



**MOD**

**Contract Number :**  
ACT/04493

**Description:**

Provision of Accreditation for Artificer Training at MOD Lyneham for the Period 1 April 2017 to 31 March 2020 with a Further Option Period of up to 2 Years

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1. SCHEDULE OF REQUIREMENTS

Name and Address of Tenderer  <b>UNIVERSITY OF PORTSMOUTH</b> University House Winston Churchill Avenue Portsmouth PO1 2UP	<b>MINISTRY OF DEFENCE</b>	Tender No  <b>ACT/04493</b>
	Schedule of Requirements for  <b>Provision of Accreditation for Artificer Training at MOD Lyneham for the Period 1 April 2017 to 31 March 2020 with a Further Option Period of up to 2 Years</b>	
Issued With  <b>DEFFORM 159</b>	On 14 March 2017	Previous Contract No  <b>ACT/04033</b>

<u>Contractor Deliverables</u>												
Item No	Description/Specification	Estimated Quantity	TOTAL FIRM PRICE (£) Year 1 1 Apr 17 to 31 Mar 18 (excl VAT)		TOTAL FIRM PRICE (£) Year 2 1 Apr 18 to 31 Mar 19 (excl VAT)		TOTAL FIRM PRICE (£) Year 3 1 Apr 19 to 31 Mar 20 (excl VAT)		TOTAL FIRM PRICE (£) Year 4 (Option) 1 Apr 20 to 31 Mar 21 (excl VAT)		TOTAL FIRM PRICE (£) Year 5 (Option) 1 Apr 21 to 31 Mar 22 (excl VAT)	
			Per Student	Estimated Total price	Per Student	Estimated Total price	Per Student	Estimated Total price	Per Student	Estimated Total price	Per Student	Estimated Total price
1	Provision of Accreditation for Artificer Training at MOD Lyneham for the Period 1 April 2017 to 31 March 2020 with a Further Option Period of up to 2 Years  <b>(See Statement of Requirements attached)</b>	48	█	█	█	█	█	█	█	█	█	█



## 2 GENERAL CONDITIONS

DEFCON68 (Edn.02/16) - Supply of Data for Hazardous Articles, Materials and Substances

1. The Contractor shall provide to the Authority:
  - a. for each hazardous material or substance supplied, a Safety Data Sheet (SDS) in accordance with the extant Chemicals (Hazard Information and Packaging for Supply) Regulations (CHIP) and /or the Classification, Labelling and Packaging (CLP) Regulation 1272/2008 (whichever is applicable), and
  - b. 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 Condition shall reduce or limit any statutory duty or legal obligation of the Authority or the Contractor.
2. If the item of supply contains or is a substance falling within the scope of the REACH Regulation (EC) No 1907/2006:
  - a. the Contractor shall provide to the Authority an SDS for the substance in accordance with the Regulation. 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 8 below, and
  - b. 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 safety data sheet supplied, shall report this information in writing to the Contractor.
3. If the Contractor is required, under, or in connection with the 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, they shall provide to the Authority a list of those hazardous materials or substances, and for each hazardous material or substance listed, provide an SDS.
4. The Contractor shall provide to the Authority a completed DEFFORM 68.
5. If the Articles, materials or substances are ordnance, munitions or explosives, in addition to the requirements of CHIP and /or the CLP Regulation 1272/2008 (whichever is applicable) and REACH the Contractor shall comply with hazard reporting requirements of DEF STAN 07-085 Design Requirements for Weapons and Associated Systems.
6. If the Articles, materials or substances are or contain or embody a radioactive substance as defined in the Ionising Radiation Regulations SI 1999/3232, the Contractor shall additionally provide details of:
  - a. activity;
  - b. the substance and form (including any isotope);
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.
8. Any SDS to be provided in accordance with this Condition, including any related information to be supplied in compliance with the Contractor's statutory duties under Clauses 1.a. and 2.a., any information arising from the provisions of Clauses 5, 6 and 7 and the completed DEFFORM 68, shall be sent directly to the Commercial Officer defined in the Contract as soon as practicable, and no later than one (1) month prior to the Contract delivery date, unless otherwise stated in the Contract. In addition, so that the safety information can reach users without delay, a copy shall be sent preferably as an email with attachment(s) in Adobe PDF or MS WORD format, or, if only hardcopy is available, to the addresses below :
  - a. Hard copies to be sent to:

