

OFFICIAL-SENSITIVE COMMERCIAL

- 35.2.1 is disclosed to its Employees and Sub-Contractors, only to the extent necessary for the performance of this Contract; and
- 35.2.2 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 this Contract or any Sub-Contract.
- 35.3 The Contractor shall ensure that its Employees and Sub-Contractors are aware of its arrangements for discharging the obligations at Clauses 35.1 and 35.2 (*Disclosure of Information*) before they receive Information and take such steps as may be reasonably practical to enforce such arrangements.
- 35.4 Clauses 35.1 and 35.2 (*Disclosure of Information*) shall not apply to any Information to the extent that either Party:
- 35.4.1 exercises rights of use or disclosure granted otherwise than in consequence of, or under, this Contract;
- 35.4.2 has the right to use or disclose the Information in accordance with other conditions of this Contract; or
- 35.4.3 can show:
- (i) that the Information was or has become published or publicly available for use otherwise than in breach of any provision of this Contract or any other agreement between the Parties;
 - (ii) that the Information was already known to it (without restrictions on disclosure or use) prior to it receiving it under or in connection with this Contract;
 - (iii) 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
 - (iv) from its records that the same information was derived independently of that received under or in connection with this Contract,
- provided the relationship to any other Information is not revealed.
- 35.5 Neither Party shall be in breach of this Clause 35 (*Disclosure of Information*) 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 Clause 35 (*Disclosure of Information*).
- 35.6 The Authority may disclose the Information:

OFFICIAL-SENSITIVE COMMERCIAL

- 35.6.1 on a confidential basis to any Central Government Body for any proper purpose of the Authority or of the relevant Central Government Body, which shall include: disclosure to the Cabinet Office and/or HM Treasury for the purpose of ensuring effective cross-Government procurement processes, including value for money and related purposes;
- 35.6.2 to Parliament and Parliamentary Committees or if required by any Parliamentary reporting requirement;
- 35.6.3 to the extent that the Authority (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions;
- 35.6.4 on a confidential basis to a professional adviser, consultant or other person engaged by any Central Government Body and/or the Authority (including benchmarking organisation) for any purpose relating to or connected with this Contract;
- 35.6.5 on a confidential basis for the purpose of the exercise of its rights under this Contract; or
- 35.6.6 on a confidential basis to a proposed body in connection with any assignment, novation or disposal of any of its rights, obligations or liabilities under this Contract,

and for the purposes of the foregoing, references to disclosure on a confidential basis shall mean disclosure subject to a confidentiality agreement or arrangement containing terms no less stringent than those placed on the Authority under this Clause 35 (*Disclosure of Information*).

- 35.7. Before sharing any Information in accordance with Clause 35.6 (*Disclosure of Information*), the Authority may redact the Information. Any decision to redact Information made by the Authority shall be final.
- 35.8 The Authority shall not be in breach of this Contract where it can show that any disclosure of Information is made solely and to the extent necessary to comply with the FOI Act or the Environmental Regulations. To the extent permitted by the time for compliance under the FOI Act or the Regulations, the Authority shall consult the Contractor where the Authority is considering the disclosure of Information under the FOI Act or the Regulations and, in any event, shall provide prior notification to the Contractor of any decision to disclose the Information. The Contractor acknowledges and accepts that its representations on disclosure during consultation may not be determinative and that the decision whether to disclose Information in order to comply with the FOI Act or the Regulations is a matter in which the Authority shall exercise its own discretion, subject always to the provisions of the FOI Act or the Regulations. For the avoidance of doubt, nothing in this Clause 35.8 (*Disclosure of Information*) shall affect the Contractor's rights at law.
- 35.9 Nothing in this Clause 35 (*Disclosure of Information*) shall affect the Parties' obligations of confidentiality where information is disclosed orally in confidence.

Controlled Information

OFFICIAL-SENSITIVE COMMERCIAL

35.10 This Clause 35.10 (*Controlled Information*) and Clauses 35.11 to 35.13 (inclusive) (*Controlled Information*) shall apply in respect of any Controlled Information communicated to and/or held by the Contractor, in addition to and notwithstanding Clauses 35.1 to 35.9 (inclusive) (*Disclosure of Information*), or any other confidentiality Clause of this Contract.

35.11 The Contractor shall:

35.11.1 hold the Controlled Information and not use it other than for the purpose of discharging its obligations under this Contract;

35.11.2 not copy the Controlled Information except as strictly necessary for the purpose of discharging its obligations under this Contract;

35.11.3 not disclose the Controlled Information to any Third Party unless so authorised in writing beforehand by the Authority;

35.11.4 protect the Controlled Information diligently against unauthorised access and against loss; and

35.11.5 act diligently to ensure that:

(i) Controlled Information is disclosed to its Employees only to the extent necessary for the purpose of discharging its obligations under this Contract; and

(ii) Employees to whom Controlled Information is disclosed are made aware of and required to comply with the terms of these Clauses 35.10 to 35.13 (inclusive) (*Controlled Information*).

35.12 Where Controlled Information is provided to the Contractor, it shall:

35.12.1 compile a register of that Controlled Information, which shall include an explicit description of the Controlled Information, a record of the number of copies made and a record of all access to the Controlled Information including access to any copies of the Controlled Information;

35.12.2 maintain such register for the duration of this Contract and for two (2) years following expiry or earlier termination of this Contract in accordance with its terms;

35.12.3 make such register of access available to the Authority upon reasonable notice for inspection and audit for so long as it is required to be maintained under Clause 35.12.2 (*Controlled Information*); and

35.12.4 on expiry or earlier termination of this Contract in accordance with its terms, return to the Authority all original and duplicate copies of the Controlled Information, or else at the Authority's option destroy these copies and provide a certificate of destruction to the Authority.

OFFICIAL-SENSITIVE COMMERCIAL

35.13 Nothing in these Clauses 35.10 to 35.13 (inclusive) (*Controlled Information*) shall diminish or extinguish any right of the Contractor to copy, use or disclose any information that is not Controlled Information to the extent that it can show:

- 35.13.1 that the information concerned was or has become published or publicly available for use without breach of any provision of this Contract or any other agreement between the Parties;
- 35.13.2 that such information was already known to it (without restrictions on disclosure or use) prior to receiving it under or in connection with this Contract;
- 35.13.3 that the information concerned was lawfully provided by a Third Party without restriction on use or further disclosure; or
- 35.13.4 from its records, that such information was derived independently of the Controlled Information,

to the extent that copying, use or disclosure of such other information shall not disclose its relationship to any Controlled Information.

Publicity and communications with the media

35.14 The Contractor shall not by itself, its Employees or agents (and shall ensure that its Sub-Contractors shall not):

- 35.14.1 communicate with representatives of the press, television, radio or other communications media on any matter concerning the provision of the Contractor Deliverables or this Contract;
- 35.14.2 photograph or film in or upon any Authority Sites;
- 35.14.3 erect or exhibit on any part of the Authority Sites any signs or trade boards; or
- 35.14.4 exhibit or attach to any part of the Authority Sites any notice or advertisement,

unless:

- (i) the Authority has given its prior written consent; or
- (ii) as otherwise required to comply with law, provided always that the Contractor shall, to the extent reasonably practicable, notify the Authority in advance (and provide the Authority with a copy) of the relevant communication, sign, notice or material.

35.15 Should the Contractor wish to release any publicity material or display hardware that arises from this Contract, the Contractor must seek the prior approval of the Authority. Publicity material includes open publication in the Contractor's publicity literature or website or through the media, displays at exhibitions in any country, lectures or symposia, scientific or technical papers, or any other occasion where members of the

general public may have access to the information, even if organised or sponsored by the Authority or any other government department.

36 Transparency

- 36.1 Notwithstanding any other term of this Contract, the Contractor understands that the Authority may publish the Transparency Information to the general public. The Contractor shall assist and cooperate with the Authority to enable the Authority to publish the Transparency Information.
- 36.2 Before publishing the Transparency Information to the general public in accordance with Clause 36.1 (*Transparency*), the Authority shall redact any information that would be exempt from disclosure if it was the subject of a request for information under the FOI Act or the Environmental Regulations, including the Contractor Commercially Sensitive Information as listed in (*Schedule R - Contractor's Commercially Sensitive Information (DEFFORM 539A)*).
- 36.3 The Authority may consult with the Contractor before redacting any information from the Transparency Information in accordance with Clause 36.2 (*Transparency*). 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 FOI Act or the Regulations.
- 36.4 For the avoidance of doubt, nothing in this Clause 36 (*Transparency*) shall affect the Contractor's rights at law.

37 Accuracy of Information

- 37.1 The Contractor shall be responsible for the accuracy of all drawings, documentation, information and/or other items supplied to the Authority by the Contractor in connection with the provision of the Contractor Deliverables.

38 Protection of Personal Data

- 38.1 In this Clause 38 (*Protection of Personal Data*), the following wording and expressions shall have the following meanings given to them, except where the context requires a different meaning:

38.1.1 "**Data Loss Event**" means any event that results in unauthorised access to Personal Data held by the Contractor under this Contract, and/or actual loss and/or destruction of Personal Data in breach of the Contract, including any Personal Data Breach;

38.1.2 "**Data Protection Legislation**" means

- (i) the UK GDPR and any applicable national implementing Laws as amended from time to time;
- (ii) the DPA 2018 to the extent that it relates to processing of personal data and privacy; and

OFFICIAL-SENSITIVE COMMERCIAL

- (iii) all applicable Law about the processing of personal data and privacy;
- 38.1.3 **"Data Protection Impact Assessment"** means an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data;
- 38.1.4 **"Data Subject Request"** means a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data;
- 38.1.5 **"DPA 2018"** means the Data Protection Act 2018;
- 38.1.6 **"UK GDPR"** the retained European Union law version of the General Data Protection Regulation (EU) 2016/679 as modified by Schedule 1 to the Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019 as in force in the UK from time to time;
- 38.1.7 **"Law"** means any law, subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978, bye-law, enforceable right within the meaning of section 2 of the European Communities Act 1972, regulation, order, regulatory policy, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements with which the Contractor is bound to comply;
- 38.1.8 **"Protective Measures"** means appropriate technical and organisational measures which may include (as appropriate):
 - (i) pseudonymising and encrypting Personal Data;
 - (ii) ensuring confidentiality, integrity, availability and resilience of systems and services;
 - (iii) ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident; and
 - (iv) regularly assessing and evaluating the effectiveness of such measures adopted by it, including those set out in DEFFORM 532;
- 38.1.9 **"Sub-processor"** means any Third Party appointed to process Personal Data on behalf of the Contractor related to this Contract;
- 38.1.10 The following expressions shall have the same meanings as in Article 4 of the UK GDPR:
 - (i) Controller;
 - (ii) Processor;
 - (iii) Data Subject;
 - (iv) Personal Data;

(v) Personal Data Breach; and

(vi) Data Protection Officer.

