insurance cover in excess of the agreed levels then it will reimburse the Contractor the net costs of such insurance subject to this being agreed by the Authority in advance of such cover being affected.

38.4 As and when reasonably required to do so by the Authority, the Contractor shall produce for inspection documentary evidence (including, if required by the Authority, the originals of the relevant insurance document) that the agreed level of his professional indemnity insurance is being maintained.

38.5 The above obligations in respect of professional indemnity insurance shall continue notwithstanding determination of the Contract for any reason whatsoever, including (without limitation) breach by the Authority.

39. NOT USED

40. Spare

41. Spare

THE SITE

42. Occupier's Rules and Regulations

42.1 The occupier's rules and regulations will be advised and clarified by the PM at Contract award.

42.2 The Contractor shall comply with the occupier's rules and regulations which have been provided to him or made available to him for inspection, both in respect of the Site and in respect of any larger premises of which the Site forms part. The Contractor shall comply with any changes to those rules and regulations notified to him as an Instruction under Condition 62 (Change Control Procedures) during the execution of the Works.

43. Occupation of Government Premises

43.1 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 and shall be used by the Contractor solely for the purposes of performing this Contract. The Contractor shall have the use of such land or premises as Licensee and shall vacate the same upon termination or completion of the Contract or when requested by the WCO.

44. Use of the Site

44.1 The Contractor shall not use the areas agreed for performance of the Contract for any other purpose other than to the extent necessary and agreed by the Authority for the performance of the Contract. In this respect he shall comply with any instructions issued by the PM. The Contractor shall not cause any obstruction to normal pedestrian or vehicular movements around the Base. No storage of materials or parking of vehicles or temporary accommodation or any other use of areas beyond this area shall be permitted.

44.2 Contractors Site and Living Accommodation and all life support (where appropriate). The Contractor shall be responsible for providing sufficient site office and living accommodation and facilities for all personnel necessary for performance of the contract. The Authority will not be responsible for providing any other facilities other than those detailed in the Contract

44.3 The Contractor shall, at all times, keep the Site tidy and free from debris, litter and rubbish and shall, not later than the Works Completion Date, remove from the Site all Things for incorporation which are unused, together with all things not for incorporation. The Contractor shall, by the Works Completion Date, clear and remove all rubbish and deliver up the Site, in all respects, in accordance with the Contract. The Contractor shall comply at his own cost with any PM direction relating to the removal of any Things and Rubbish.

45. Spare

46. Spare

THE WORKS

47. Design

47.1 The Contractor shall undertake and be responsible for the Design, which shall comply with the requirements of the Design Brief. The Works shall be executed in accordance with the Design and shall be reasonably fit for the purpose described in the Design Brief (the design requirement as defined within the Outline Design and Specification and the General Specification).

47.2 The Contractor shall provide the PM with up to a maximum of 6 copies of all Design Documents on request. The PM shall notify the Contractor in writing within 72 hours of receiving any Design Document whether or not he considers the document to be satisfactory as a Construction Document. The Contractor shall not commence any work to which such Design Document relates unless the Contractor has been notified by the PM in writing that it is considered satisfactory, and the Contractor shall not alter that design without the further written approval of the PM.

47.3 If the PM considers that a Design Document is not satisfactory as a Construction Document he shall reject the document concerned and the Contractor shall at his own cost amend it and submit an amended version(s) to the PM satisfaction.

47.4 The PM will only be entitled under paragraph 47.3 to reject Design Documents which he considers would render the Design incapable of complying with the Design Brief or which, if used for construction, would render the Works unfit for their purpose.

47.5 The Contractor shall warrant that the Design will comply with the conditions of any planning consent, the requirements of the Building Regulations and shall comply and continue to comply with MOD Fire Regulations and all other relevant statutory requirements.

47.6 The Contractor shall be liable for the rectification of any defect which occurs during a period of 10 years following the expiry of the Maintenance Period and which is caused by a fault in the design.

47.7 The Contractor's liability under this condition shall not be affected by any warranty that the Authority may obtain from any sub-contractor.

47.8 The copyright in all Design and Construction Documents related to this Project will be the property of and will vest in the Authority.

47.9 Nothing in this Condition shall relieve the Contractor of liability under the Contract for any defect in any Design or Construction Document, or for any defect in the Design as a whole.

47.10 In case of any discrepancy between the Authority's Requirements and any Design Document, the Authority's Requirements shall prevail, without any adjustment to the Contract Price.

47.11 In case of discrepancy within, or between, Design Documents, the Contractor shall resolve the discrepancy to the satisfaction of the PM, without any adjustment to the Contract Price.

47.12 If the Contractor discovers any of the discrepancies referred to in sub-paragraphs 47.10 and 47.11 above he shall immediately notify the PM, informing him of the discrepancy.

48. Technical Guidance

48.1 The Contractor shall ensure that the constructed works and Contractor designed works where applicable comply with all relevant legislation, national or EU standards and any relevant Technical Guidance. For the purpose of this Condition, Technical Guidance means any document published by the Authority as “Defence Estates (DE) Technical Bulletins” and “Defence Works Functional Standards” or any guidance published by the Authority and deemed by the Authority to be extant. DE Technical Bulletins and other technical guidance are available via the World Wide Web (www).

49. Setting Out

49.1 The Contractor shall set out the Works and shall provide all the instruments, profiles, templates, rods, stakes and all other equipment necessary for that purpose. The Contractor shall be solely responsible for the correctness of the setting out.

49.2 The Contractor shall provide, fix and be responsible for the maintenance of all stakes, profiles, templates, level marks, points and any other setting out apparatus which is required in the setting out of the Works and the Contractor shall take all necessary precautions to prevent their removal, alteration or disturbance and shall be liable for the consequences of such removal, alteration or for their efficient reinstatement.

50. Excavations

50.1 Except as otherwise provided by the Contract, material and objects of any kind obtained from work on the Site (including, without limitation, from excavations, demolition or dismantling) shall remain or become the property of the Authority.

50.2 When the Authority’s property is permitted to be used in substitution for any Things, (whether or not for incorporation), which the Contractor would otherwise have provided, the Authority shall ascertain and agree with the Contractor the amount of any saving in the cost of the execution of the Works. The Contract Price shall be reduced by the value of any saving.