Hazardous Stores Information System (HSIS)  
Defence Safety Authority (DSA)  
Movement Transport Safety Regulator (MTSR)  
Hazel Building Level 1, #H019  
MOD Abbey Wood (North)  
Bristol BS34 8QW

b. Emails to be sent to:

DSA-DLSR-MovTpt-DGHSIS @mod.uk

9. Failure by the Contractor to comply with the requirements of this Condition 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 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 the Contract without compensation.

10. In exercising its rights or remedies under this Condition, the Authority shall act in a reasonable and proportionate manner having regard to the gravity of the failure.

DEFCON501 (Edn.03/15) - Definitions and Interpretations

1. In the Contract (as defined below) the following words and expressions shall have the meanings given to them, except where the context requires a different meaning:

a. 'Articles' means all goods (excluding Services) which the Contractor is required under the Contract to supply;

b. 'the Authority' means the Secretary of State for Defence, acting on behalf of the Crown;

c. 'business day' means any day excluding:

i) Saturdays, Sundays and public and statutory holidays in the jurisdiction of either party;

ii) privilege days notified in writing by the Authority to the Contractor at least 10 business days in advance; and

iii) such periods of holiday closure of the Contractor's premises of which the Authority is given written notice by the Contractor at least 10 business days in advance;

d. 'Central Government Body' means a body listed in one of the following sub-categories of the Central Government classification of the Public Sector Classification Guide, as published and amended from time to time by the Office for National Statistics:

i) Government Department;

ii) Non-Departmental Public Body or Assembly Sponsored Public Body (advisory, executive, or tribunal);

iii) Non-Ministerial Department; or

iv) Executive Agency.

e. 'the Contract' means the agreement concluded between the Authority and the Contractor, including all specifications, plans, drawings, schedules and other documentation, expressly made part of the agreement. In the event of contradiction, precedence shall be given to DEFCON 537 followed by the special conditions of contract, followed by the DEFCONs referenced in the Contract (other than DEFCON 537) and then the Schedule of Requirements;

f. 'Contractor Deliverables' means the works, goods and / or the services, including packaging (and Certificate(s) of Conformity and supplied in accordance with any QA requirements if specified) which the Contractor is required to provide under the Contract;

- g. 'the Contract Price' means the price exclusive of Value Added Tax, payable to the Contractor by the Authority under the Contract for the full and proper performance by the Contractor of his part of the Contract as determined under the provisions of the Contract;
- h. 'the Contractor' means the person who, by the Contract, undertakes to supply the Articles, or perform the Service, or both for the Authority as is provided by the Contract. Where the Contractor is an individual or a partnership, the expression shall include the personal representatives of the individual or of the partners, as the case may be, and the expression shall also include any person to whom the benefit of the Contract may be assigned by the Contractor with the consent of the Authority;
- i. 'the Commercial Officer' means the authority so designated in the Contract;
- j. 'Firm Price' means a price, agreed for the Articles or Services, or both, which is not subject to variation;
- k. 'Fixed Price' means a price, agreed for the Articles or Services, or both, that is subject to variation in accordance with the variation of price provisions of the Contract;
- l. 'Issued Property' means any item of Government Furnished Equipment (GFE), including any Articles in connection with which the Contractor is required under the Contract to carry out any Service, issued or otherwise furnished to the Contractor in connection with the Contract by or on behalf of the Authority;
- m. 'loss' includes damage or destruction;
- n. 'materiel' is a generic term meaning equipment (including fixed assets), stores, supplies and spares;
- o. 'Government Furnished Resource' (GFR) means MOD personnel loaned to the Contractor in connection with the Contract by or on behalf of the Authority;
- p. 'Government Furnished Information' (GFI) means information or data issued or made available to the Contractor in connection with the Contract by or on behalf of the Authority;
- q. 'Government Furnished Facilities' (GFF) means buildings, parts of buildings, sites and other infrastructure issued or made available to the Contractor in connection with the Contract by or on behalf of the Authority;
- r. 'month' means calendar month;
- s. 'person' includes any legal or natural person or persons;
- t. 'Project Manager' and 'Equipment Support Manager' mean the authority so designated in the Contract;
- u. 'Representative of the Authority' in any provision of the Contract means the person duly authorised by the Authority to act for the purposes of the provision and identified in the Contract or in any subsequent notice to act for the purposes of the provision;
- v. 'Schedule of Requirements' means that part of the Contract which identifies, either directly or by reference, the Articles, Services or Contract Deliverables to be supplied or carried out, the quantities involved and the price or pricing terms in relation to each Article, Service or Contract Deliverable;
- w. 'Services' means all services (excluding the supply of Articles) which the Contractor is required under the Contract to perform or to fulfil;
- x. the masculine includes the feminine and vice versa and words importing the neuter include the masculine and the feminine;
- y. all singular includes the plural and vice versa.
2. 'Defence Reform Act' (DRA) 2014 means the primary legislation applicable to single source procurement. In the context of DRA:
- a. 'Single Source Contract Regulations' (SSCR) 2014, means the secondary legislation applicable to single source procurement;