- 38.2 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 or destruction of or damage to that Personal Data.
- 38.3 The Parties acknowledge that for the purposes of the Data Protection Legislation, the Authority is the Controller and the Contractor is the Processor. The only processing that the Contractor is authorised to do is listed in DEFFORM 532 by the Authority and may not be determined by the Contractor.
- 38.4 The Contractor shall notify the Authority without undue delay if it considers that any of the Authority's instructions infringe the Data Protection Legislation. The Authority agrees that the Contractor shall not be required to provide legal advice to the Authority and that no notification (or absence of notification) by the Contractor will be construed as legal advice or a representation by the Contractor.
- 38.5 The Contractor shall provide all reasonable assistance to the Authority in the preparation of any Data Protection Impact Assessment prior to commencing any processing that is likely to result in a high risk to the rights and freedoms of Data Subjects. Such assistance may, at the discretion of the Authority, include:
- 38.5.1 a systematic description of the envisaged processing operations and the purpose of the processing;
 - 38.5.2 an assessment of the necessity and proportionality of the processing operations in relation to the services provided under this Contract;
 - 38.5.3 an assessment of the risks to the rights and freedoms of Data Subjects; and
 - 38.5.4 the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.
- 38.6 The Contractor shall, in relation to any Personal Data processed in connection with its obligations under this Contract:
- 38.6.1 process that Personal Data only in accordance with DEFFORM 532, unless the Contractor is required to do otherwise by Law. If it is so required the Contractor shall promptly notify the Authority before processing the Personal Data unless prohibited by Law;
 - 38.6.2 ensure that it has in place Protective Measures, including those set out in DEFFORM 532, as appropriate to protect against a Data Loss Event, which the Authority may acting reasonably reject (but failure to reject shall not

OFFICIAL-SENSITIVE COMMERCIAL

amount to approval by the Authority of the adequacy of the Protective Measures), having taken account of the:

- (i) nature of the data to be protected;
- (ii) harm that might result from a Data Loss Event;
- (iii) state of technological development; and
- (iv) cost of implementing any measures;

38.6.3 ensure that:

- (i) subject to Clause 38.6.1 (*Protection of Personal Data*), the Contractor Personnel do not process Personal Data except in accordance with this Contract (and in particular DEFFORM 532);
- (ii) it takes all reasonable steps to ensure the reliability and integrity of any Contractor Personnel who have access to the Personal Data by ensuring that they undertake the Government's Baseline Personnel Security Standard or other standard as specified in this Contract and ensure that they:
 - (A) are aware of and comply with the Contractor's duties under this Clause 38 (*Protection of Personal Data*);
 - (B) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any Third Party unless directed in writing to do so by the Authority or as otherwise permitted by this Contract; and
 - (C) have undergone adequate training in the use, care, protection and handling of Personal Data; and
- (iii) not transfer Personal Data outside of the EU unless the prior written consent of the Authority has been obtained and the following conditions are fulfilled;
 - (A) the Authority or the Contractor has provided appropriate safeguards in relation to the transfer (whether in accordance with UK GDPR Article 46 or DPA 2018 Article 73) as determined by the Authority;
 - (B) the Data Subject has enforceable rights and effective legal remedies;
 - (C) the Contractor complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Authority in meeting its obligations); and

OFFICIAL-SENSITIVE COMMERCIAL

- (D) the Contractor complies with any reasonable instructions notified to it in advance by the Authority with respect to the processing of the Personal Data,
- 38.7 Subject to Clause 38.6 (*Protection of Personal Data*), the Contractor shall notify the Authority without undue delay if, in connection with Personal Data processed under this Contract, it:
- 38.7.1 receives a Data Subject Request (or purported Data Subject Request);
 - 38.7.2 receives a request to rectify, block or erase any Personal Data;
 - 38.7.3 receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
 - 38.7.4 receives any communication from the Information Commissioner or any other regulatory authority;
 - 38.7.5 receives a request from any Third Party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law; or
 - 38.7.6 becomes aware of a Data Loss Event.
- 38.8 The Contractor's obligation to notify under Clause 38.7 (*Protection of Personal Data*) shall include the provision of further information to the Authority in phases, as details become available.
- 38.9 Taking into account the nature of the processing, the Contractor shall provide the Authority with assistance, insofar as possible, in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under Clause 38.7 (*Protection of Personal Data*) (and insofar as possible within the timescales reasonably required by the Authority) including by promptly providing:
- 38.9.1 the Authority with full details and copies of the complaint, communication or request;
 - 38.9.2 such assistance as is reasonably requested by the Authority to enable the Authority to comply with a Data Subject Request within the relevant timescales set out in the Data Protection Legislation;
 - 38.9.3 the Authority, at its request, with any Personal Data it holds in relation to a Data Subject;
 - 38.9.4 assistance as requested by the Authority following any Data Loss Event;
 - 38.9.5 assistance as requested by the Authority with respect to any request from the Information Commissioner's Office, or any consultation by the Authority with the Information Commissioner's Office.
- 38.10 The Contractor shall maintain complete and accurate records and information as necessary to fulfil its obligations under Clause 38.9 (*Protection of Personal Data*).

OFFICIAL-SENSITIVE COMMERCIAL

- 38.11 The Contractor shall allow for audits of its Data Processing activity by the Authority or the Authority's designated auditor, as required to demonstrate the Authority's compliance with its obligations as a Controller. Such audits will be conducted in accordance with general audit conditions contained in this Contract.
- 38.12 The Contractor shall designate a Data Protection Officer if required by the Data Protection Legislation.
- 38.13 Before allowing any Sub-processor to process any Personal Data related to this Contract, the Contractor must:
- 38.13.1 notify the Authority in writing of the intended Sub-processor and processing;
 - 38.13.2 obtain the written consent of the Authority;
 - 38.13.3 enter into a written contract with the Sub-processor which give effect to the terms set out in this Clause 38 (*Protection of Personal Data*) such that they apply to the Sub-processor; and
 - 38.13.4 provide the Authority with such information regarding the Sub-processor as the Authority may reasonably require.
- 38.14 The Contractor shall remain fully liable for all acts or omissions of any Sub-processor.
- 38.15 The Contractor may, at any time on not less than thirty (30) Working Days' notice, revise this Clause 38 (*Protection of Personal Data*) by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this Contract).
- 38.16 The Parties agree to take account of any guidance issued by the Information Commissioner's Office. The Authority may on not less than thirty (30) Working Days' give notice to the Contractor to amend this Contract to ensure that it complies with any guidance issued by the Information Commissioner's Office.
- 38.17 Any Contract amendments resulting from Clause 38.15 (*Protection of Personal Data*) and/or Clause 38.16 (*Protection of Personal Data*) shall be conducted in accordance with Clause 84 (*Change*).

39 Official-Sensitive Security Requirements

- 39.1 The Contractor shall protect (including protection from deliberate and/or opportunistic attack) all Information relating to the aspects designated as "OFFICIAL" and "OFFICIAL SENSITIVE" as identified in the *Schedule M - Security Aspects Letter*.
- 39.2 The Contractor shall include the requirements and obligations set out in Clause 39.1 (*Official-Sensitive Security Requirements*) in any Sub-Contract placed in connection with or for the purposes of this Contract which requires disclosure of OFFICIAL-SENSITIVE Information to the Sub-Contractor or under which any Information relating to aspects designated as OFFICIAL-SENSITIVE is created by the Sub-Contractor. The Contractor shall also include in the Sub-Contract a requirement for the Sub-

Contractor to flow the requirements of this Clause 39.2 (*Official-Sensitive Security Requirements*) to its Sub-Contracts and through all levels of the supply chain to the lowest level where any OFFICIAL-SENSITIVE Information is handled.

40 Cyber

Definitions

40.1 In this Clause 40 (*Cyber*), the following words and expressions shall have the meanings given to them below, except where the context requires a different meaning:

40.1.1 **"Associated Company"** means:

- (i) 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
- (ii) any parent undertaking or subsidiary undertaking of the Contractor from time to time within the meaning of section 1162 of the 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;

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

40.1.3 **"Cyber Security Implementation Plan"** means the plan referred to in Clause 40.3 (*Contractor Obligations*), including but not limited to any risk-balance case and mitigation measures required by the Authority;

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

- (i) unauthorised access to an information system or electronic communications network;
- (ii) disruption or change of the operation (including but not limited to takeover of control) of an information system or electronic communications network;
- (iii) destruction, damage, deletion or the change of MOD Identifiable Information residing in an information system or electronic communications network;
- (iv) removal or limiting the possibility to use MOD Identifiable Information residing in an information system or electronic communications network; or

OFFICIAL-SENSITIVE COMMERCIAL

- (v) the appropriation, publication, dissemination or any other use of non-public MOD Identifiable Information by persons unauthorised to do so;
- 40.1.5 **"Cyber Security Instructions"** means Def Stan 05-138, together with any relevant ISN and specific security instructions relating to this Contract issued by the Authority to the Contractor;
- 40.1.6 **"Cyber Security Model"** or **"CSM"** means the process by which the Authority ensures that MOD Identifiable Information is adequately protected from a Cyber Security Incident and includes the CSM Risk Assessment Process, Def Stan 05-138 and the CSM Supplier Assurance Questionnaire;
- 40.1.7 **"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;
- 40.1.8 **"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 Clause 40 (Cyber);
- 40.1.9 **"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;
- 40.1.10 **"Def Stan 05-138"** means the Defence Standard 05-138 as amended or replaced from time to time;
- 40.1.11 **"Electronic Information"** means all information generated, processed, transferred or otherwise dealt with under or in connection with this Contract, including but not limited to Data, recorded or preserved on any information system or electronic communications network;
- 40.1.12 **"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;
- 40.1.13 **"ISN"** means Industry Security Notices issued by the Authority to the Contractor whether directly or by issue on the gov.uk website at: <https://www.gov.uk/government/publications/industry-security-notices-isns>;
- 40.1.14 **"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;
- 40.1.15 **"MOD Identifiable Information"** means all Electronic Information which is attributed to or could identify an existing or proposed Authority capability, defence activities or personnel and which the Authority requires to be

protected against loss, misuse, corruption, alteration and unauthorised disclosure;

- 40.1.16 **"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;
- 40.1.17 **"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; and
- 40.1.18 **"Supplier Cyber Protection Service"** means the CSM Risk Assessment Process and CSM Supplier Assurance Questionnaire.

Authority obligations

- 40.2 The Cyber Risk Level of this Contract is "moderate", as defined in Def Stan 05-138. The Authority shall notify the Contractor as soon as reasonably practicable where the Authority reassesses the Cyber Risk Level relating to this Contract.

Contractor obligations

- 40.3 The Contractor shall, and shall procure that its Sub-Contractors shall:
 - 40.3.1 comply with Def Stan 05-138;
 - 40.3.2 complete the CSM Risk Assessment Process in accordance with the Authority's instructions, ensuring that any change in the Cyber Risk Level is notified to any affected Sub-Contractors, and complete a further CSM Risk Assessment Process 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;
 - 40.3.3 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;
 - 40.3.4 having regard to the state of technological development, implement and maintain all appropriate technical and organisational security measures to discharge its obligations under this Clause 40 (*Cyber*) in accordance with Good Industry Practice, provided always that where there is a conflict between the Contractor's obligations under Clause 40.3.1 and this Clause 40.3.4 (*Contractor obligations*), the Contractor shall notify the Authority in accordance with the notification provisions in Def Stan 05-138 as soon as it becomes aware of the conflict and the Authority shall determine which standard or measure shall take precedence;

- 40.3.5 comply with all Cyber Security Instructions notified to it by the Authority as soon as reasonably practicable;
- 40.3.6 notify the JSyCC WARP in accordance with ISN 2014/02 as amended or updated from time to time and the Contractor's 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;
- 40.3.7 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 Contractor's NSA/DSA in the circumstances and taking into account the Cyber Risk Level;
- 40.3.8 consent to the Authority recording and using information obtained in relation to this 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
- 40.3.9 include provisions equivalent to Clause 40.16 (*Breach of obligations*) in all Sub-Contracts imposing provisions equivalent to this Clause 40.3 (*Contractor obligations*) (the "**Equivalent Provisions**") and, where a Sub-Contractors breaches terms implementing this Clause 40.3 (*Contractor obligations*) 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:
- (i) 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 view into consideration; and
 - (ii) 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 Clauses 40.3.1 to 40.3.9 (inclusive) (*Contractor obligations*), 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 Clauses 40.3.1 to 40.3.9 (inclusive) (*Contractor obligations*), shall apply in full. In the event that a Cyber Security Implementation Plan cannot be agreed the matter shall be resolved in accordance with the Dispute Resolution Procedure.

Management of Sub-Contractors

- 40.4 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 Clause 40.3 (*Contractor obligations*). In the event that a Sub-Contractor is found to be in breach of its obligations in Clause 40.3 (*Contractor obligations*), 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 Clause 40.4 (*Management of Sub-Contractors*).
- 40.5 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-Contractors 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 Clause 40.3.9 (*Contractor obligations*).
- 40.6 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 Clauses 40.4 to 40.7 (inclusive) (*Management of Sub-Contractors*) and the provisions of Clause 40.17 or 40.18 (*Breach of obligations*) as appropriate shall apply.
- 40.7 The Contractor shall, and shall procure that its Sub-Contractors shall, include provisions equivalent to Clauses 40.4 to 40.7 (inclusive) (*Management of Sub-Contractors*) in all Sub-Contracts which flow down the obligations set out in Clause 40.3 (*Contractor obligations*) of this Contract.

