

- 43.3. Accordingly, for each day's delay (including bank holidays and weekends) the Contractor shall pay the Authority £100 up to a maximum of £10,000 as Liquidated Damages per Intercept and Escort Craft. The Parties confirm that this sum represents a genuine pre-estimate of the Authority's loss.
- 43.4. The provisions of this Clause are without prejudice to any other rights of the Authority under the Contract, including but not limited to those under DEFCON 514 (Material Breach), Clause 46 (Take Over/Tow Out Option) and Clause 47 (Financial Consequences of Termination). Accordingly, in the event that the Authority terminates the Contract, Liquidated Damages shall be payable under Clause 43.3 above until the date of such termination.
- 43.5. Unless expressly stated by the Authority in writing, the provisions of DEFCON 527 (Waiver) shall apply.

44. Permissible Delays

- 44.1. The Contractor shall notify the Authority in writing within five (5) Calendar Days of the occurrence of a Force Majeure Event or Delay Event and may request in writing an extension to the Required Delivery Date for Contractor to present Boat to Authority for Acceptance in accordance with Clause 44.2 provided that:
- 44.1.1. any Delay Event:
- 44.1.1.1. was not caused by the error, neglect, act or omission of the Contractor or its Sub-Contractors; and
- 44.1.1.2. could not reasonably have been, foreseen by the Contractor at the date of the Contract; and
- 44.1.1.3. the Contractor shall have made all reasonable efforts to avoid and mitigate the effects such Force Majeure Event or Delay Event has on the delivery of the Intercept and Escort Craft(s).
- 44.2. A request for an extension of time to the Required Delivery Date for Contractor to present Boat to Authority for Acceptance shall be submitted by the Contractor to the Authority within ten (10) Calendar Days of the occurrence of the Force Majeure Event or Delay Event and shall include:
- 44.2.1. the cause and extent of the delay;
- 44.2.2. a statement on the effect the event has, or will have on the critical programme path of the Intercept and Escort Craft(s) has or will be delayed;
- 44.2.3. those contractual obligations which have been affected by the delay;
- 44.2.4. proposals for mitigating the delay, including alternative arrangements.
- 44.3. A failure of the Contractor to notify the Authority in accordance with Clauses 44.1 and 44.2 shall prevent the Contractor from claiming an extension to the Required Delivery Date for Contractor to present Boat to Authority for Acceptance.
- 44.4. The Contractor shall:
- 44.4.1. advise the Authority immediately in writing that the Force Majeure Event or Delay Event has ended; and
- 44.4.2. as soon as reasonably practicable thereafter, and no later than fifteen (15) Calendar Days after the end of the Force Majeure Event or Delay Event, submit

in writing details of the length of extension to the Required Delivery Date for Contractor to present Boat to Authority for Acceptance claimed including evidence that the critical path of the Intercept and Escort Craft(s) has been delayed.

- 44.5. Any extension of time granted or rejected by the Authority pursuant to this Clause 44 shall be fair and reasonable. For the avoidance of doubt the Authority shall have a right to grant an extension to the Required Delivery Date for Contractor to present Boat to Authority for Acceptance irrespective of any claim by the Contractor.
- 44.6. For the avoidance of doubt, any act or omission of the Authority causing a Delay Event to an Intercept and Escort Craft shall not necessarily be a Delay Event in respect of any subsequent Intercept and Escort Craft(s).

45. Termination for A Permissible Delay

- 45.1. If a Permissible Delay is continuing, or its consequence remains such that the affected Party is unable to comply with its obligations under this Contract, for a period of more than one hundred and twenty (120) Calendar Days, then either Party may (subject to Clause 45.2 below) terminate this Contract or part thereof by serving upon the other Party a Termination Notice stating that:
 - 45.1.1. It is terminating the Contract pursuant to Clause 45 and
 - 45.1.2. The Contract shall terminate on the day falling fifteen (15) Calendar Days after the date of the Termination Notice.
- 45.2. If the Termination Notice has been served by the Contractor the Authority may elect to require the Contract or part thereof to continue by serving the Contractor with written notice of such and the Parties shall agree a fair and reasonable adjustment in accordance with Clause 40 (Changes to the Contract) – Changes Initiated by the Authority. The Contract or part thereof shall not terminate until the earlier of:
 - 45.2.1. any applicable date for the termination or expiry of this Contract set out in Clause 10 (Duration); and
 - 45.2.2. the expiry of any subsequent written notice (of at least thirty (30) Calendar Days) from the Authority to the Contractor that it wishes this Contract to terminate.
- 45.3. Subject to Clause 45.2 above the Contract shall terminate upon the expiry of fifteen (15) Calendar Days from the date of the Termination Notice.

46. Take Over/Tow-Out Option

- 46.1. The Authority shall, within fifteen (15) Calendar Days after termination of this Contract in accordance with DEFCON 514 (Material Breach) or Clause 45 (Termination for a Permissible Delay), have the right to elect to take possession of the Intercept and Escort Craft(s), documentation and other deliverables in their current state and to:
 - 46.1.1. complete such work as be necessary in order to remove the Intercept and Escort Craft(s), documentation and other deliverables from the Contractors Premises or the premises of a Sub-Contractor, using the premises, labour, plant, machinery and equipment of the Contractor or Sub-Contractor (at the Contractor's risk); and
 - 46.1.2. remove the Intercept and Escort Craft(s), documentation and other deliverables from the Contractors Premises or the premises of a Sub-Contractor in order to complete the Intercept and Escort Craft(s) elsewhere in accordance with this Contract.