50.3 All objects which are, or appear to be, fossils, antiquities, or likely to have interest or value, found on the Site or in carrying out excavations in the execution of the Works, shall remain or become the property of the Authority. Upon the discovery of any such object, the Contractor shall forthwith:

50.3.1 Take all practicable measures not to disturb the object;

50.3.2 Cease work, if the continuance of work would endanger, or disturb, the object, or prevent or impede its excavation or removal;

50.3.3 Take all necessary steps to preserve the object in the exact position and condition in which it was found; and

50.3.4 Inform the PM of the discovery and precise location of the object.

50.4 Any Instructions issued by the PM in relation to any object mentioned in paragraph 50.3 above, may require the Contractor to permit the examination, excavation or removal of the object by a third party.

51. Foundations

51.1 The Contractor shall not lay any foundations until the excavations for them have been examined by the PM. The Contractor shall give the PM a minimum of 5 days notice prior to laying any foundations.

51. Covering Work

52.1 The Contractor shall give the PM a minimum of 2 days prior notice whenever any work or Thing for incorporation is intended to be covered with earth or otherwise. In default of such notice, the Contractor shall, if required by the PM, uncover the work or Thing at his own expense.

53. Protection of Works

53.1 The Contractor shall during the execution of the Works take all reasonable measures and precautions needed to take care of the Site and the Works, and shall have custody of all Things on the Site against loss or damage from fire and any other cause. The Contractor shall be solely responsible for and shall take all reasonable and proper steps for protecting, securing, lighting and watching all places on or about the Works and the Site which may be dangerous to his workpeople or to any other person.

53.2 The Contractor shall comply with any statutory regulations (whether or not binding on the Crown) which govern the storage and use of all Things that are brought on to the Site in connection with the Works.

54. Conditions Affecting Works

54.1 The Contractor shall in relation to the Site be deemed to have satisfied himself as to:-

54.1.1 The existing roads and other means of communication with or access to it;

54.1.2 Its contours and boundaries;

54.1.3 The risk of damage by reason of any work to any property adjacent to the Works and injury to occupiers of that property;

54.1.4 The nature of the soil and material (whether natural or otherwise) to be excavated;

54.1.5 The conditions under which the Works will have to be carried out, including precautions to prevent nuisance and pollution;

54.1.6 The supply of and conditions affecting labour necessary to carry out the Works;

54.1.7 The facilities for obtaining any Things whether or not for incorporation, and

54.1.8 Any survey and investigative works they believe necessary for both the design and safe execution of the Works, and;

54.1.8 Any other matters or information affecting or likely to affect the execution of, or price tendered for, the Works.

54.2 If, during the execution of the Works, the Contractor becomes aware of ground conditions (excluding those caused by weather but including artificial obstructions) which he did not know of,

and which he could not reasonably have foreseen having regard to any information which he had, or ought reasonably to have ascertained, he shall, as a condition precedent to any right of remedy in respect of such conditions, by notice immediately;

54.2.1 Inform the PM of those conditions; and

54.2.2 State the measures, which he proposes to take to deal with them.

54.3 If the PM agrees that the ground conditions specified in a notice under Condition 54.2 could not reasonably have been foreseen by the Contractor having regard to any information he should have had in accordance with that Condition, he shall certify those conditions to be 'Unforeseeable Ground Conditions'. The PM shall notify the Contractor of his decision which shall be final and conclusive.

54.4 If, after ground conditions specified in a notice under Condition 54.2 have been or should have been certified as Unforeseeable Ground Conditions in accordance with this Condition, and, as a result of such Unforeseeable Ground Conditions the Contractor in executing the Works properly carries out or omits any work which he would not otherwise have carried out or omitted, then without prejudice to any instruction given by the PM, the value of the work carried out or omitted shall be ascertained in accordance with Condition 64 (Valuation of PM's Instructions-Principles) and the Contract sum shall be increased or decreased accordingly.

54.5 No claim by the Contractor for additional payment will be allowed because he has, or claims to have, misunderstood or misinterpreted anything mentioned in paragraph 54.1 above. The Contractor shall not be released from any risks or obligations imposed on, or undertaken by him under the Contract for this reason or because he did not or could not foresee any matter which might affect or have affected the execution of the Works.

55. Spare

56. Spare

MANAGING THE WORKS

57. Returns

57.1 The Contractor shall provide the PM with a return, in a form the PM shall direct, of the number and description of his workpeople and the plant employed each day on the works including those employed by sub-contractors.

58. Records

58.1 The Contractor shall for the purposes of the Contract keep such records as may be reasonably necessary for the PM and/or the Authority to ascertain or verify any claims made or to be made by the Contractor or any sums to be paid to the Contractor under, or in connection with, the Contract.

58.2 In order that the PM may discharge his functions under the Contract, the Contractor shall afford him access to the records mentioned in sub-paragraph 58.1 and supply him with the information (including means to interpret the records) that may be required.

59. Programme

59.1 The Contractor shall deliver the Works in accordance with the programme and methodology agreed in the Contract. Without prejudice to Condition 61 (Progress Meetings), the Contractor may

at any time submit proposals to the PM for amending the agreed programme. Such proposals shall not, however, be included in the Programme unless and until they have been agreed by the PM.

60. Commencement and Completion

60.1 Upon receipt of the Authority's letter of acceptance of his Tender, the Contractor shall immediately commence the performance of the Contract. Possession of the Site shall be given to the Contractor on the date agreed under the Contract and he shall then take possession of the Site or parts of the Site and forthwith commence the execution of the Works and proceed with diligence and in accordance with the Programme or as may be instructed by the PM, so that the whole of the Works or any relevant Section shall be completed to the satisfaction of the PM by the agreed Date or Dates for Completion.

60.2 The Contractor shall, at all times, keep the Site tidy and free from debris, litter and rubbish and shall not later than the agreed date for Completion of the Works, remove from the Site all Things for incorporation in the Works or any relevant Section(s) which are unused, together with all things not for incorporation. The Contractor shall by the agreed date clear and remove all rubbish and deliver up the Site and the Works in all respects to the satisfaction of the PM. The Contractor shall comply at his own cost with any Instructions from the PM relating to the removal of any Things and rubbish.

60.3 When the Contractor considers the Works to be completed, he shall invite the PM to certify that they are complete to the PM's satisfaction. Before certifying the Works as complete, the PM and Contractor shall jointly inspect the Works. If, in the opinion of the PM, the Works are not complete, the PM shall not certify them as such and the Contractor must do whatever is necessary to complete the Works. However, if some minor works ("snags") are still to be completed but in the opinion of the PM the Works are substantially complete, the PM may certify the Works as complete subject to the completion by the Contractor of those snags to the satisfaction of the PM.

61. Progress Meetings

61.1 The Contractor shall attend regular progress meetings to assess progress and to facilitate satisfactory completion by the agreed Date or Dates for Completion.