- b. 'Qualifying Defence Contract' (QDC) means a single source contract which has been assessed, and which meets the criteria for a contract to which the DRA and SSCR must apply;
- c. 'Single Source Regulations Office' (SSRO) means the Non-Departmental Public Body acting as the independent expert for MOD single source procurement.
3. Where BS/EN/ISO 9000 or documents in the AQAP 100 series form part of the Contract either by reference in the special conditions or as invoked by such Defence Standards (DEF-STANS) in the 05-090 series as are called up as part of the Contract, the following provisions shall also have effect:
- a. 'the Purchaser' means 'the Authority';
- b. 'the Purchaser's Representative' means 'the Representative of the Authority';
- c. 'the Project Management Authority' or 'Progress Authority' means the authorities so designated in the Contract.
4. References to any enactment, order, regulation, or other similar instrument shall be construed as a reference to the enactment, order, regulation, or instrument as amended or consolidated by any subsequent enactment, order, regulation, or instrument.
5. The heading to any Contract condition shall not affect the interpretation of that condition.
6. Any decision, act, or thing which the Authority is required or authorised to take or do under the Contract may be taken or done only by any person authorised, either generally or specifically, by the Authority to take or do that decision, act, or thing on behalf of the Authority.
7. Unless excluded within the terms of the Contract or where required by law:
- a. references to submission of documents in writing shall include electronic submission; and
- b. any requirement for a document to be signed or references to signatures shall be construed to include electronic signature, provided that a formal method of authentication as agreed between the parties is employed and the agreed method recorded in the Contract.

#### DEFCON503 (Edn.12/14) - Formal Amendments To Contract

1. The Contract shall only be amended by the written agreement of the duly authorised representatives of the parties.
2. The written agreement shall consist of the:
- a. Authority Notice of Change under DEFCON 620 (where used);
- b. issue of a serially numbered amendment letter, by the Authority; and
- c. unqualified acceptance of the offer from the Contractor.

The amendment shall come into force only when the Contractor has returned the DEFFORM 10B as an unqualified acceptance of the Authority's offer.

3. No Contract amendment shall come into effect unless it satisfies clauses 1 and 2.
4. Where an amendment to Specification results in a Contract Price change, that price shall be agreed prior to any formal amendments to the contract.
5. In exceptional circumstances where the Authority wishes to add work to the Contract requirement that is unpriced at the time of the amendment, the Authority shall have the right to negotiate prices under the terms of DEFCON 643 (Price Fixing (Non-qualifying contracts)) or DEFCON 127 (Price Fixing Condition for Contracts of Lesser Value). Where DEFCON 643 is used the Contractor shall make arrangements with their sub-contractors in accordance with clause 5 of DEFCON 643.
6. Where necessary the Contractor shall either confirm the existing Parent Company Guarantee is relevant or provide a revised Parent Company Guarantee, with the DEFFORM 10B.