Records

- 40.8 The Contractor shall keep and maintain, and shall ensure that any Sub-Contractor shall keep and maintain, until six (6) years after the end of the Contract Period, or as long a period as may be agreed between the Parties, full and accurate records including but not limited to:
- 40.8.1 details of all MOD Identifiable Information relating to the Contractor Deliverables provided under this Contract; and
 - 40.8.2 copies of all documents required to demonstrate compliance with Def Stan 05-138 and this Clause 40 (*Cyber*), 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.
- 40.9 The Contractor shall, and shall ensure that any Sub-Contractor shall, on request provide the Authority, the Authority's Representatives and/or the Contractor's NSA/DSA such access to those records as may be required in connection with this Contract.

Audit

- 40.10 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

OFFICIAL-SENSITIVE COMMERCIAL

the 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 NSA/DSA may, not more than twice in any calendar year and for a period of six (6) years following the termination or expiry of this Contract, whichever is the later, conduct an audit for the following purposes:

- 40.10.1 to review and verify the integrity, confidentiality and security of any MOD Identifiable Information;
 - 40.10.2 to review the Contractor's and/or any Sub-Contractor's compliance with its obligations under this Clause 40 (Cyber); and
 - 40.10.3 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 Clauses 40.10.1 and 40.10.2 (Audit).
- 40.11 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.
- 40.12 The Contractor shall, and shall ensure that any Sub-Contractor shall, on demand provide the Authority and any relevant regulatory body, including the NSA/DSA, (and/or their agents or representatives), together the "Auditors", with all reasonable co-operation and assistance in relation to each audit, including but not limited to:
- 40.12.1 all information requested by the Authority within the permitted scope of the audit;
 - 40.12.2 any Associated Company or any Sub-Contractor and to any equipment used (whether exclusively or non-exclusively) in the performance of this Contract and, where such Sites and/or equipment are not within 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
 - 40.12.3 access to any relevant staff.
- 40.13 The Authority shall endeavour to (but is not obliged to) provide at least fifteen (15) calendar days' notice of its intention to conduct an audit.
- 40.14 The Parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this Clause 40 (Cyber), unless the audit identifies a material breach of the terms of this Clause 40 (Cyber) 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.

Cyber Accreditation

- 40.15 The Contractor shall hold the correct level of Cyber Accreditation for this Contract

Breach of obligations

- 40.16 In exercising its rights or remedies under this Clause 40 (*Cyber*), the Authority shall:
- 40.16.1 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
 - 40.16.2 give all due consideration, where appropriate, to action other than termination of this Contract, including but not limited to a remedial period if this is appropriate in all the circumstances.
- 40.17 Where the Cyber Risk Level of this Contract is assessed to be moderate or high, and the Contractor breaches the terms of this Clause 40 (*Cyber*), the Authority shall be entitled to terminate this Contract (whether in whole or in part) and the provisions of Clause 78 (*Termination for Contractor Default*) shall apply.
- 40.18 Where the Cyber Risk Level of this Contract is assessed to be very low or low, and the Contractor breaches the terms of this Clause 40 (*Cyber*), the Authority shall be entitled:
- 40.18.1 to recover from the Contractor the amount of any Loss sustained in consequence of any breach of this Clause 40 (*Cyber*); and
 - 40.18.2 where the Contractor does not comply with any reasonable instructions issued by the Authority or the 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 the provisions of Clause 80.6 (*Termination for Contractor Default*) shall apply.
- 40.19 Where the Contractor commits an act of fraud, negligence or wilful misconduct in respect of its obligations under this Clause 40 (*Cyber*) the Authority shall be entitled to terminate this Contract (whether in whole or in part) and the provisions of Clause 80.6 (*Termination for Contractor Default*) shall apply.

General

- 40.20 On termination or expiry of this Contract, the provisions of this Clause 40 (*Cyber*) (excepting Clauses 40.3.2 and 40.3.3 (*Contractor obligations*)) shall continue in force so long as the Contractor and/or Sub-Contractor holds any MOD Identifiable Information relating to this Contract.
- 40.21 Without prejudice to Clause 82.1.1 (*Continuing Obligations*), termination or expiry of this Contract shall not affect any rights, remedies, obligations or liabilities of the Parties under this Clause 40 (*Cyber*) 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 this Contract which existed at or before the date of termination or expiry.
- 40.22 The Contractor agrees that the Authority has absolute discretion to determine changes to Def Stan 05-138 and/or the Cyber Risk Level. In the event that there is such a change to Def Stan 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 Def Stan 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 this Contract and reasonable in all the circumstances.

- 40.23 Subject to Clause 40.22 (*General*), where the Contractor seeks such adjustment or extension, the provisions of Clause 84 (*Change*) shall apply to determine the request for such adjustment or extension, provided always that:

40.23.1 notwithstanding Clause 84 (*Change*), the Contractor shall deliver an Estimate to the Authority within eight (8) weeks of the occurrence of the change in Def Stan 05-138 or Cyber Risk Level (or such longer period as may be agreed by the Parties) and such Estimate shall, without prejudice to Clause 84 (*Change*), identify the impact of that change and shall be accompanied by full details of the request for adjustment (and for the purposes of Clause 84 (*Change*), the notice given by the Authority pursuant to Clause 40.22 (*General*) of the changes to Def Stan 05-138 and/or the Cyber Risk Level shall be deemed to be an Authority Notice of Change and the request for such proposed changes shall be deemed to be a Change and the subject of such Authority Notice of Change); and

40.23.2 the Contractor shall not be entitled to refuse the proposed Change pursuant to Clause 84 (*Change*), insofar as it relates to Def Stan 05-138 or the Cyber Risk Level whether or not the Contractor's Estimate is rejected. In the event that the Contractor does not agree with the Authority's determination, then the provisions of the Dispute Resolution Procedure shall apply.

- 40.24 The Contractor shall not recover any costs and/or other Losses under or in connection with this Clause 40 (*Cyber*) 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.

PART 7 - INTELLECTUAL PROPERTY RIGHTS

41 Intellectual Property Rights

- 41.1 The Parties shall comply with their respective rights and obligations in Schedule S (*IPR*).

42 Authorisation by the Crown for use of Third Party Intellectual Property Rights

Notwithstanding any other provisions of this Contract and for the avoidance of doubt, award of this 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.

PART 8 - SECURITY PROVISIONS

43 Security Aspects Letter

- 43.1 The Contractor shall comply with the requirements of the Security Aspects Letter.

44 Security – Secret Matters

- 44.1 [In this Clause 44 (*Security – Secret Matters*), the following words and expressions shall have the following meanings:

44.1.1 “**Employee**” shall include any person who is an employee or director of the Contractor or who occupies the position of a director of the Contractor, by whatever title given;

44.1.2 “**Secret Matter**” means any matter connected with this Contract, or its performance which is designated by the Authority in the Security Aspects Letter or otherwise in writing as 'Top Secret' or 'Secret', and shall include any information concerning the content of such matter and anything which contains or may reveal that matter; and

44.1.3 “**Security Policy**” has the meaning given it in Schedule G (*Definitions*).

Official Secrets Acts

- 44.2 The Contractor shall:

44.2.1 take all reasonable steps to make sure that all Employees engaged on any work in connection with this Contract have notice that the Official Secrets Acts 1911-1989 apply to them and will continue so to apply after the completion or termination of this Contract;

44.2.2 if directed by the Authority, make sure that any such Employees shall sign a statement acknowledging that, both during the term of this Contract and after its completion or termination, he is bound by the Official Secrets Acts 1911-1989 (and where applicable by any other legislation); and

44.2.3 make sure that any such Employees are aware that all provisions of the Security Aspects Letter and any other statutory provisions and/or guidance provided by the Authority to the Contractor from time to time, apply to such Employees and will continue so to apply after the completion or termination of this Contract.

Security measures

- 44.3 Unless it has the written authorisation of the Authority to do otherwise, neither the Contractor nor any of its Employees shall, either before or after the completion or termination of this Contract, do or permit to be done anything which they know or ought reasonably to know may result in Secret Matter being disclosed to or acquired by a person in any of the following categories:

44.3.1 who is not a British citizen;

OFFICIAL-SENSITIVE COMMERCIAL

- 44.3.2 who does not hold the appropriate authority for access to the protected matter;
 - 44.3.3 in respect of whom the Authority has notified the Contractor in writing that the Secret Matter shall not be disclosed to or acquired by that person;
 - 44.3.4 who is not an Employee of the Contractor; or
 - 44.3.5 who is an Employee of the Contractor and has no need to know the information for the proper performance of this Contract.
- 44.4 Unless it has the written authorisation of the Authority to do otherwise, the Contractor and its Employees shall, both before and after the completion or termination of this Contract, take all reasonable steps to ensure that:
- 44.4.1 no photograph of, or pertaining to, any Secret Matter shall be taken and no copy of or extract from any Secret Matter shall be made except to the extent necessary for the proper performance of this Contract; and
 - 44.4.2 any Secret Matter is at all times strictly safeguarded in accordance with the Security Policy (as amended from time to time) and, upon request, is delivered up to the Authority who shall be entitled to retain it.
- A decision of the Authority on the question of whether the Contractor has taken or is taking reasonable steps as required by this Clause 44 (*Security – Secret Matters*) shall be final and conclusive.
- 44.5 The Contractor shall:
- 44.5.1 provide to the Authority:
 - (i) upon request, such records giving particulars of those Employees who have had, at any time, access to any Secret Matter that is required to be kept in accordance with Clause 44.4.2 (*Security measures*);
 - (ii) upon request, such information as the Authority may from time to time require so as to be satisfied that the Contractor and its Employees are complying with its obligations under this Clause 44 (*Security – Secret Matters*), including the measures taken or proposed by the Contractor so as to comply with its obligations and to prevent any breach of them; and
 - (iii) full particulars of any failure by the Contractor and its Employees to comply with any obligations relating to any Secret Matter arising under this Clause 44 (*Security – Secret Matters*) immediately upon such failure becoming apparent; and
 - 44.5.2 ensure that, for the purpose of checking the Contractor's compliance with the obligation in Clause 44.4.2 (*Security measures*), a representative of the Authority shall be entitled at any time to enter and inspect any premises used by the Contractor which are in any way connected with this Contract

OFFICIAL-SENSITIVE COMMERCIAL

and inspect any document or thing in any such premises, which is being used or made for the purposes of this Contract. Such representative shall be entitled to all such information as he may reasonably require.

- 44.6 If at any time either before or after the completion or termination of this Contract, the Contractor or any of its Employees discovers or suspects that an unauthorised person is seeking or has sought to obtain information directly or indirectly concerning any Secret Matter, the Contractor shall forthwith inform the Authority of the matter with full particulars thereof.

Sub-Contracts

- 44.7 If the Contractor proposes to make a Sub-Contract which will involve the disclosure of Secret Matter to the Sub-Contractor, the Contractor shall:
- 44.7.1 submit for approval of the Authority the name of the proposed Sub-Contractor, a statement of the work to be carried out and any other details known to the Contractor, which the Authority shall reasonably require;
 - 44.7.2 incorporate into the Sub-Contract the terms of the Appendix to DEFCON 659A and such secrecy and security obligations as the Authority shall direct. In the appendix "Agreement" shall mean the "Sub-Contract", "First Party" shall mean "the Contractor" and "Second Party" shall mean the "Sub-Contractor"; and
 - 44.7.3 inform the Authority immediately if it becomes aware of any breach by the Sub-Contractor of any secrecy or security obligation and, if requested to do so by the Authority, terminate the Sub-Contract.

Termination

- 44.8 The Authority shall be entitled to terminate this Contract immediately if:
- 44.8.1 the Contractor is in breach of any obligation under this Clause 44 (*Security – Secret Matters*); or
 - 44.8.2 the Contractor is in breach of any secrecy or security obligation imposed by any other contract with the Crown,

where the Authority considers that the circumstances of the breach jeopardise the secrecy or security of the Secret Matter and claim such damages as may have been sustained as a result of the Contractor's breach of this Clause 44 (*Security – Secret Matters*).