61.2 As a minimum a progress meeting shall be held each fortnight subject to any Instructions to the contrary. The PM shall specify the time and place of progress meetings.

61.3 The Contractor shall submit to the PM, at least 3 days before each progress meeting, a written report which shall, as a minimum;

61.3.1 Describe the progress of the Design and execution of the Works by reference to the Programme, and relevant Instructions;

61.3.2 Specify all outstanding requests by the Contractor for information;

61.3.3 Explain any new circumstances arising since the previous meeting which in his opinion have delayed, or may delay, completion of the Works or a Section of them;

61.3.4 Refer to any request for an extension of time under Condition 68 (Extensions of Time) since the previous meeting;

61.3.5 Set out any re-programming proposals to ensure that the completion of the Works or any Section will be achieved by the relevant Date for Completion.

61.3.6 Give any additional details requested by the PM.

61.4 The PM shall, within 3 Days of each progress meeting, give the Contractor, a written statement which specifies;

61.4.1 By reference to the Programme the extent to which he considers the project is on time, delayed or early;

61.4.2 The matters that the PM considers have delayed, or are likely to delay, due completion of the Works or any Section or Sections;

61.4.3 The steps that the PM has agreed with the Contractor to reduce or eliminate the effects of any such delay;

61.4.4 The situation in respect of applications for and awards of extensions of time under Condition 68 (Extensions of Time); and

61.4.5 His response to outstanding requests for information.

62. Change Control Procedures

62.1 Changes to the Contract ("Changes") shall for the purpose of this condition mean;

62.1.1 The award of extensions of time in accordance with Condition 68 (Extensions of Time);

62.1.2 The acceptance of proposals for acceleration in accordance with Condition 67 (Acceleration);

62.1.3 The determination of expense arising from the prolongation or disruption of the regular progress of the Works or any part of them in accordance with Condition 69 (Prolongation and Disruption); and

62.2 In event of any conflict or inconsistency between this Condition and the Conditions referred to in Condition 62.1, this Condition shall prevail.

62.3 Either party to the Contract may initiate a Change and shall, subject always to the provisions of paragraph 62.2, follow the procedures laid down in the Condition governing that Change and in accordance with the Change Control Procedure detailed within the Variation Order Form at Annex A.

62.4 The Contractor shall be responsible for co-ordinating and providing all information necessary for the Authority to assess the proposed Change. Such information should be submitted to the Works Contracts Officer detailed in the Appendix to Contract. As appropriate he will issue any necessary Amendment to Contract. The Contract may only be amended by the designated WCO.

62.5 If as a result of a Change, the Contract Sum is adjusted, the Milestone Payment Schedule, if appropriate, shall be adjusted by agreement to reflect the effect of the Change as follows;

62.5.1 For Changes in accordance with any PM's Instruction, the Works Contracts Officer shall advise the Milestone on completion of which price for the Change shall be paid;

62.5.2 For Changes in accordance with Condition 69 (Prolongation and Disruption), the Works Contracts Office shall advise a separate Milestone to allow payment to be claimed at the earliest opportunity.

62.5.3 For any other Change, which affects the completion of more than one Milestone, the Works Contracts Officer may agree to renegotiate the full Milestone Payment Schedule.

62.6 No payment shall be made in respect of any Change unless and until the Change, and the price for the Change, has been agreed in writing by the Works Contracts Officer detailed in the Appendix to Contract. The Authority may not accept liability for any Change if the Contract procedures for agreeing Changes, detailed on the Variation Order Form at Annex A, are not strictly adhered to.

63. PM's Instructions

63.1 The Authority may from time to time issue further drawings, details, instructions, directions and explanations all or any of which shall be treated for the purposes of the Contract as PM Instructions, including Variation Instructions.

63.2 Instructions may be given in relation to all or any of the following matters;

63.2.1 The version or modification of all or any of the specification, drawings or Bills of Quantities, or the design, quality or quantity of the Works;

63.2.2 Any discrepancy in or between the specification, drawings and Bills of Quantities;

63.2.3 The removal from the Site of any Things for incorporation and their substitution with any other Things;

63.2.4 The removal and/or re-execution of any work executed by the Contractor;

63.2.5 The order of execution of the Works or any part of them;

63.2.6 The hours of working and the extent of overtime or night working to be adopted;

63.2.7 The suspension of the execution of the works or any part of them;

63.2.8 The replacement of any person employed in connection with the Contract;

63.2.9 The opening up for inspection of any work covered up;

63.2.10 The amending and making good any defects under Condition 88 (Defects in Maintenance Period(s)).

63.2.11. The execution of any emergency work as mentioned in Condition 72 (Emergency Work).

63.2.12 The use or disposal of material obtained from excavations on the Site;

63.2.13 The actions to be taken following discovery of fossils, antiquities, objects of interest or value;

63.2.14 Measures to avoid nuisance or pollution;

63.2.15 Any other matter which the PM considers necessary or expedient.

63.3 All instructions shall be in writing except those under sub-paragraphs 63.2.2, 63.2.4, 63.2.7, and 63.2.11, which may be given orally – these will be confirmed in writing within 7 days of the oral instruction. The decision of the PM that any Instruction is necessary or expedient shall be final and conclusive. The Contractor shall comply with any PM Instruction.

63.4 The Contractor shall not add to, omit from, or otherwise alter the Works except in accordance with a PM Instruction.

63.5 The PM may include in a Variation Order a requirement for the Contractor to submit to the QS not later than 21 days from the receipt of that Instruction a written quotation of the lump sum price of complying with it.

64 Valuation of PM's Instructions – Principles

64.1 It is a fundamental principle of this Contract that the price for any alterations or additions to or omissions from the Works, or the Design, where appropriate, shall be agreed by the Works Contracts Officer before the relevant Amendment to Contract is issued.

64.2 The price for any alterations or additions to or omissions from the Works etc will be calculated and agreed using the same prices and rates included in the Contractor's accepted tender for the Contract where these are appropriate and available. The Contractor shall provide a full breakdown of the proposed additional or reduced price(s) for consideration, negotiation as appropriate, and agreement with the Authority. The Contractor shall mitigate any additional costs incurred for any Change and shall provide full supporting documentation and explanation in support of any proposed alteration in price and such additional explanation and documentation as the Authority may reasonably require. The price will be agreed on the basis of "fair and reasonableness".

64.3 In addition to Condition 64.2 above, full details of the Contractor's proposals relating to alterations or additions to or omissions from the Works are to be provided in the Variation Order Form enclosed at Annex A.