- 46.1.3. upon giving prior written notice of such to the Contractor.
- 46.2. In the event that the Contract is terminated in accordance with DEFCON 514 (Material Breach) all reasonable costs and expenses incurred by the Authority in exercising its rights in accordance with Clause 46.1 and completing the Intercept and Escort craft(s) elsewhere shall be deducted from any outstanding payments to be made to the Contractor if the same be sufficient and if the same is not sufficient shall be made good by the Contractor on demand.
- 46.3. This Clause shall not apply if the Contractor has commenced action under DEFCON 530 (Dispute Resolution) at any time prior to the Authority exercising its rights in accordance with Clause 46.1.

47. Financial Consequences of Termination

Termination for Material Breach

- 47.1. Where the Authority has terminated this Contract pursuant to DEFCON 514 (Material Breach) the Contractor shall, in respect of any Intercept and Escort Craft(s) that have not been Accepted Off Contract, but terminated by the Authority, promptly refund to the Authority the full amount of sums paid by the Authority to the Contractor under Clause 12 (Payment).
- 47.2. Where the Authority has exercised its right to Take Over/Tow-Out Option in accordance with Clause 46, the Authority shall not be entitled to a refund in accordance with Clause 47.1 and the financial consequences shall be dealt with in accordance with Clause 47.
- 47.3. Notwithstanding the refund of instalment payments in accordance with Clause 47.1, the Authority may elect to pay the Contractor for some or all of the Contractor Deliverables at prices to be agreed by the Parties.
- 47.4. Where the Authority is entitled to terminate this Contract pursuant to DEFCON 520 (Corrupt Gifts and Payments of Commission), the Authority shall, in addition to its rights set out in Clause 47.1 above (but without any double-counting) be entitled to:
- 47.4.1. recover from the Contractor the amount of any loss resulting from such termination;
- 47.4.2. where this Clause 47.4 applies but this Contract has not been terminated, to recover from the Contractor any other loss sustained as a result of such breach,
- and any recovery action taken against any UK Government employee shall be without prejudice to any recovery action taken against the Contractor pursuant to this Clause.

Termination for Convenience (Contracts over £5M)

- 47.5. Where this Contract is terminated pursuant to DEFCON 656B (Termination for Convenience – Over £5M), then in addition to the provisions of DEFCON 656B, the provisions of Clause 47.6 below shall also apply.
- 47.6. The Authority shall not be liable under DEFCON 656B (Termination for Convenience – Over £5M) to pay any sum which;
- 47.6.1. would be claimable under any insurance held (or required to be held) by the Contractor, but for the fact that the Contractor has failed to make a claim on its insurance, or has failed to make a claim in accordance with the procedural requirements of the insurance policy, or has failed to take out or maintain any insurance that it is required to take out and/or maintain; or

- 47.6.2. When added to any sums already paid or due to the Contractor under this Contract, exceeds the total sum that would have been payable to the Contractor if this Contract had not been terminated pursuant to DEFCON 656B (Termination for Convenience – Over £5M).

Termination for a Permissible Delay

- 47.7. Where this Contract is terminated pursuant to Clause 45 (Termination for a Permissible Delay), the provisions of Clauses 47.8 to 47.10 below shall apply.
- 47.8. Subject to Clause 47.9 below, where the Contract has been determined in accordance with Clause 45 (Termination for a Permissible Delay) the Contractor shall promptly refund to the Authority the full amount of sums paid by the Authority to the Contractor under Clause 12 (Payment).
- 47.9. The Contractor shall only be entitled to be paid from the sums refunded to the Authority in accordance with Clause 47.8 for any aspect of the Contractor Deliverables that it has, as at the Termination Date, delivered to the Authority in accordance with the Contract (subject to any other provisions of this Contract affecting the level of such payment).
- 47.10. The Authority shall not be entitled to a refund under Clause 47.8 above where:
- 47.10.1. the permissible delay is caused entirely by an act or omission of the Authority;
or
 - 47.10.2. the Authority has exercised its right to Take Over/Tow-Out in accordance with Clause 46.1 above.

Miscellaneous Provisions

- 47.11. Each Party shall pay to the other any amounts payable pursuant to Clause 47 within twenty (20) Business Days of the Termination Date (or, if later, within twenty (20) Business Days of the amount being identified by both Parties as being payable, where it was not possible to determine on the Termination Date that such amount was payable).
- 47.12. Any payment made by the Authority to the Contractor or by the Contractor to the Authority, pursuant to this Clause 47 shall be in full satisfaction of the liability of the paying Party and shall be the sole remedy of the receiving Party in relation to this Clause 47.

48. Major Incident Inquiries

- 48.1. If any Major Incident occurs the Contractor shall, as soon as possible and upon notice to the Authority, convene and conduct a formal enquiry under the chairmanship of a director of the Contractor to establish the causes of the incident and, where appropriate, recommend remedial action to prevent any recurrence of the Major Incident.
- 48.2. The requirement of Clause 48.1 shall be without prejudice to any inquiry by the relevant national health and safety regulatory body, as required by law, and in the event, that any such inquiry is convened the Contractor shall:
- 48.2.1. give notice of the inquiry to the Authority as soon as reasonably practicable;