Acknowledgement by the Contractor

- 44.9 By entering into this Contract, the Contractor confirms that:
- 44.9.1 it has received the Security Aspects Letter;
 - 44.9.2 the Secret Matter has been brought to the attention of the person directly responsible for the security of this Contract;

- 44.9.3 the nature and details of the Secret Matter are understood; and
- 44.9.4 measures will be taken to safeguard the Secret Matter in accordance with the requirements of this Clause 44 (*Security – Secret Matters*).

Submission of security information

- 44.10 The Contractor shall submit all information required to be submitted under this Clause 44 (*Security – Secret Matters*) to:

[REDACTED]
Defence Equipment & Support

[REDACTED]
MOD Abbey Wood
Bristol
BS34 8JH

or such other address as may be notified in writing by the Authority to the Contractor from time to time.

45 Personnel Security

- 45.1 Without prejudice to the provisions of Clauses 45.2 and 45.3 (*Personnel Security*), if the Authority considers that any of the Employees are for any reason unsatisfactory to the Authority, it may:

- 45.1.1 refuse admission to the relevant person(s) to the Authority Site; and/or
- 45.1.2 direct the Contractor to end the involvement of the relevant person(s) in the provision of the Contractor Deliverables,

and the Contractor shall replace and/or procure the replacement of any such Employees as soon as reasonably practicable, whilst ensuring that any Key Role is not vacant for a period exceeding ten (10) Working Days.

- 45.2 The Contractor shall ensure and/or procure that the Employees comply with all reasonable requirements of the Authority concerning conduct at Authority Sites and make themselves familiar with and at all times shall conduct themselves in accordance with any rules and regulations as issued from time to time by the Authority in relation to the relevant Authority Site and/or by the Authority.
- 45.3 The Authority reserves the right to refuse access to, or remove anyone from, any Authority Site who fails to comply with the applicable rules and regulations.
- 45.4 Should an Employee be refused access to, or be removed from an Authority Site for failure to comply with applicable rules and regulations, the Contractor shall not be relieved from its obligations to provide the Contractor Deliverables in full.

Security clearance

- 45.5 The Contractor shall be responsible for ensuring that each Employee holds and maintains a valid security clearance up to and including "Secret" level at all times during their employment or engagement in connection with this Contract.

Admission to Authority Sites

- 45.6 The Contractor shall provide the Authority with details of each Employee and any other details the Authority may require, together with details of the Authority Site to which access is required and the capacity in which such person is concerned with the provision of the Contractor Deliverables.
- 45.7 The Authority shall issue a pass for all Employees who are security cleared to an appropriate level for the Authority Site pursuant to Clause 45.5 (*Security clearance*) before such person is intended to enter onto an Authority Site in connection with the provision of the Contractor Deliverables. Passes shall remain the property of the Authority and the Contractor shall ensure that passes shall be surrendered on demand or on termination or expiry of this Contract.
- 45.8 A person not in possession of a pass who is required by the Contractor or any Sub-Contractor to attend an Authority Site to provide emergency reactive services shall be allowed temporary admission to the Authority Site provided that the Contractor shall, or shall procure that any Sub-Contractor shall, ensure that such individual is accompanied at all times whilst on the Authority Site by a member of the Contractor or Sub-Contractor's staff who has been issued with a pass pursuant to Clause 45.5 (*Security clearance*).
- 45.9 Whilst engaged at the Authority's Sites, the Contractor shall, and shall procure that any Sub-Contractor shall, ensure that all Employees and other accompanied emergency reactive workers pursuant to Clause 45.8 (*Admission to Authority Sites*) comply with the Authority's policies as notified to the Contractor from time to time relating to the conduct of staff and security arrangements.
- 45.10 Notwithstanding the provisions of Clauses 45.6 to 45.9 (inclusive) (*Admission to Authority Sites*), the Authority may refuse any person admission to an Authority Site or require the removal of any person from an Authority Site for any reason.
- 45.11 The Authority's decision on any matter arising under Clause 45.10 (*Admission to Authority Sites*) shall be final and conclusive.
- 45.12 Where a person is refused admission:
- 45.12.1 to an Authority Site or is removed from an Authority Site, then the Contractor shall not be relieved from its obligations to provide the Contractor Deliverables in full; or
 - 45.12.2 to an Authority Site or is removed from an Authority Site, in each case pursuant to Clause 45.10 (*Admission to Authority Sites*), then the Authority shall give the Contractor such relief from its obligations in respect of those Contractor Deliverables in which such person is or would have been engaged for a reasonable period to allow the Contractor or any Sub-Contractor to make alternative arrangements to replace the person whose

admission has been refused or whose removal has been required by the Authority.

46 Co-operation for Security Investigation

- 46.1 The Contractor shall, and shall procure that each Sub-Contractor shall, notify the Authority's Representative immediately it becomes aware that an Employee or an accompanied emergency reactive worker pursuant to Clause 45.8 (*Admission to Authority Sites*) has breached Clause 44 (*Security – Secret Matters*) and/or Clause 45 (*Personnel Security*).
- 46.2 The Contractor shall, and shall procure that its Sub-Contractors shall, give reasonable assistance to the Authority's Representative and/or any other representative or adviser of the Authority for the purposes of carrying out any investigation that the Authority undertakes (acting reasonably).

PART 9 - SITE ISSUES

47 Access to the Contractor's Premises

Authority's monitoring and inspection rights

- 47.1 Without prejudice to the other provisions of this Contract, the Contractor shall ensure that the Authority and the representatives of the Authority shall have the right at all reasonable times and on reasonable notice (but not so as to materially delay or impede the progress of the provision of the Contractor Deliverables):
- 47.1.1 to enter any of the Contractor's premises in order to inspect the state and progress of the provision of the Contractor Deliverables (and to ascertain whether the Contractor Deliverables are being properly provided in accordance with this Contract) and to monitor compliance by the Contractor with its obligations under this Contract; and
- 47.1.2 subject to obtaining the consent of the relevant Sub-Contractor, manufacturer or supplier (which the Contractor shall use all reasonable endeavours to obtain), to visit any property, site or workshop other than the Contractor's premises where materials, plant or equipment are being manufactured, prepared or stored for use in connection with this Contract (for the purposes of general inspection and of attending any test or investigation being carried out), or any property other than the Contractor's premises used by the Contractor as training or workshop facilities or as a place where work is being prepared or materials are being obtained in relation to this Contract.
- 47.2 The Contractor shall provide and shall ensure the Sub-Contractors provide to the Authority and the representatives of the Authority (in each case without any additional cost to the Authority) for the purposes of Clause 47.1 (*Authority's monitoring and inspection rights*):
- 47.2.1 all reasonable access to premises and such accommodation and facilities for representatives of the Authority as the Authority may reasonably require (provided that all accommodation shall be adequately furnished, lit, heated

and ventilated and shall include suitable cloakroom and communication facilities) for an agreed reasonable period; and

- 47.2.2 that satisfactory facilities are made available and that reasonable assistance is given to representatives of the Authority,

subject to the Contractor's and any Sub-Contractors' operations not being adversely affected.

Authority's conduct on the Contractor's Premises

- 47.3 In exercising any right under Clause 47.1 (*Authority's monitoring and inspection rights*), the Authority shall comply with all relevant safety procedures (which shall include any relevant health and safety plans), the Contractor's site rules from time to time and any reasonable directions with regard to site safety that may be issued by or on behalf of the Contractor from time to time.
- 47.4 The Authority shall indemnify the Contractor for any material damage caused by it to the Contractor's Premises whilst exercising any right under this Clause 47 (*Access to the Contractor's Premises*).

48 Not used

49 The Contractor's Property and Personnel at Government Establishments

Liability in respect of damage to Government and Third Party property

- 49.1 Without prejudice to the provisions of Clause 60 (*Issued Property*), the Contractor shall, except as otherwise provided for in this Contract, make good or, at the option of the Authority, pay compensation for all damage occurring to any Government and/or Third Party property (which includes land or buildings), occasioned by the Contractor, or by any Contractor's Representative or Contractor Related Party, arising from his or their presence on a Government Establishment in connection with this Contract, provided that this Clause 49.1 (*Liability in respect of damage to Government and Third Party property*) shall not apply to the extent that the Contractor is able to show that any such damage was not caused or contributed to by any circumstances within its reasonable control.

The Contractor's property

- 49.2 All property of the Contractor and Contractor Related Parties shall be at the risk of the Contractor whilst it is on any Government Establishment and the Authority shall accept no liability for any Loss or damage howsoever occurring to or caused by such property, except where any such Loss or damage occurred on a Government Establishment and such Loss or damage was caused or contributed to by any act, neglect or default of any Authority servant, agent or Contractor then the Authority shall accept liability for such Loss or damage to the extent to which such Loss or damage is so caused or contributed to by such Authority servant, agent or Contractor.

Transport overseas

- 49.3 Where the Contractor's representatives are required by this Contract to join or visit a Government Establishment overseas, transport between the United Kingdom and the place of duty (but excluding transport within the United Kingdom) may be provided by the Authority by Royal Air Force or by Authority chartered aircraft. The Contractor shall make such arrangements through the Authority's Representative. When such transport is not available within a reasonable time, the Contractor shall make its own transport arrangements. The Authority shall reimburse the Contractor's costs for such transport, provided that the Contractor provides evidence supporting the use of alternative transport and proof of the costs involved and the Contractor has used reasonable endeavours to ensure that any such costs for alternative transport are consistent with the standards defined in the Expenses Policy.

Medical treatment overseas

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

Injuries, disease and dangerous occurrences

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

Dependants of Contractor's Representatives

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

Provision of funds overseas

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

Health and safety hazard control

49.8 Without prejudice to the Contractor's obligations under Clause 56 (*Supply of Hazard Data*), where the Contractor enters a Government Establishment for the purpose of providing the whole or any part of the Contractor Deliverables:

49.8.1 the Contractor shall notify the officer in charge or the site project liaison officer or overseeing officer or other person nominated by the Authority of:

- (i) any health and safety hazards associated with the delivery of that part of the Contractor Deliverable to be provided by it or Contractor Related Party;
- (ii) any foreseeable risks to the health and safety of all persons associated with such hazards; and
- (iii) any precautions to be taken by it as well as any precautions which, in its opinion, ought to be taken by the Authority or other person, in order to control such risks;

49.8.2 the Authority shall notify the Contractor of:

- (i) any health and safety hazards which may be encountered by the Contractor or any Contractor Related Party on the Government Establishment;
- (ii) any foreseeable risks to the health and safety of the Contractor or any Contractor Related Party, associated with such hazards; and
- (iii) any precautions to be taken by the Authority and/or any Third Party as well as any precautions which, in its opinion, ought to be taken by the Contractor, in order to control such risks;

49.8.3 the Contractor shall notify the Contractor Related Parties of and, where appropriate, provide adequate instruction in relation to:

- (i) the hazards, risks and precautions notified by it to the Authority under Clause 49.8.1 (*Health and safety hazard control*);
- (ii) the hazards, risks and precautions notified by the Authority to the Contractor under Clause 49.8.2 (*Health and safety hazard control*); and
- (iii) the precautions which, in its opinion, ought to be taken by the Contractor Related Parties in order to control those risks;

49.8.4 the Contractor shall provide the officer in charge or the site project liaison officer or overseeing officer nominated in this Contract with:

- (i) copies of those sections of its own and, where appropriate, Contractor Related Party's safety policies which are relevant to the

OFFICIAL-SENSITIVE COMMERCIAL

risks notified under Clause 49.8.1 (*Health and safety hazard control*);

- (ii) copies of any related risk assessments; and
- (iii) copies of any notifications and instructions issued by it to any Contractor Related Party under Clause 49.8.3 (*Health and safety hazard control*);

49.8.5 the Authority shall provide the Contractor with:

- (i) copies of those sections of its own or (to the extent that the same are provided to the Authority) any Third Party's (as the case may be) safety policies which are relevant to the risks notified under Clause 49.8.2 (*Health and safety hazard control*);
- (ii) copies of any related risk assessments; and
- (iii) copies of any notifications and instructions issued by it to its employees similar to those called for from the Contractor under Clause 49.8.3 (*Health and safety hazard control*); and

49.8.6 where the Contractor identifies a health and safety hazard associated with services provided by the Authority under Schedule D (GFA), the Contractor shall notify the Authority of the hazard and the risk to the Contractor's or the Authority's personnel;

- (i) the Authority shall implement any urgent temporary actions agreed by the Parties to rectify the hazard within five (5) Working Days; and
- (ii) the Authority shall implement permanent changes to rectify the hazard as soon as practicable but no later than three (3) months from the notification in Clause 49.8.6 (*Health and safety hazard control*).