65. Non-compliance with Instructions

65.1 If, after receipt of a notice from the PM requiring compliance with any Instruction within a period specified in the notice, the Contractor fails to comply, the Authority may, without prejudice to the exercise of his powers to determine the Contract, provide labour and/or any Things (whether or not for incorporation), or enter into a contract for the execution of any work which may be necessary to give effect to that Instruction. Any reasonable costs and expenses incurred by the Authority over and above those, which would have been incurred had the Contractor complied promptly with the Instruction, shall be recoverable by the Authority from the Contractor.

66. Early Possession

66.1 The Authority shall be entitled, before the completion of the Works, to take possession of any part of the Works (in this Condition referred to as a 'completed part') which is certified by the PM as having been completed in accordance with the Contract and is either ;

66.1.1 A Section; or

66.1.2 Any other part of the Works in respect of which the parties agree, or the PM has given an Instruction, that possession shall be given before the completion of the Works or the relevant Section;

and the completed part, on and after the date on which the certificate is given, shall no longer form part of the Works for the purposes of Conditions 13 (Loss or Damage) and 9 (Vesting).

66.2 The provisions of Condition 88 (Defects in Maintenance Periods) shall have effect in relation to a completed part as if the Maintenance Period or Periods in respect of the completed part, or any subcontract works comprised in it, commenced on the date of certification under Condition 70 (Certifying Completion).

66.3 As soon as possible after certification under Condition 70 (Certifying Completion), the PM shall certify the value of the completed part.

66.4 Any decision of the PM under this Condition shall be final and conclusive.

67. Acceleration

67.1 If the Authority wishes to achieve completion of the Works or any relevant Section before the agreed Date or Dates for Completion, he shall direct the Contractor to submit to him within the period specified in the direction;

67.1.1 The Contractor's priced proposals for achieving the accelerated completion date, together with any proposed consequential amendments to the Programme, or

67.1.2 As appropriate, the Contractor's explanation why he is unable to achieve the accelerated completion date or such alternative priced proposals and amended programme as he considers appropriate.

67.2 If the Authority accepts the Contractor's proposals he shall specify;

67.2.1 The accelerated Date for Completion of the Works and/or any relevant Section;

67.2.2 The amendment to the Programme, including any relevant critical paths and any supporting documentation;

67.2.3 The amount(s) by which the Contract Price shall be adjusted;

67.2.4 A revised Milestone Payment Schedule or Schedules, if appropriate;

67.2.5 Any other relevant amendment to the Contract which has been agreed with the Contractor.

67.3 The Contractor may at any time submit to the Authority proposals for completing the Works or any relevant Section, before the agreed Date or Dates of Completion. The Authority undertakes to consider any such proposals and, if he accepts them, to take action as in Condition 67.2.

68. Extensions of Time

68.1 Where the PM receives notice requesting an extension of time from the Contractor (which should include the grounds for his request) or where the PM considers that there has been or is likely to be a delay which will prevent or has prevented completion of the Works or any relevant Section by the agreed Date for Completion, he shall as soon as possible and in any event within 7 Days from the date any notice is received notify the Contractor of his final or interim decision regarding an extension of time for completion of the Works or relevant Section. The PM will come to a final decision on any outstanding interim decision(s) within a maximum of 7 days after completion of the work. No requests for extension of time may be submitted after completion of the Works or relevant Section.

68.2 The Authority shall award an extension of time under paragraph 68.1 only if he is satisfied that the delay, or likely delay, is or will be due to;

68.2.1 The execution of any modified or additional work;

68.2.2 The acts, neglect or default of the Authority or the PM;

68.2.3 An accepted Risk or unforeseeable ground conditions;

68.3 The PM shall indicate whether this decision is interim or final. The PM shall keep all interim decisions under review until he is satisfied from the information available to him that he can give a final decision.

68.4 The Authority shall not be entitled in a final decision to withdraw or reduce any interim extension of time already awarded, except to take account of any authorised omission from the Works or any relevant Section, that he has not already allowed for in an interim decision.

68.5 If the Contractor is dissatisfied with any decision under paragraph 68.1 he shall, not later than 7 Days from receipt of the decision, submit a case to the Works Contracts Officer specifying the grounds which in his view entitles him to an extension or further extension of time. The Works Contracts Officer shall notify the Contractor of his decision within 7 Days of the receipt of the case.

68.6 The Contractor must endeavour to prevent delays and to minimise unavoidable delays, and to do all that may be required to proceed with the Works in accordance with the agreed programme. The Contractor shall not be entitled to an extension of time where any delay, or likely delay, is, or would be, attributable to the Contractor.

69. Prolongation and Disruption

69.1 If the Contractor properly and directly incurs any expense which he would not otherwise have incurred by reason of;

69.1.1 The execution of works pursuant to Condition 12 (Other Works); or

69.1.2 Any delay in being given possession of the Site or part of it or in respect of the matters specified in Condition 69.2;

69.1.3 Delay in being given notification as to whether or not a Design Document is satisfactory as a Construction Document under Condition 47 (Design).

which unavoidably results in the regular progress of the Works or of any part of them being materially disrupted or prolonged and which is beyond that provided for or reasonably contemplated by the Contract he should action in accordance with Condition 62 (Change Control Procedures). Except that full details may be submitted after the event but within 14 days of the end of "Other Works" – Condition 12 or the end of any delay under Conditions 69.1.2 and 69.1.3.

69.2 The matters referred to in Condition 69.1.2 are;

69.2.1 The issue of any schedules or other information to be provided by the PM;

69.2.2 The execution of any work or the supply of any Thing by the Authority or ordered from somebody other than the Contractor and which is not undertaken or ordered in consequence of any default on the part of the Contractor;

69.2.3 The issue of any pass to any person's i.e. beyond the normal period for approval as notified by the PM.

69.3 The Contract Sum shall not be increased under paragraph 69.1 unless;

69.3.1 The Contractor, immediately upon becoming aware that Design work, or the regular progress of the Works or any part of them, has been or is likely to be disrupted or prolonged has given notice to the PM specifying the circumstances causing, or expected to cause, that disruption or prolongation and stating that he is, or expects to be, entitled to an increase in the Contract Sum under that paragraph;

69.3.2 The Contractor, as soon as reasonably practicable, and in any case within 14 Days of the end of any delay, provides full details of all expenses incurred and evidence of the expenses directly resulting from the occurrence of any of the events as appropriate described in Condition 69.1.

69.4 Subject to paragraph 69.3, the Contract Price may be increased in accordance with Condition 68.1.2 only where the Contractor has necessarily incurred additional costs through no fault of his own and the Authority has failed to supply an item or act;

69.4.1 By a date agreed beforehand with the Contractor; or

69.4.2 Within any reasonable period specified in a notice given by the Contractor to the Authority or the PM for the supply of the item or taking the action.

69.5 The Authority shall, not later than 14 Days from receipt of the information referred to in Condition 69.3.2 above, notify the Contractor of his decision under this Condition.

69.6 In this Condition “expense” shall mean money expended by the Contractor but shall not include any sum expended, or loss incurred, by him by way of interest or finance charges however described.

70. Certifying Completion

70.1 The PM shall certify the date when the Works, or any Section, or any completed part within the meaning of Condition 66 (Early Possession), are completed in accordance with the Contract. Such completion shall include full compliance by the Contractor with Condition 26 (Statutory Notices and CDM Regulations). After the end of the last Maintenance Period to expire, the PM shall issue a certificate when the Contractor has complied with Condition 88 (Defects in Maintenance Periods).

71. Quality

71.1 The Contractor shall execute the Works with in accordance with the Contract and;

71.1.1 With diligence;

71.1.2 In accordance with the programme;

71.1.3 With all reasonable skill and care;

71.1.4 In a workmanlike manner.

71.2 The Contractor shall ensure that any Things for incorporation are of appropriate quality for their intended purpose, and conform to the Specification and the Design and/or agreed by the PM.

71.3 The Contractor shall when requested by the PM demonstrate to the PM’s satisfaction that he is performing his duties under paragraphs 71.1 and 71.2 above. The PM shall have power at any time to inspect and examine any parts of the Works or inspect, examine and test any Thing for incorporation either on the Site or at any factory or workshop or other such place where any such Thing is being constructed or manufactured or at any place where it is lying or from which it is being obtained. The Contractor shall give the Authority the assistance and facilities he may reasonably require for any inspection and examination. The Authority may reject any Thing for incorporation, which he is satisfied, does not conform to the Specification or Design.

71.4 The PM may arrange for an independent expert to test whether any Thing for incorporation is fit for use in the Works and/or conforms to the Contract requirements. All costs incurred by the

Authority in arranging for an expert to carry out any test shall be borne by the Contractor if the test results disclose that the Thing tested does not conform to the provisions of the Contract. The Contractor shall also bear the cost of any further tests reasonably required to monitor quality following negative test results.

71.5 The report of the independent expert and to the fitness or suitability of any Thing required to be provided under the Contract shall be final and conclusive.

71.6 The Contractor shall, at his own cost, replace, rectify or reconstruct;

71.6.1 The Works, or any part of them, which do not conform with the Contract or are not to the satisfaction of the PM; and

71.6.2 Any Things for incorporation which do not conform to the Contract or which have been rejected by the PM.

72. Emergency Work

72.1 If the Contractor is unable or unwilling to carry out promptly any emergency work required by the PM, the Authority may make arrangements for that work to be carried out. If the work carried out by the Authority shall be such as the Contractor is liable under the Contract to carry out or execute at his own expense then the Contractor shall reimburse;

72.1.1 any costs reasonably incurred by the Authority under this paragraph; and

72.1.2 any loss suffered by the Authority because the Contractor has not carried out the work.

72.2 In this Condition 'emergency work' means any work which becomes necessary during the execution of the Works or during any Maintenance Period;

72.2.1 to prevent, or alleviate the effects of, any accident, failure or other event in connection with the performance of the Works;

72.2.2 to secure the Works, the Site or any adjoining property from damage; or

72.2.3 without prejudice to Condition 13 (Loss or Damage), to repair any damaged or dangerous part of the Works.

73. Vehicles, Plant, Tools, and Equipment

73.1 The Contractor shall;

73.1.1 Provide any Vehicles, Plant, MHE, Tools (including Special Tooling) and Equipment required to undertake the requirements of the contract.

73.1.2 Be responsible for providing necessary insurance for all personnel required to use Vehicles, Construction Plant, and MHE.

73.1.3 Provide all fuel for use under the Contract.

74. Authority Supplied Materials

74.1 Where applicable, material will be handed over to the Contractor on site and will thereafter become his responsibility in accordance with Condition 9 (Vesting).

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FINANCE

77. Price

77.1 All Prices are FIRM i.e. not subject to variation and will be paid in Singapore Dollars (SD\$) as identified in the Milestone Payment Schedule. Where Option Prices have been agreed these will remain FIRM for a period of 6 months from the Contract award date. These Options will remain open for acceptance subject to any decision of the Authority. The Authority does not commit to order any of the Option tasks and will not be liable for any costs for any Option tasks not taken up. The Authority will give the Contractor a minimum of 14 days notice if it wishes to take up any of the Option tasks.

78. Payment and Recovery of Sums Due

78.1 "As Built" drawings, documents and all related information referred to in Conditions 49 (Setting Out) and 47 (Design) shall be supplied in 3 hard copies plus 1 electronic copy (Drawings to be in AutoCAD 2000 format) prior to submitting/approval of the final claim for payment.

78.2 The Contractor shall be entitled to apply for and be paid advances against the agreed FIRM Contract price during the period of the Contract for each Milestone certified as being completed to the satisfaction of the PM provided that all preceding Milestones on the agreed extant Payment Schedule have been satisfactorily completed.

78.3 The amount of each advance payable shall be the relevant milestone value detailed in the agreed extant Milestone Payment Schedule less 5%, which the Authority shall withhold as retention from each Milestone Payment. If the final milestone completion date is achieved then the Authority will pay 2.5% of the value of the milestone, with the remaining 2.5% being paid on successful completion of any defects at the end of the 12 months defects liability period (DLP) (or such lesser period decided by the WCO) and on satisfaction by the Authority that all Contractual obligations have been fulfilled subject to Conditions 83 (Recovery of Sums from the Contractor). Failure to meet the final milestone completion date will result in the full 5% being retained until successful completion of the defects in the DLP.

78.4 The Contractor shall submit valid claims for payment of bills following satisfactory completion of the agreed milestones, and which are properly payable under terms and conditions of the Contract, to the PM for certification for payment. The Contractor having received appropriate certification should forward his application for payment on company headed notepaper to the WCO.

78.5 Payment for Contractor Deliverables will be paid through the local Finance Officer in BDSSU.

78.6 Where the Contractor submits an invoice to the Authority in accordance with clause 78.5, the Authority will consider and verify that invoice in a timely fashion.