PART 10 - PEOPLE ISSUES

50 Transfer of Undertakings (Protection of Employment) (TUPE)

50.1 The Parties shall comply with their respective rights and obligations in Schedule N (*Transfer Regulations (TUPE)*).

51 Child Labour and Employment Law and Modern Slavery Act

51.1 The Contractor shall comply in all material respects with Child Labour Legislation and applicable employment legislation of those jurisdiction(s) where this Contract is being performed.

51.2 The Contractor agrees to take reasonable efforts to reflect this Clause 51 (*Child Labour and Employment Law and Modern Slavery Act*) in any Sub-Contract that it enters into to satisfy the requirements of this Contract and to require its Sub-Contractors to reflect

this Clause 51 (*Child Labour and Employment Law and Modern Slavery Act*) in their Sub-Contracts that they enter into to satisfy the requirements of this Contract.

- 51.3 The Authority has a zero-tolerance approach to modern slavery and human trafficking, and it is committed to acting ethically in its business dealings and relationships and to implement and enforce effective procedures and controls to prevent modern slavery and human trafficking in its business dealings and relationships. The Authority expects the same high standards from all its consultants, suppliers, employees and agents. The Contractor undertakes and warrants that it:
- 51.3.1 has not committed any offence under the Modern Slavery Act 2015;
 - 51.3.2 has in place adequate procedures and controls to prevent modern slavery and human trafficking as contemplated by the Modern Slavery Act 2015; and
 - 51.3.3 shall comply, and shall require its Sub-Contractors, suppliers, employees and agents to comply, with the Modern Slavery Act, the Authority's Anti-Slavery and Human Trafficking Policy.
- 51.4 The Contractor shall notify the Authority immediately if it becomes aware that it, its Sub-Contractors, suppliers, employees or agents are in breach of Clause 51.3 (*Child Labour and Employment Law and Modern Slavery Act*) (had such Sub-Contractors, suppliers, employees or agents been subject to the same provisions).
- 51.5 In the event that the Contractor, its Sub-Contractors, suppliers, employees or agents are in breach of Clause 51.3 (*Child Labour and Employment Law and Modern Slavery Act*) (had such Sub-Contractors, suppliers, employees or agents been subject to the same provisions), the breach will be considered a Contractor Default for the purpose of this Contract and the Authority shall be entitled to terminate the whole or any part of this Contract in accordance with the provisions of Clause 78.1 (*Termination for Contractor Default*), subject to the provisions of Clauses 78.3 to 78.6 (inclusive) (*Rectification*).

52 Equality

- 52.1 The Contractor shall not unlawfully discriminate either directly or indirectly on the grounds of age, disability, gender (including re-assignment), sex or sexual orientation, marital status (including civil partnerships), pregnancy and maternity, race, or religion or belief.
- 52.2 Without prejudice to the generality of the obligation in Clause 52.1 (*Equality*), the Contractor shall not unlawfully discriminate within the meaning and scope of the Equality Act 2010 (or any statutory modification or re-enactment thereof) or other relevant or equivalent legislation in the country where this Contract is being performed.
- 52.3 The Contractor agrees to take reasonable efforts to secure the observance of the provisions of this Clause 52 (*Equality*) by any of its employees, agents or other persons acting under its direction or control who are engaged in the performance of this Contract.

- 52.4 The Contractor agrees to take reasonable efforts to reflect this Clause 52 (*Equality*) in any Sub-Contract that it enters into to satisfy the requirements of this Contract and to require its Sub-Contractors to reflect this Clause 52 (*Equality*) in their Sub-Contracts that they enter into to satisfy the requirements of this Contract.

PART 11 - ASSET RELATED PROVISIONS

53 Packaging

Definitions

- 53.1 For the purposes of this Clause 53 (*Packaging*):

- 53.1.1 "**Commercial Packaging**" means commercial Packaging for military use as described in Def Stan 81-041 (Part 1);
- 53.1.2 "**Dangerous Goods**" means those substances, preparations and articles that are capable of posing a risk to health, safety, property or the environment which are prohibited by regulation, or classified and authorised only under the conditions prescribed by the:
- (i) Carriage of Dangerous Goods and Use of Transportable Pressure Equipment Regulations 2009 (as amended 2011);
 - (ii) European Agreement Concerning the International Carriage of Dangerous Goods by Road;
 - (iii) Regulations Concerning the International Carriage of Dangerous Goods by Rail;
 - (iv) International Maritime Dangerous Goods Code;
 - (v) International Civil Aviation Organisation Technical Instructions for the Safe Transport of Dangerous Goods by Air; and
 - (vi) International Air Transport Association Dangerous Goods Regulations;
- 53.1.3 "**Military Level Packaging**" or "**MLP**" means Packaging that provides enhanced protection in accordance with Def Stan 81-041 (Part 1), beyond that which Commercial Packaging normally provides for the military supply chain;
- 53.1.4 "**Military Packager Approval Scheme**" or "**MPAS**" means an Authority sponsored scheme to certify military Packaging designers and register organisations, as capable of producing acceptable Services Packaging Instruction Sheet ("**SPIS**") designs in accordance with Defence Standard (Def Stan) 81-041 (Part 4);
- 53.1.5 "**Military Packaging Level**" or "**MPL**" shall have the meaning described in Def Stan 81-041 (Part 1);

- 53.1.6 **"Packaging"** when used as a verb means the preparation of Articles for transportation, storage and delivery in accordance with this Contract. The term includes, as appropriate, cleaning and preservation processes, packing techniques and marking procedures;
- 53.1.7 **"Packaging"** when used as a noun means the materials, and components, used for the preparation of the Articles for transportation, storage and delivery in accordance with this Contract;
- 53.1.8 **"Packaging Design Authority" or "PDA"** means the organisation that is responsible for the design of the packaging, identified in Box 3 of DEFFORM 111;
- 53.1.9 **"Primary Packaging Quantity" or "PPQ"**, and Standard Family Specification ("SFS") shall have the meaning as described in Def Stan 81-041 (Part 1);
- 53.1.10 **"Robust Articles"** means Robust items as described in Def Stan 81-041 (Part 2); and
- 53.1.11 **"Safety Data Sheet"** shall have the meaning as defined in REACH.

Specifications for Packaging

- 53.2 General requirements for service Packaging, including details of UK and NATO MLP and Commercial Packaging descriptions, are contained in Def Stan 81-041 (Part 1) "Packaging of Defence Materiel". Def Stans, STANAGs and further information are available from the DefStan internet site at: <http://www.dstan.mod.uk/>
- 53.3 In the event of conflict between this Contract and Def Stan 81-041, this Contract shall take precedence.

Responsibilities

- 53.4 Packaging responsibilities are as follows:
- 53.4.1 The Contractor shall be responsible for providing Packaging which fully complies with the requirements of this Contract.
- 53.4.2 The Authority shall indicate in this Contract or order raised against a framework agreement (where applicable) the standard or level of Packaging required for each Article, including the PPQ. If a standard or level of Packaging (including the PPQ) is not indicated in this Contract or order, the Contractor shall request such instructions from the Authority before proceeding further.
- 53.4.3 The Contractor shall ensure all relevant information necessary for the effective performance of this Contract is made available to all Sub-Contractors.
- 53.4.4 Where the Contractor or any of their Sub-Contractors have concerns relating to the appropriateness of the Packaging design and or MPL prior

OFFICIAL-SENSITIVE COMMERCIAL

to manufacture or supply of the Articles they shall use DEFFORM 129B to feedback these concerns to the Contractor or Authority, as appropriate.

- 53.4.5 Where the volumetric data of individual package designs is required to be compiled as part of the codification data set, the Contractor shall do so in accordance with Clause 54 (*Supply of Information for NATO Codification and Defence Inventory Introduction*).

Commercial Packaging

53.5 The Contractor shall supply Commercial Packaging meeting the standards and requirements of Def Stan 81-041 (Part 1). In addition the following requirements apply:

53.5.1 The Contractor shall provide Packaging which:

- (i) will ensure that each Article may be transported and delivered to the consignee named in this Contract in an undamaged and serviceable condition; and
- (ii) is labelled to enable the contents to be identified without need to breach the package; and
- (iii) is compliant with statutory requirements and this Clause 53 (*Packaging*).

53.5.2 The Packaging used by the Contractor to supply identical or similar Articles to commercial customers or to the general public (i.e. point of sale packaging) will be acceptable, provided that it complies with the following criteria:

- (i) reference in this Contract to a PPQ means the quantity of an Article to be contained in an individual package, which has been selected as being the most suitable for issue(s) to the ultimate user;
- (ii) Robust Articles, which by their nature require minimal or no packaging for commercial deliveries, shall be regarded as "PPQ packages" and shall be marked in accordance with Clauses 53.12 (*Package labelling and marking*) to 53.15 (*Consignment of aggregated packages*) (inclusive). References to "PPQ packages" in subsequent text shall be taken to include Robust Articles; and
- (iii) for ease of handling, transportation and delivery, packages which contain identical Articles may be bulked and overpacked, in accordance with Clauses 53.12 (*Package labelling and marking*) to 53.13 (*Bar code marking*) (inclusive).

Packaging Regulations for Dangerous Goods

53.6 The Contractor shall ascertain whether the Articles being supplied are, or contain, Dangerous Goods, and shall supply the Dangerous Goods in accordance with:

53.6.1 The Health and Safety At Work etc. Act 1974 (as amended);

- 53.6.2 The Classification Hazard Information and Packaging for Supply Regulations (CHIP) 2009 (as amended);
 - 53.6.3 The REACH Regulations 2007 (as amended); and
 - 53.6.4 The Classification, Labelling and Packaging Regulations (CLP) 2009 (as amended).
- 53.7 The Contractor shall package the Dangerous Goods as limited quantities, excepted quantities or similar derogations, for UK or worldwide shipment by all modes of transport in accordance with the regulations relating to the Dangerous Goods and:
- 53.7.1 The Safety Of Lives At Sea Regulations (SOLAS) 1974 (as amended); and
 - 53.7.2 The Air Navigation (Amendment) Order 2019.
- 53.8 As soon as possible, and in any event no later than one (1) month before delivery is due, the Contractor shall provide a Safety Data Sheet in respect of each Dangerous Good in accordance with the REACH Regulations 2007 (as amended) and the Health and Safety At Work etc. Act 1974 (as amended).

UK military or NATO Packaging

- 53.9 The Contractor shall comply with the requirements for the design of MLP which include Clauses 53.9 (*UK military or NATO Packaging*) and 53.10 (*Military Packaging design procedure*) as follows:

- 53.9.1 Where there is a requirement to design UK or NATO MLP, the work shall be undertaken by an MPAS registered organisation, or one that although non-registered is able to demonstrate to the Authority that its quality systems and military package design expertise are of an equivalent standard.

Note 1: The MPAS certification (for individual designers) and registration (for organisations) scheme details are available from:

DES SEOC SCG-SCEng-Pkg

MOD Abbey Wood

Bristol, BS34 8JH

Tel. +44(0)30679-35353

DESSEOCSCG-SCEng-Pkg@mod.gov.uk

Note 2: The MPAS Documentation is also available on the DefStan website

- 53.9.2 MLP shall be designed to comply with the relevant requirements of Def Stan 81-041, and be capable of meeting the appropriate test requirements of Def Stan 81-041 (Part 3). Packaging designs shall be prepared on a Service

OFFICIAL-SENSITIVE COMMERCIAL

Packaging Instruction Sheet (SPIS), in accordance with Def Stan 81-041 (Part 4).