78.7 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.

78.8 Where the Authority fails to comply with clause 78.6 and there is an undue delay in considering and verifying the invoice, the invoice shall be regarded as valid and undisputed for the purposes of clause 78.7 after a reasonable time has passed.

78.9 The approval for payment of a valid and undisputed claim for payment 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.

78.10 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.

79. Certifying Payments

79.1 The PM shall certify the sums to which the Contractor is entitled under Condition 80 (Final Account).

79.2 The Authority shall give the Contractor notice not later than 14 Days after receipt of a claim due under the Contract specifying any amount to be withheld, the grounds for withholding payment and the basis on which that amount was calculated.

79.3 Any certificate may be modified or corrected by any subsequent certificate or by the final certificate for payment. No certificate of the PM shall of itself be conclusive evidence that any Work or Things to which it relates are in accordance with the Contract.

79.4 Any dispute about the Contractor's right to a certificate shall be referred at the request of the Contractor to the WCO named in the Contract whose decision shall be final and conclusive – provided that this paragraph shall not apply to a dispute as to the amount of the balance of the Final Sum due to the Contractor.

80. Final Account

80.1 Upon completion of the Works to the satisfaction of the Authority the Contractor may claim the balance of the Contract price outstanding subject to any previous instruction and/or agreement with the Authority or any action under any other Condition of Contract. The Project Manager's decision in this matter will be final and conclusive.

80.2 Within 2 months of the certified completion of the Works to the satisfaction of the Authority the Contractor shall forward one copy of the final account to the PM. The PM shall within 10 days of receipt of the final account notify any disagreement to the Contractor along with full details for his disagreement.

80.3 If before the end of the Maintenance Period, or where there is more than one the end of the last Maintenance Period, the Final Price has been calculated and agreed, or in default of agreement has been determined by an Arbitrator appointed under Condition 95 (Arbitration), then:

80.3.1 If the Final agreed Price exceeds the sum of any amount already paid plus any amount withheld by the Authority, then the Authority shall pay the difference to the Contractor, and

80.3.2 If the total amount already paid to the Contractor exceeds the Final agreed Price then the Contractor shall pay the excess to the Authority immediately on request.

81. Cost Savings

81.1 The Contractor may at any time during the Contract submit to the PM a written proposal which in the Contractor's opinion will reduce the cost of the Works or the cost of maintenance or increase the efficiency of the completed works. Any proposal shall clearly state that it is submitted for consideration under this Condition and shall include an estimate, for consideration by the

Authority, of the amount to which the Contractor may be entitled on the basis that he and the Authority shall share equally the savings in the cost of carrying out the Works as determined in accordance with Condition 64 (Valuation of PM's Instructions-Principles).

81.2 The Contractor shall provide any further information relating to his proposal which the Authority may require.

81.3 The Contractor, having submitted any proposal under Condition 81.1, shall continue with the expeditious completion of the works as previously agreed by the Authority. If appropriate the Works Contracts Officer will formally advise any changes to the Contract.

82. Payment of Sub-contractors

82.1 Where the Contractor enters into a sub-contract with a supplier or sub-contractor for the purpose of performing the Contract, he shall cause a term to be included in such sub-contract which requires payment to be made to the supplier or sub-contractor within a specified period not exceeding 30 days from receipt of a valid invoice as defined by the sub-contract requirements.

83. Recovery of Sums from the Contractor

83.1 Any sum that is recoverable from or payable by the Contractor under the Contract may be deducted from or reduced by any sum(s) then due, or which may thereafter become due to the Contractor under or in respect of the Contract or any other contract with the Authority

84. Suspension for Non-payment

84.1 Where a sum due under the Contract (as determined by agreement between the parties, certification and invoicing, adjudication, arbitration or litigation) is not paid in full by the final date for payment and no effective notice to withhold payment has been given under Condition 79 (Certifying Payments), the person to whom the sum is due has the right (without prejudice to any other right or remedy) to suspend performance of his obligations under the Contract to the party by whom payment ought to have been made ('the party in default').

84.2 The right may not be exercised without first giving to the party in default at least 7 Days' notice of intention to suspend performance, stating the ground or grounds on which it is intended to suspend performance.

84.3 The right to suspend performance ceases when the party in default makes payment in full of the amount due or alternatively gives effective notice to withhold payment under Condition 83 (Recovery of Sums from the Contractor).

84.4 Any period during which performance is suspended in pursuance of the right conferred by this Condition shall be disregarded in computing, for the purposes of any contractual time limit, the time taken, by the party exercising the right or by a third party, to complete any work directly or indirectly affected by the exercise of the right. Where the contractual time limit is set by reference to a date rather than a period, the date shall be adjusted accordingly.

85. Bankruptcy

85.1 Should the contractor be adjudged bankrupt, or should the Contractor make a general assignment for the benefit of his creditors, or should a Receiver be appointed on account of the Contractor's insolvency, the Authority may, without prejudice to any other right or remedy he may have under the terms and conditions of the Contract, terminate forthwith the Contract. Such termination shall be without liability, arising howsoever, to the Authority.

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POST COMPLETION

88. Defects in Maintenance Period

88.1 The Contractor shall without delay make good at his own cost to the satisfaction of the Authority any defects in the Works resulting from what the Authority considers to be default by the Contractor or his agent or sub-contractor which appear during the Defects Liability Period.

88.2 After completion of the remedial works by the Contractor the Authority shall reimburse the Contractor for any reasonable costs the Contractor has incurred to the extent that the Authority is satisfied that any defects were not caused by:

88.2.1 A fault in the Design;

88.2.2 The Contractor's neglect or default, or the neglect or default of any agent or sub-contractor of his; or

88.2.3 By any circumstances within his or their control.

88.3 If the Contractor fails to comply with this Condition the Authority may do anything necessary to make good any defects notified to the Contractor. All the costs and expenses incurred by the Authority in doing so shall be recoverable from the Contractor.

88.4 When the cost of making good defects under this Condition are not reimbursed by the Authority under paragraph 88.2 then the relevant defects shall apply to the remedial Works in full from the date of making good.

88.5 The Defects Liability Period for the Works shall be 12 months, or such lesser period as decided by the WCO, and shall apply from the day after that on which the Works are certified as complete by, and to the, satisfaction of, the PM.

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DETERMINATION AND ARBITRATION

91. Determination

91.1 Without prejudice to any other power of determination, the Authority may at any time determine the Contract by notice to the Contractor. Upon receipt of the notice the Contract shall be determined.