- 53.9.3 The Contractor shall ensure a search of the SPIS index (the "SPIN") is carried out to establish the SPIS status of each requirement (using DEFFORM 129A 'Application for Packaging Designs or their Status').
- 53.9.4 New designs shall not be made where there is an existing usable SPIS, or one that may be easily modified.
- 53.9.5 Where there is a usable Standard Family Specification (SFS), it shall be used in place of a SPIS design unless otherwise stated by this Contract. When an SFS is used or replaces a SPIS design, the Contractor shall upload this information on to SPIN in Adobe PDF.
- 53.9.6 All SPIS, new or modified (and associated documentation), shall, on completion, be uploaded by the Contractor on to SPIN. The format shall be Adobe PDF.

Manufacture of Packaging to a Military Packaging Level

- 53.9.7 Where it is necessary to use an existing SPIS design, the Contractor shall ensure the Packaging manufacturer is a registered organisation in accordance with Clause 53.9.1 (*UK military or NATO Packaging*), or if un-registered, is compliant with MPAS ANNEX A Supplement (Code) M. The Contractor shall ensure, as far as possible, that the SPIS is up to date.

Intellectual Property Rights (IPR)

- 53.9.8 The documents supplied under Clause 53.9.6 (*UK military or NATO Packaging*) shall be subject to Part 1 (*Intellectual Property Rights*) of Schedule S (*IPR*).

Military Packaging design procedure

- 53.10 Unless otherwise stated in this Contract, one of the following procedures for the production of new or modified SPIS designs shall be applied:

- 53.10.1 if the Contractor or their Sub-Contractor is the PDA they shall:
 - (i) on receipt of instructions received from the Authority's representative nominated in Box 2 of DEFFORM 111, prepare the required package design in accordance with Clause 53.9 (*UK military or NATO Packaging*).
 - (ii) where the Contractor or their Sub-Contractor is registered they shall, on completion of any design work, provide the Authority with the following documents electronically:
 - (A) a list of all SPIS which have been prepared or revised against this Contract; and

- (B) a copy of all new/revised SPIS, complete with all continuation sheets and associated drawings, where applicable, to be uploaded onto SPIN;
 - (C) where the PDA is not a registered organisation, then they shall obtain approval for their design from a registered organisation before proceeding, then follow Clause 53.10.1(ii) (*Military Packaging design procedure*);
- 53.10.2 where the Contractor or their Sub-Contractor is not the PDA and is un-registered, they shall not produce, modify or update SPIS designs. They shall obtain current SPIS design(s) from the Authority or a registered organisation before proceeding with manufacture of Packaging. To allow designs to be provided in ample time, they should apply for SPIS designs as soon as practicable.
- 53.10.3 where the Contractor or their Sub-Contractor is un-registered and has been given authority to produce, modify, and update SPIS designs by this Contract, it shall obtain approval for their design from a registered organisation using DEFFORM 129A before proceeding, then follow Clause 53.10.1(ii) (*Military Packaging design procedure*); and
- 53.10.4 where the Contractor or their Sub-Contractor is not a PDA but is registered, it shall follow Clauses 53.10.1(i) and 53.10.1(ii) (*Military Packaging design procedure*).

Tools

- 53.11 If Special Jigs, Tools Etc. are required for the production of MLP, the Contractor shall obtain written approval from the Authority's Representative before providing them.

Package labelling and marking

- 53.12 In addition to any marking required by international or national legislation or regulations, the following package labelling and marking requirements apply:

Labelling – General

- 53.12.1 if this Contract specifies UK or NATO MLP, labelling and marking of the packages shall be in accordance with Def Stan 81-041 (Part 6) and this Clause 53 (*Packaging*) as follows:
- (i) labels giving the mass of the package, in kilograms, shall be placed such that they may be clearly seen when the items are stacked during storage.

Marking – General

- (ii) each consignment package shall be marked with details as follows:
 - (A) name and address of consignor;

OFFICIAL-SENSITIVE COMMERCIAL

- (B) name and address of consignee (as stated in this Contract or order);
 - (C) destination where it differs from the consignee's address, normally either:
 - 1) delivery destination/address; or
 - 2) transit destination, where delivery address is a point for aggregation/disaggregation and/or onward shipment elsewhere; e.g., railway station, where that mode of transport is used; and
 - (D) the unique order identifiers and the CP&F Delivery Label / Form which shall be prepared in accordance with DEFFORM 129J; and
- (iii) if aggregated packages are used, their consignment marking and identification requirements are stated at Clause 53.15 (*Consignment of aggregated packages*).

Marking of Commercial Packaging

- 53.12.2 if this Contract specifies Commercial Packaging, an external surface of each PPQ package and each consignment package, if it contains identical PPQ packages, shall be marked, using details of the Articles, to state the following:
- (i) description of the Article;
 - (ii) the full thirteen digit NSN;
 - (iii) the PPQ;
 - (iv) maker's part/catalogue, serial and/or batch number, as appropriate;
 - (v) this Contract and order number when applicable;
 - (vi) the words "Trade Package" in bold lettering, marked in blue in respect of trade packages, and black in respect of export trade packages;
 - (vii) shelf life of item where applicable;
 - (viii) for rubber items or items containing rubber, the quarter and year of vulcanisation or manufacture of the rubber product or component. (marked in accordance with Def Stan 81-041);
 - (ix) any statutory hazard markings and any handling markings, including the mass of any package which exceeds three (3) kg gross; and
 - (x) any additional markings specified in this Contract.

Bar code marking

- 53.13 Bar code marking shall be applied to the external surface of each consignment package and to each PPQ package contained therein. The default symbology shall be as specified in Def Stan 81-041 (Part 6). As a minimum the following information shall be marked on packages:
- 53.13.1 the full 13-digit NSN;
 - 53.13.2 denomination of quantity ("D of Q");
 - 53.13.3 actual quantity (quantity in package);
 - 53.13.4 manufacturer's serial number and/or batch number, if one has been allocated; and
 - 53.13.5 the unique order identifier.
- 53.14 Requirements for positioning bar codes in relation to related text, as well as positioning on package etc., are defined in Def Stan 81-041 (Part 6). If size of the bar code does not allow a label to be directly attached, then a tag may be used. Any difficulties over size or positioning of barcode markings shall initially be referred to the organisation nominated in Box 3 of DEFFORM 111.

Consignment of aggregated packages

- 53.15 The requirements for the consignment of aggregated packages are as follows:
- 53.15.1 With the exception of packages containing Dangerous Goods, over-packing for delivery to the consignee shown in this Contract may be used by the consignor to aggregate a number of packages to different Packaging levels, provided that the package contains Articles of only one NSN or class group. Over-packing shall be in the cheapest commercial form consistent with ease of handling and protection of over-packed items.
 - 53.15.2 Two adjacent sides of the outer container shall be clearly marked to show the following:
 - (i) class group number;
 - (ii) name and address of consignor;
 - (iii) name and address of consignee (as stated on this Contract or order);
 - (iv) destination if it differs from the consignee's address, normally either:
 - (A) delivery destination/address; or
 - (B) transit destination, if the delivery address is a point of aggregation/disaggregation and/or onward shipment e.g. railway station, where that mode of transport is used;

- (v) where applicable, the reference number if the delivery note produced by CP&F relating to the contents. The consignee's copy of each delivery note shall be placed in the case/container. If the Articles listed in the delivery note are packed in several cases, the consignee's copy shall be placed in the first case and a separate list detailing the contents shall be prepared for each case after the first and placed in the case to which it relates. Each case is to be numbered to indicate both the number of the case and the total number of cases concerned e.g. 1/3, 2/3, 3/3;
- (vi) shipping label in accordance with Clause 58 (*The Use of The Electronic Business Delivery Form*); and
- (vii) any statutory hazard markings and any handling markings:

Concessions

- 53.16 Authorisation of the Contractor to undertake Packaging design, or to use a packaging design, that was not part of the original requirement under this Contract, shall be considered as an alteration to the specification under Clause 84 (*Change*).

Environmental – requirements for wood used in Packaging

- 53.17 The Contractor shall ensure that timber and wood-containing products supplied under this Contract comply with DEFCON 691 and Annex I and Annex II of the International Standards for Phytosanitary Measures, "Guidelines for Regulating Wood Packaging Material in International Trade", Publication No 15 (ISPM 15).

Environmental – Packaging and Packaging waste

- 53.18 All Packaging shall meet the requirements of the Packaging (Essential Requirements) Regulations 2003 (as amended) where applicable.
- 53.19 In any design work the Contractor shall comply with the Producer Responsibility Obligations (Packaging Waste) Regulations 2007 (as amended) or equivalent legislation. Evidence of compliance shall be a Contractor record in accordance with Clause 33 (*The Contractor's Records*).

Packaging design liability statement

- 53.20 This Clause 53 (*Packaging*) is concerned with the supply of Packaging suitable to protect and ease handling, transport and storage of specified items. Where there is a failure of suitable Packaging (a design failure), or Packaging fails and this is attributed to the Packaging supplier, then the supplier shall be liable for the cost of replacing the Packaging.
- 53.21 Liability for other Losses resulting from Packaging failure or resulting from damage to Packaging, (such as damage to the packaged item etc.), shall be specified elsewhere in this Contract.

54 Supply of Information for NATO Codification and Defence Inventory Introduction

54.1 The purpose of Codification is to catalogue Items of Supply, using the minimum information required to distinguish them from similar items available. The cataloguing information is not normally a full technical specification and definition that could be used for manufacture of alternative items.

54.2 For the purposes of this Clause 54 (*Supply of Information for NATO Codification and Defence Inventory Introduction*) and Clause 55 (*Codification Requirements for Item Identification*):

54.2.1 **"Authority's Agent"** means the Government Departments authorised by the Codification Authority to undertake NATO codification;

54.2.2 **"Codification"** means the application of unique identification and classification information to Items of Supply, using a common supply language (as set out in Clause 55 (*Codification Requirements for Item Identification*)) which is recorded in sufficient detail to distinguish uniquely Items of Supply from other items, using NSNs;

54.2.3 **"Codification Authority"** means the United Kingdom National Codification Bureau or **"UKNCB"**, except as provided in Clause 54.13 (*Supply of Information for NATO Codification and Defence Inventory Introduction*);

54.2.4 **"Codification Purposes"** means use to enable maximum effectiveness in national and international logistic support, data management in the area of materiel, supply and inventory introduction and management, throughout the life of an equipment, by the United Kingdom Ministry of Defence and its NATO partners;

54.2.5 **"Design Control Authority" or "DCA"** means the individual, company, firm, corporation, designing authority or government department, which controls the design, characteristics and production of an Item by means of its engineering drawings, specifications and inspection requirements;

54.2.6 **"Form, Fit and Function"** means, in respect of each of its elements:

- (i) **Form:** The shape, size, dimensions, and other physically measurable parameters that uniquely characterise an article. For software, form denotes the language and media;
- (ii) **Fit:** The characteristics of an article to enable it to interface or interconnect with a part of another article, including the dimensional relationship between mating parts and the limits of tolerances;
- (iii) **Function:** The actions that a product is designed to perform in normal use or operation.

54.2.7 **"Item"** means the part or the whole of any Article as defined in DEFCON 501 or any other Article (as defined in DEFCON 501) to the same design or any modification of it;

OFFICIAL-SENSITIVE COMMERCIAL

- 54.2.8 **"Item Identification"** means the minimum information required to uniquely identify the Item of Supply derived from information supplied in response to the requirements specified in Clause 55 (*Codification Requirements for Item Identification*);
- 54.2.9 **"Item of Supply"** means an Item, or where two or more Items are attached or assembled together, the minimum assembly of Items listed in the Design Control Authority's Master Parts List or required to be delivered to the Authority under this Contract;
- 54.2.10 **"NATO Commercial & Government Entity code"** or **"NCAGE"** means the unique code allocated to a supplier by the UKNCB; and
- 54.2.11 **"Technical Data"** means the cataloguing information identified in Clause 55 (*Codification Requirements for Item Identification*) to be supplied to enable the creation of Item Identification.
- 54.3 In the case of an Item of Supply for which the Contractor is the DCA, the Contractor shall:
- 54.3.1 provide Technical Data to the Codification Authority, or the Authority's Agent specified by the Codification Authority, where:
- (i) the Item of Supply is not already codified in the NATO Codification System or **"NCS"**; or
 - (ii) the Contractor has not previously supplied that information either in the recommended spare parts list supplied by the Contractor in the initial provisioning phase or under another contract;
- 54.3.2 where the Item of Supply has already been NATO codified, supply the NSN(s) to the Codification Authority, or the Authority's Agent; and
- 54.3.3 inform the Codification Authority, or its Agent, when and to whom the data was supplied if the information has previously been supplied by the Contractor.
- 54.4 In the case of an Item of Supply for which the Contractor is not the DCA, the Contractor shall ensure that the Technical Data is supplied, either by the subcontract DCA or by the Contractor. The Contractor shall, where appropriate, consider including the terms of this Condition, or equivalent text, in any Sub-Contracts, to ensure delivery of the cataloguing information.
- 54.5 Unless otherwise provided by this Contract, the cost of supplying the information under Clauses 54.3 and 54.4 (*Supply of Information for NATO Codification and Defence Inventory Introduction*) above, and any other information specifically called for under this Contract, shall be deemed to have been included in the Contract Price.
- 54.6 The Contractor may from time to time be requested to supply additional information necessary for Codification. To the extent that it has the right to do so, the Contractor shall supply that additional data. The extent of information shall be governed by the

requirements of the Codification system at that time. Full details of the Codification system can be obtained from the Codification Authority.

- 54.7 At any time during the life of this Contract the Contractor shall notify the Codification Authority of all modifications or design changes made to an Item of Supply, which affect the Item Identification, including reference number changes, Form, Fit or Function.
- 54.8 Fair and reasonable payment, based upon the actual work involved, will be made to the Contractor for the supply of additional information under Clause 54.6 (*Supply of Information for NATO Codification and Defence Inventory Introduction*) above and, in respect of modifications and design changes approved by the Authority, the supply of updated information under Clause 54.7 (*Supply of Information for NATO Codification and Defence Inventory Introduction*).
- 54.9 Subject to the restrictions resulting from Clause 54.11 (*Supply of Information for NATO Codification and Defence Inventory Introduction*), the Authority shall have the right, free of charge, to use and copy or have used and copied for Codification Purposes information supplied under the provisions of this Clause 54 (*Supply of Information for NATO Codification and Defence Inventory Introduction*), use and copying being limited to that necessary for Codification Purposes. The Authority may convert or have converted any Technical Data provided in whatever format to an alternative format, including digital formats.
- 54.10 Subject to the restrictions resulting from Clause 54.11 (*Supply of Information for NATO Codification and Defence Inventory Introduction*), the information constituting the Item Identification may be included in the databases of codification data which are produced by the Authority or any international organisation of which the Authority is a member and may be made available to other Governments, organisations or individuals who are authorised to have access to those databases by the Authority or the organisation(s) of which the Authority is a member.
- 54.11 The Contractor shall endeavour to ensure that all information supplied under this Clause 54 (*Supply of Information for NATO Codification and Defence Inventory Introduction*) can be used for Codification Purposes, however, where any of the information supplied is marked to indicate it is proprietary in nature the Contractor shall indicate the restrictions which apply to its use.
- 54.12 The Codification Authority shall not retain or use the Technical Data supplied under this Clause 54 (*Supply of Information for NATO Codification and Defence Inventory Introduction*) for any purpose other than for Codification.
- 54.13 If the DCA is located in a NATO country other than the UK, the equivalent organisation in that NATO country shall be substituted for the UKNCB. All contact between the Contractor and those equivalent organisations will be via the UKNCB.
- 54.14 If the DCA is located in a country which is not a member of the NATO Alliance or a NATO sponsored (NCS participating) country, the Codification Authority will be deemed to be the UKNCB, which may nominate an agent to act on its behalf.
- 54.15 The Contractor, Sub-Contractor or supplier may contact the Codification Authority for any information concerning the NCS.

- 54.16 The requirements set out in Clause 55 (*Codification Requirements for Item Identification*) shall apply in relation to Item Identification.

55 Codification Requirements for Item Identification

- 55.1 Information to be supplied and used for the purposes of Codification is governed by the requirements of the NCS Item Identification Guide ("IIG") and the approved item name shall be used for Codification. The exact requirements are item specific and will vary on an item by item basis.
- 55.2 Information may be provided in the form of engineering drawings, international/national or commercial standards and specifications, commercial literature such as catalogues, brochures or similar documentation, in hard or soft copy. Alternatively arrangement may be made to allow the data to be retrieved via a URL or similar.
- 55.3 This Clause 55 (*Codification Requirements for Item Identification*) covers all Items of Supply, and the following information must be supplied:
- 55.3.1 The NCAGE or name, address and contact details of the DCA;
- 55.3.2 The name of the Item of Supply, as recognised by the DCA;
- 55.3.3 Identifying references:
- (i) the DCA's drawing or part number(s), and National or International Standard or Specification Reference, or both (indicating definitive or non-definitive). The references will be assumed to be fully definitive unless stated otherwise;
 - (ii) where the Contractor's own identifying reference differs from the DCA's reference, this shall also be provided;
 - (iii) any associated bar code or product identification numbers, assigned by companies compliant with [EAN International]¹ or the Uniform Code Council; and
 - (iv) for medical items, the ATC Code (World Health Organisation (WHO) Anatomical Therapeutic Codes), BNF code (British National Formulary) or the ECRI Universal Medical Device Nomenclature code shall be supplied where relevant; and
- 55.3.4 The following "**Volumetric Data**". Definitions equate to those in ASD S2000M and the data is to be supplied in the format specified therein:
- (i) length, width and height/depth of packaged unit, used with an associated unit of issue code;
 - (ii) length, width and height/depth of unpackaged unit, used with an associated unit of issue code;

¹ Pending potential update to new compliance standard.

OFFICIAL-SENSITIVE COMMERCIAL

- (iii) gross weight of packaged unit, used with an associated unit of issue code; and
- (iv) gross weight of unpackaged unit, used with an associated unit of issue code.

55.4 The following additional information shall be supplied where it is necessary for the information to be used to fully distinguish Items of Supply, as determined by the applicable approved item name and NCS IIG. The DCA is not required to disclose particulars of proprietary processes, manufacturing techniques or proprietary material specifications:

55.4.1 Basic material (the base material from which the item is fabricated) surface treatment (the finish by which the item is plated, dipped and/or coated, including any special cleanliness conditions).

55.4.2 All key dimensions shall be supplied for common mechanical parts, such as nuts, bolts, screws, washers etc.

55.4.3 Where items are threaded, include the size, type, length, class and direction of the thread.

55.4.4 Electrical characteristics, such as nominal voltage, current or rated power, or both, of the item, rated resistance, capacitance or inductance, and operating frequencies.

55.4.5 For any pressure system components and equipment details of the pressure ratings.

55.4.6 Temperature ratings.

55.4.7 Information on distinguishing features, e.g. colour, shape, style, holes, cut-outs, keyways or slots, etc.

55.4.8 Radioactive components - radioactive materials.

55.4.9 Software - the software identification number.

55.4.10 Markings - markings that indicate the primary purpose, function or application of the Item of Supply.

55.5 For assemblies only, the Contractor shall supply the final assembly drawing or parts list, or both, including known NSNs and part numbers of constituent parts.

55.6 Where the Item of Supply is designed for a specific application, the source data shall identify the end item application.

55.7 Where the Item of Supply contains items of a hazardous nature, the information shall identify the existence of any hazard and the Contractor shall provide a safety data sheet in accordance with Clause 56 (*Supply of Hazard Data*).

Requests for NATO Codification

OFFICIAL-SENSITIVE COMMERCIAL

55.8 Where the Contractor is required to apply for NATO Codification on behalf of the Authority:

- 55.8.1 All requests for codification action must be submitted using the Authority's mandated system.
- 55.8.2 Access to the Authority's mandated system is via a user account allocated by UK NCB (subject to conditions).
- 55.8.3 The Contractor shall supply the following additional information to the Codification Authority to enable automated item introduction on the Authority's relevant base inventory system. Where this information is not known, the Authority's Representative shall be contacted for guidance:

Data Field	CRISP	SS3	SCCS	ASTRID
Domestic Management Code – DMC		Y		
Inventory Management Code – IMC	Y			
Supply Management Branch – SMB			Y	
Requirement for Provenance and Traceability (items fitted to aircraft requiring Certificate of Conformity)	Y	Y	Y	Y
Used on next higher assembly – End item information	Y	Y	Y	Y
Unit of Issue Code	Y	Y	Y	Y
Hazardous Indicator	Y	Y	Y	Y
Materiel Accounting Classification Code	Y	Y	Y	Y
Shelf Life Code	Y	Y	Y	
Estimated Price	Y			
Procurement Reference Code	Y	Y		
Special To Contents Container Indicator	Y		Y	
Periodic Maintenance Interval Code	Y			
Pre-Issue Inspection Code	Y			
Quality Assurance Documentation Code	Y			
Inventory Classification Code		Y		
Capital Indicator Code		Y		

56 Supply of Hazard Data

56.1 The Contractor shall provide to the Authority:

- 56.1.1 for each hazardous material or substance supplied a "Safety Data Sheet" ("SDS") in accordance with the Classification, Labelling and Packaging (GB CLP) Regulation ("GB CLP"); or
- 56.1.2 for each hazardous Article, safety information as required by the Health and Safety at Work etc. Act 1974 at the time of supply.

Nothing in this Clause 56 (*Supply of Hazard Data*) shall reduce or limit any statutory duty or legal obligation of the Authority or the Contractor and/or the Contractor's obligations under Schedule A (*Contractor's Obligations*).

- 56.2 If the item of supply contains or is a substance falling within the scope of the extant UK REACH Regulation ("REACH"):
- 56.2.1 the Contractor shall provide to the Authority an SDS for the substance in accordance with REACH. If the Contractor becomes aware of new information which may affect the risk management measures or new information on the hazard, the Contractor shall update the SDS and forward it to the Authority and to the address listed in Clause 56.8 (*Supply of Hazard Data*); and
 - 56.2.2 the Authority, if it becomes aware of new information regarding the hazardous properties of the substance, or any other information that might call into question the appropriateness of the risk management measures identified in the SDS supplied, shall report this information in writing to the Contractor.
- 56.3 If the Contractor is required, under, or in connection with this Contract, to supply Articles or components of Articles that, in the course of their use, maintenance, disposal, or in the event of an accident, may release hazardous materials or substances, the Contractor shall provide to the Authority a list of those hazardous materials or substances, and, for each hazardous material or substance listed, provide an SDS.
- 56.4 The Contractor shall provide to the Authority a completed DEFFORM 68 in accordance with Schedule O (*Hazardous Materials – DEFFORM 68*).
- 56.5 If the Articles, materials or substances are ordnance, munitions or explosives, in addition to the requirements of GB CLP and REACH the Contractor shall comply with the hazard reporting requirements of Def Stan 07-085 (Design Requirements for Weapons and Associated Systems).
- 56.6 If the Articles, materials or substances are or contain or embody a radioactive substance as defined in the extant Ionising Radiation Regulations, the Contractor shall additionally provide details of:
- 56.6.1 activity; and
 - 56.6.2 the substance and form (including any isotope).
- 56.7 If the Articles, materials or substances have magnetic properties, the Contractor shall additionally provide details of the magnetic flux density at a defined distance, for the condition in which it is packed.
- 56.8 Any SDS to be provided in accordance with this Clause 56 (*Supply of Hazard Data*), including any related information to be supplied in compliance with the Contractor's statutory duties under Clauses 56.1.1 and 56.2.1 (*Supply of Hazard Data*), any information arising from the provisions of Clauses 56.5, 56.6 and 56.7 (*Supply of Hazard Data*) and the completed DEFFORM 68, shall be sent directly to the Authority's Representative as soon as practicable, and no later than one (1) month prior to the delivery of the relevant Articles, materials or substances. In addition, so that the safety information can reach users without delay, the Contractor shall send a copy preferably

OFFICIAL-SENSITIVE COMMERCIAL

as an email with attachment(s) in Adobe PDF or MS WORD format, or, if only hard copy is available, to the addresses below:

56.8.1 Hard copies to be sent to:

Hazardous Stores Information System (HSIS)
Department of Safety & Environment, Quality and Technology (D S & EQT)
Spruce 2C, #1260
MOD Abbey Wood (South)
Bristol BS34 8JH

56.8.2 Emails to be sent to:

DESTECH-QSEPEnv-HSISMulti@mod.gov.uk

56.9 Failure by the Contractor to comply with the requirements of this Clause 56 (*Supply of Hazard Data*) shall be grounds for rejecting the affected Articles. Any withholding of information concerning hazardous Articles, materials or substances shall be regarded as a breach of this Contract for which the Authority reserves the right to require the Contractor to rectify the breach immediately at no additional cost to the Authority or to terminate this Contract pursuant to Clause 78 (*Termination for Contractor Default*) without compensation to the Contractor.