91.2 The Authority shall specify in a notice of determination, which, if any, of the grounds mentioned in paragraph 91.7 apply.

91.3 The Authority may give directions in relation to the performance or completion of any work and any other matters connected with the Works, the Site and any other contract or sub-contract.

91.4 Any direction under paragraph 91.3 shall be given not later than 7 days from the date of notice of determination or the Date or Dates for Completion whichever is the sooner.

91.5 The Contractor shall comply promptly with any directions given by the Authority under paragraph 91.3. The Contractor shall be paid for any work so performed as if the directions were PM Instructions.

91.6 When requested by the Authority the Contractor shall promptly pass to the Authority all drawings, plans and other design information that have been prepared or are in the process of being prepared.

91.7 Condition 92 (Consequences of Determination for Default) shall have the effect where notice of Determination is given for any of the following reasons, namely;

91.7.1 The failure of the Contractor to comply with the content of a PM Instruction within a reasonable period of its issue;

91.7.2 The failure of the Contractor to proceed with the Design or to execute work in an efficient, workmanlike or proper manner, or to proceed regularly and diligently with the Works, or the suspension by the Contractor of the Design or the Works, so that in the opinion of the Authority the Contractor has not completed or will be unable to secure the completion of the Works or any relevant Section by the agreed Date or Dates for completion;

91.7.3 Where the Contractor is an individual, the insolvency of that individual, or, where the Contractor is a partnership, the insolvency of any partner. In this sub-paragraph insolvency shall include the making of any voluntary arrangement under Part VIII, and the presentation of any bankruptcy petition under Part IX, of the Insolvency Act 1986, or the making of any conveyance or assignment of the benefit of creditors;

91.7.4 Where the Contractor is a registered company, the passing of any resolution or the making of any application to the Court for the winding up of the company, the making of any arrangement with creditors, the appointment of a receiver or manager on behalf of a creditor, or in the occurrence of any circumstances which will entitle any creditor to appoint a receiver or manager or the Court to make a winding up order;

91.7.5 Failure by the Contractor to comply with Condition 30 (Site Admittance) where the Authority determines that such failure is prejudicial to its interests;

91.7.6 Any breach by the Contractor of Condition 8 (Corruption); or

91.7.7 Any breach of the conditions mentioned in the Invitation to Tender relating to the Contract.

91.8 Condition 93 (Consequences of Other Determination) shall have the effect where notice of determination is given for any reason not mentioned in Condition 91.7.

91.9 All Things not for incorporation which are brought onto the Site at the Contractor's expense shall (whether damaged or not) be removed by him as and when they cease to be required in connection with any directions given by the Authority under Paragraph 91.3. From the date of determination the Authority shall be under no liability to the Contractor in respect of any loss or damage to any such Things howsoever caused including by any of the Accepted Risks.

91.10 Under this Condition the decisions of the Authority shall be final and conclusive.

92. Consequences of Determination for Default

92.1 If the Authority shall determine the Contract for any reason mentioned in Condition 91.7 (Determination) the following provisions shall apply;

92.1.1 All sums of money that may then be due or accruing due from the Authority to the Contractor shall cease to be due or to accrue due;

92.1.2 The Authority shall hire any person, employ other contractors, use any Things on the Site, and may purchase or do anything necessary for the completion of the Design and of the Works. The Contractor shall have no claim whatsoever in respect of any such action by the Authority.

92.1.3 The Contractor shall when requested, except where determination occurs by reason of any of the circumstances described in Condition 91.7.3 and 91.7.4, assign to the Authority without further payment, when requested, the benefit of any sub-contract or contract for the supply of any Thing for incorporation which he may have made in connection with the Contract.

91.1.4 The Authority shall ascertain and certify the cost of completing of the Works.

92.2 If the total of the following sums, i.e. sub-paragraphs 92.2.1, 92.2.2 and 92.2.3 - (hereafter called 'the first amount') - exceeds the total of all payments paid to the Contractor (or to which he is entitled) to the date of determination (hereafter called the 'second amount'), the Authority shall, subject to Condition 92.3, hold the amount of the excess. If the second amount exceeds the first amount the Contractor shall, be liable to pay the Authority the amount of the excess.

The individual sums making up the 'first amount' are;

92.2.1 The value of all the work carried out to the satisfaction of the PM up to the date of determination;

92.2.2 The value of any work carried out or other actions carried out in accordance with any direction given under Condition 91.3 (Determination);

92.2.3 The value (ascertained on the basis of fair and reasonable prices) of all Things for incorporation brought onto Site or in the course of preparation or manufacture off the Site which the Authority elects to keep.

92.3 If the total cost of completing the works as certified under Condition 92.1.4 and the first amount determined in accordance with Condition 92.2 exceeds the sum that would have been payable to the Contractor for due completion then the Contractor shall pay the Authority the amount of the excess.

93. Consequences of Other Determination

93.1 If the Authority shall determine the Contract for any reason not mentioned in Condition 91.7 (Determination) the following provisions shall apply.

93.2 If the total of the following sums (hereafter called the 'third amount') exceeds the second amount i.e. the total of all payments paid to the Contractor (or to which he is entitled) to the date of Determination (see Condition 92.2 (Consequences of Determination for Default), the Authority shall be liable to pay the Contractor the amount of the excess. If the second amount exceeds the third amount the Contractor shall be liable to pay the Authority the amount of the excess immediately on request. The individual sums are;

93.2.1 The value of all the design and construction work carried out to the satisfaction of the PM to the date of determination;

93.2.2 The value of any work carried out or other things done in accordance with any direction given under Condition 91.3 (Determination);

93.2.3 The value (ascertained on the basis of fair and reasonable prices) of any Things for incorporation brought onto the Site or in the course of preparation or manufacture off the Site which the Authority elects to keep;

93.2.4 Any sum necessarily and reasonably expended by the Contractor because of the determination of the Contract in respect of;

93.2.4.1 The uncompleted part of any sub-contract and other contracts (including those for the hire of plant, services and insurance), and

93.2.4.2 Any unavoidable contract of employment, entered into in connection with the Contract.

93.3 If, in the period from the date of determination to the date on which any directions under Conditions 91.3 (Determination) are to have been complied with, the Works or any part of them, or any Things for incorporation which the Authority elects to keep, are lost or damaged by reason of any of the Accepted Risks, and the loss or damage was not occasioned by any failure on the part of the Contractor to perform his obligations under Condition 53 (Protection of Works), the amount payable to the Contractor under this Condition shall be ascertained as if no loss or damage occurred.