56.10 Where delivery is made to the Defence Fulfilment Centre and/or other Team Leidos location/building, the Contractor must comply with the Logistic Commodities and Services Transformation Supplier Manual.

57 Delivery, Acceptance, Rejection and transfer of Title and Risk

Delivery

57.1 Unless otherwise agreed by the Parties, delivery of Articles shall occur upon the Articles being handed over by the Contractor to the Authority or to the Authority's Representative at the then relevant address in the United Kingdom that the Authority has notified the Contractor (such address as may change from time to time following notification (in accordance with Clause 95 (*Notices*)) by the Authority to the Contractor).

57.2 Unless otherwise agreed by the Parties and subject to Clauses 57.4 to 57.16 (*Delivery, Acceptance, Rejection and transfer of Title and Risk*) (inclusive), the title and risk in the Articles shall pass from the Contractor to the Authority upon delivery at the address in Clause 57.1. (*Delivery*) provided the Contractor has complied with its obligations in this Clause 57 (*Delivery, Acceptance, Rejection and transfer of Title and Risk*).

57.3 The Contractor shall ensure that the Articles are packaged in accordance with the terms of this Contract (including Clause 53 (*Packaging*)).

57.4 Where an Article is rejected by the Authority in accordance with Clauses 57.5 and 57.6 (*Rejection*) that Article shall, for the purposes of this Contract, be considered as not having been delivered under this Contract and the title, property and risk in that Article shall return to the Contractor (unless, in the case of an Article purported to have been rejected by the Authority, a notice of objection has been issued to the Authority in

accordance with Clause 57.11 (*Rejection*), when the title, property and risk in that Article shall only return to the Contractor if it is agreed or determined such objection is not valid).

Rejection

- 57.5 Prior to acceptance by the Authority in accordance with Clauses 57.12 to 57.16 (inclusive) (*Acceptance*), the Authority may reject any Article (whether or not after inspection) which does not conform with the requirements of this Contract.
- 57.6 The Authority may (whether or not after inspection) reject the whole of any consignment of the Articles if:
- 57.6.1 a reasonable proportion or percentage of such Articles in that consignment does not conform with the requirements of this Contract; or
 - 57.6.2 samples, whether of Articles or of the material in the Articles, taken randomly from that consignment do not conform with the requirements of this Contract; and
 - 57.6.3 in either such case, where not more than ten (10) Working Days have elapsed since the date of delivery in the manner required in Clauses 57.1 to 57.3 (inclusive) (*Delivery*), subject always to Clause 57.14 (*Acceptance*).
- 57.7 For the purposes of this Clause 57 (*Delivery, Acceptance, Rejection and transfer of Title and Risk*), an item of Issued Property in connection with which the Contractor is required to perform obligations in accordance with this Contract shall, following completion of the relevant part of the Contractor Deliverables, be subject to rejection under Clause 57.6 (*Rejection*) as if it was an Article, but without prejudice to the Authority's proprietary and other rights in that item of Issued Property. The provisions of Clauses 57.8 to 57.11 (inclusive) (*Rejection*) shall similarly apply to such items.
- 57.8 Subject to Clause 57.11 (*Rejection*), the Contractor shall at its own expense and within fourteen (14) Working Days of being notified of the rejection, or within any other applicable period specified in this Contract, remove any such Article and/or consignment which the Authority has rejected.
- 57.9 If the Contractor fails to remove the relevant Article and/or consignment in accordance with Clause 57.8 (*Rejection*) or the Authority considers such Article and/or consignment is defective and is in need of repair, the Authority may return it to the Contractor at the Contractor's risk and expense.
- 57.10 The Contractor shall at its own expense and within the contractual period for delivery, or within such further reasonable period as the Authority may allow, supply and deliver Articles that conform with the requirements of this Contract.
- 57.11 The Contractor may object in writing to a notification of rejection of an Article by the Authority within the period specified at Clause 57.8 (*Rejection*). If the objection is not resolved within a reasonable time, it shall be treated as a Dispute and the provisions of the Dispute Resolution Procedure shall apply. Unless otherwise agreed the Contractor shall not remove the Articles which are the subject of the rejection notice unless and until the objection or Dispute has been resolved in favour of the Authority.

Acceptance

- 57.12 Subject to Clause 57.13 (*Acceptance*), acceptance of an Article and/or consignment occurs at the time and in accordance with the procedure specified in this Contract on the date that is ten (10) Working Days from delivery in accordance with Clause 57.1 (*Delivery*) unless the Authority has rejected such Article in accordance with Clause 57.6 (*Rejection*).
- 57.13 The Authority shall not have accepted an Article:
- 57.13.1 merely because the Authority asks for, or agrees to, its repair by or under an arrangement with the Contractor; or
 - 57.13.2 unless otherwise specified in this Contract, merely because the Article has been delivered to a Third Party.
- 57.14 The Authority shall not be deemed to have accepted an Article unless it has had a reasonable opportunity, as defined in Clause 57.12, to examine it after delivery for the purpose of ascertaining whether it is in conformity with this Contract.
- 57.15 Not Used.
- 57.16 Where software is to be supplied as a requirement of this Contract it will be subject to the provisions of this Clause 57 (*Delivery, Acceptance, Rejection and transfer of Title and Risk*) as if it were an Article.

58 The Use of the Electronic Business Delivery Form

Form usage

- 58.1 Having regard to and subject to Clause 16 (*Payment under CP&F*), the Authority and the Contractor shall comply with the provisions of this Clause 58 (*The Use of the Electronic Business Delivery Form*).
- 58.2 The Contractor must use the electronic business delivery form for all deliveries of Articles and performance of Contractor Deliverables.
- 58.3 The electronic business delivery form, DEFFORM 129J, must accompany the package or consignment to which it applies. The Contractor must either:
- 58.3.1 attach the form as a label, directly to the package surface; or
 - 58.3.2 forward the form in a document envelope,
- as provided in Clauses 58.4 and 58.5 (*Form Structure*).

Form structure

For the provision of Articles

- 58.4 Where delivery is for a physical Article, the following criteria apply:

OFFICIAL-SENSITIVE COMMERCIAL

- 58.4.1 the nominal label size is A6 (102 mm x 152 mm) but A5 (148 mm x 210 mm) is acceptable. If required by package size, the Contractor may use other label sizes, but only if no degradation to the text, bar code legibility and quality occurs, as referred to in Clause 58.7 (*Bar code symbology and print quality*);
- 58.4.2 the Contractor must use the bar coded Unique Identifier as defined in Clause 17 (*Unique Identifiers*), unless specified otherwise in this Contract; and
- 58.4.3 the Contractor must attach two labels to each package or consignment delivered. One label must be detachable for use in processing the information through the appropriate Authority receipting system.

For the provision of Contractor Deliverables which are not physical Articles

- 58.5 Where performance is for Contractor Deliverables which are not physical Articles, the following criteria apply:
- 58.5.1 standard size is A4 (210 mm x 297 mm);
- 58.5.2 the Contractor must use the bar coded Unique Identifier as defined in Clause 17 (*Unique Identifiers*), unless specified otherwise in this Contract; and
- 58.5.3 the Contractor must provide one form either on completion of the Contractor Deliverables which are not physical Articles or on completion of each agreed stage of the Contractor Deliverables which are not physical Articles.

Bar code symbology and print quality

- 58.6 The bar code symbology used shall meet the requirements of STANAG 4329, "NATO Standard Bar Code Symbolologies", specifically Code 39 (ISO/IEC 16388), unless otherwise specified.
- 58.7 The barcode print quality shall be as defined in ISO/IEC 16388 (Information technology - Automatic identification and data capture techniques - Code 39 bar code symbology specification). The overall grade shall be at least Grade B at point of printing and not less than Grade C, at final point of receipt.

Methods of printing

- 58.8 For method of printing the DEFFORM 129J, electronic business delivery form, see Def Stan 81-041 (Part 6). Laser printing is preferred.

59 Vesting

- 59.1 Subject to the following provisions of this Clause 59 (*Vesting*):
- 59.1.1 each Article as it is constructed together with its component parts and equipment so far as incorporated in the Articles; and

OFFICIAL-SENSITIVE COMMERCIAL

59.1.2 all materiel which the Contractor acquires or allocates for incorporation in any of the Articles,

shall vest in and become the absolute property of the Authority, as from the time the construction of the Article begins or the materiel is acquired specifically for or is allocated for incorporation in any of the Articles and shall from that time be in the possession of the Contractor for the sole purpose of completing the Articles and delivering them when completed to the Authority, and shall not be within the control or disposition of the Contractor other than for that purpose.

- 59.2 Neither the Contractor, nor a subcontractor, nor any other person shall have a lien on any Article or materiel which have vested in the Authority under Clause 59.1 (*Vesting*) for any sum due to the Contractor, subcontractor or other person. The Contractor shall take all reasonable steps necessary to ensure that the provisions of this Clause are brought to the notice of all subcontractors and other persons dealing with any such Articles or materiel.
- 59.3 Without prejudice to Clause 59.1 (*Vesting*), the Contractor shall ensure that from the time when the construction of any Article begins, or as soon as practicable thereafter, or when any materiel is acquired specifically for or is allocated for incorporation in any of the Articles, they are marked or recorded so that they are readily identifiable as the property of the Authority. The Contractor shall comply with any direction given by the Authority in this respect.
- 59.4 Any Article or materiel which is rejected by the Authority shall immediately re-vest in the Contractor.
- 59.5 If the Authority terminates this Contract otherwise than under Clause 79 (*Termination for Convenience*) and Clauses 80.7 to 80.10 (*Termination for Convenience*), any Article which has not been accepted in accordance with Clause 57 (*Delivery, Acceptance, Rejection and transfer of Title and Risk*) and any materiel which has not been incorporated in any Article which has been accepted in accordance with Clause 57 (*Delivery, Acceptance, Rejection and transfer of Title and Risk*) shall re-vest in the Contractor. Such re-vesting shall occur on the expiry of thirty (30) days from the date on which that termination shall take effect, unless the Authority has given the Contractor notice, prior to that expiry, that the Authority elects to retain the property in the Article or material.
- 59.6 Any payment made by the Authority in respect of any Article or materiel which re-vest in the Contractor under Clauses 59.4 or 59.5 (*Vesting*) shall be recoverable from the Contractor.
- 59.7 The Contractor shall hand over to the Authority any Article or materiel in which the Authority has elected to retain the property under Clause 59.5 (*Vesting*). If the Contractor fails to do so, the Authority shall have the right to enter the Contractor's premises and remove the Article or materiel and recover the cost of doing so from the Contractor.
- 59.8 The Authority shall pay a fair and reasonable price for any Article or materiel in which it has elected to retain the property under Clause 59.5 (*Vesting*) and which are handed over to it by the Contractor or otherwise come into his possession.