93.4 If the Contractor is of the opinion that any unavoidable loss or expense directly due to determination has not been fully reimbursed by sums paid or agreed then he shall refer the circumstances to the WCO, for referral to Commercial Branch who shall make such allowance, if any, as is considered reasonable.

94. Determination Following Suspension of Works

94.1 Without prejudice to any other power of determination, either the Authority or the Contractor may determine the Contract by notice to the other of them in the event of the suspension of the execution of the whole or substantially the whole of the Works, other than the making good of defects in the Works under Condition 88 (Defects in Maintenance Period), for a continuous period of 30 Days, provided that such suspension for the relevant period was not due to any act, neglect or default of the party giving notice of such determination.

94.2 The party giving notice of determination under paragraph 93.1 shall specify in the notice the grounds for such determination.

95. Arbitration

95.1 The Authority and the Contractor will comply with the following procedures to resolve any dispute or disagreement arising in the performance of the Contract. Any dispute or disagreement arising should be resolved by discussion and agreement between the Contractor's nominated site representative and the PM. Either party may give a written notice of a dispute or disagreement to the other. If the issue cannot be resolved satisfactorily within 48 hours of receipt of written notification then it should be referred to the WCO for further action.

95.2 The PM and the Contractor's nominated site representative shall each prepare a submission on no more than 1 x A4 page outlining their case and submit this to the WCO for consideration. The WCO will consult further as he considers appropriate and will give a written decision to each party within 7 calendar days.

95.3 If either party to the dispute refuses to accept the Works Contracts Officer's decision then the WCO will forward a copy of all correspondence relating to the dispute or disagreement to Assistant Director Commercial 1/DIO Operations International and the Contractor's Managing Director for consideration and discussion. They will aim to agree a resolution within 14 calendar

days of receipt. Failure to reach a decision will result in the formal Arbitration Procedures detailed in paragraph 95.4 being followed.

95.4 Any dispute, difference or questions between the Authority and the Contractor arising out of or relating to this Contract, other than a matter as to which a decision is expressed to be final and conclusive, and having followed the initial process described in paragraphs 95.1 to 95.3 shall, after notice by either party to the other, be referred to arbitration by a single arbitrator mutually agreed for that purpose or, in default of agreement on a single arbitrator within a reasonable period, appointed at the request of the Authority by the Chairman or any other of the Vice Presidents of the Chartered Institute of Arbitrators.

95.5 Unless the parties otherwise agree;

95.5.1 No reference shall be made under paragraph 95.4 until after the completion, alleged completion or abandonment of the Works or the determination of the Contract;

95.5.2 The arbitrator will hold a meeting with the parties forthwith on his acceptance of office and will fix a timetable for the delivery of points of claim and defence or counter claim, for the discovery and inspection of documents, for the inspection of the Works (if necessary) and for the hearing of any oral evidence, if necessary, which timetable shall not exceed a period of six months from the date of that preliminary meeting without the consent of both parties;

95.5.3 The parties shall ensure that any evidence whether oral or written and any document or argument required to be submitted to the arbitrator is submitted to him in accordance with the agreed timetable;

95.5.4 The arbitrator shall give his award not later than three months from the end of the period mentioned in sub-paragraph 95.5.2.

95.5.5 All reasonable costs and expenses incurred by each party in pursuing the Arbitration process shall fall to be the responsibility of the parties to the extent decided by the Arbitrator or, in the absence of such decision; the unsuccessful party shall be responsible for all costs incurred by both parties or to the extent agreed between the parties.

95.6 A reference to arbitration in accordance with this Condition shall be a reference to which the Arbitration Act 1996 applies, and this Act shall have effect subject to the provisions of this Condition.

96. Spare.

97. Spare.

APPENDIX TO CONTRACT

1. Works Contracts Officer: <i>WO2 Kenneth Houston</i>	2. The Authority Project Manager shall be: <i>Mr Andy Leishman (SOEFM)</i>
3. The Certifying Officer for the purposes of this Contract shall be: <i>The Project Manager (See Box 2 above)</i>	
4. Claims for Payment: <i>All claims for payment shall be submitted to the Works Contracts Officer (See Box 1 above) for certification.</i>	
5. For the purposes of this Contract, the Quality Assurance Authority (QAA) shall be: <i>Details to be advised at Contract award</i>	
6. Project Manager's Site Representative(s)/Supervising Officer(s) shall be: <i>Details to be advised at Contract award</i>	
7. For official use:	

DIOCB1/226

SEE ATTACHED

ANNEX A: Variation Order/Project Manager's Instruction.

Protection of Personal Data (Where Personal Data is not being processed on behalf of the Authority)

1. In this Condition, the expressions “Controller”, “Data Subject”, “Personal Data”, Personal Data Breach and “Processor” shall have the same meanings as in Article 4 of the GDPR.
2. Data Protection Legislation means:
 - a. the General Data Protection Regulation (Regulation (EU) 2016/679);
 - b. the Data Protection Act 2018 to the extent that it relates to processing of Personal Data and privacy; and
 - c. all applicable laws about the processing of personal data and privacy.
3. Both Parties acknowledge that there is no processing of Personal Data associated with or intrinsic to the performance of the Contract. The incidental exchange of Personal Data for the purpose of communication to give effect to the Contract or the business relationship is not considered to be processing of Personal Data by either Party on behalf of the other.
4. The Contractor shall notify the Authority promptly if it considers that any of the Authority’s instructions obligate the Contractor to take on the role of Processor under the Data Protection Legislation beyond that which is contemplated in clause 3. The Authority agrees that the Contractor shall not be required to provide legal advice to the Authority and that such notification (or absence of notification) by the Contractor will not be construed as legal advice or representation by the Contractor.
5. Should the Contract be amended to require the Contractor to process Personal Data as a Processor on behalf of the Authority as a result of clause 4 or otherwise the Contract will be amended to include DEFCON 532B and DEFFORM 532 in accordance with the provisions of DEFCON 503. Where the Contract is amended to include processing of Personal Data as a Joint Controller, the Parties agree that they shall amend the Contract to include appropriate contractual clauses, including but not limited to clauses dealing with notification in the event of a Personal Data Breach and requests from Data Subjects for access to their Personal Data.
6. Notwithstanding clause 3, each Party undertakes to comply with its obligations as Controller under the Data Protection Legislation.

CYBER DEFCON 658 Edition 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 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>; “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, 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 Subcontractor, 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 05138 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 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 cooperation 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 nonexclusively) 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 and Sub-contractor holds any MOD Identifiable Information relating to this Contract.

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 and 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.

8.2. 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 05138 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.