1. The Authority may summarily determine the Contract, without compensation to the Contractor, by giving written notice of such determination to the Contractor at any time after any of the following events:

Where the Contractor is an individual or a firm

- a) the application by the individual or, in the case of a firm constituted under English law, any partner of the firm to the court for an interim order pursuant to Section 253 of the Insolvency Act 1986; or
- b) the court making an interim order pursuant to Section 252 of the Insolvency Act 1986; or
- c) the individual, the firm or, in the case of a firm constituted under English law, any partner of the firm making a composition or a scheme of arrangement with his or its creditors; or
- d) the presentation of a petition for bankruptcy order against the individual or, in the case of a firm constituted under English law, any partner of the firm unless it is withdrawn within 3 working days from the date on which the Contractor is notified of the presentation; or
- e) the court making a bankruptcy order in respect of the individual or, in the case of a firm constituted under English law, any partner of the firm; or
- f) where the Contractor is either unable to pay his debts as they fall due or has no reasonable prospect of being able to pay debts which are not immediately payable. The Authority shall regard the Contractor as being unable to pay his debts if:
  - i. he has failed to comply with or to set aside a Statutory demand under Section 268 of the Insolvency Act 1986 within 21 days of service of the Statutory Demand on him; or
  - ii. execution or other process to enforce a debt due under a judgement or order of the court has been returned unsatisfied in whole or in part.
- g) the presentation of a petition for sequestration in relation to the Contractor's estates unless it is withdrawn within 3 working days from the date on which the Contractor is notified of the presentation; or
- h) the court making an award of sequestration in relation to the Contractor's estates.

Where the Contractor is a company registered in England

- i) the presentation of a petition for the appointment of an administrator; unless it is withdrawn within 3 working days from the date on which the Contractor is notified of the presentation; or
- j) the court making an administration order in relation to the company; or
- k) the presentation of a petition for the winding-up of the company unless it is withdrawn within 3 working days from the date on which the Contractor is notified of the presentation; or
- l) the company passing a resolution that the company shall be wound-up; or
- m) the court making an order that the company shall be wound-up; or
- n) the appointment of a Receiver or manager or administrative Receiver.

Where the Contractor is a company registered other than in England, events occur or are carried out which, within the jurisdiction to which it is subject, are similar in nature or effect to those specified in sub-Clauses 1.i) to n) inclusive above.

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

#### DEFCON516 (Edn.04/12) - Equality

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.

2. Without prejudice to the generality of the obligation in Clause 1 above, 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 the Contract is being performed.

3. The Contractor agrees to take reasonable efforts to secure the observance of the provisions of this Condition by any of its employees, agents or other persons acting under its direction or control who are engaged in the performance of the Contract.

4. The Contractor agrees to take reasonable efforts to reflect this Condition in any subcontract that it enters into to satisfy the requirements of the Contract and to require its subcontractors to reflect this Condition in their subcontracts that they enter into to satisfy the requirements of the Contract.

#### DEFCON518 (Edn.11/12) - Transfer

1. Neither party to the Contract shall give, bargain, sell, assign, or otherwise dispose of the Contract or any part thereof, or the benefit or advantage of the Contract or any part thereof, without the prior consent in writing of the other party.

2. Subject to the Contractor obtaining the prior written consent of the Authority in accordance with clause 1 above, the Contractor may assign to a third party ("the Assignee") the right to receive payment of the Contract Price or any part thereof due to the Contractor under this Contract (including any interest incurred by the Authority under any Contract clause concerning the late payment of debts).

3. Any assignment of the right to receive payment of the Contract Price (or any part thereof) under clause 2 above shall be subject to:

a) reduction of any sums in respect of which the Authority exercises its right of recovery under DEFCON 509 (Recovery of Sums Due), or any narrative clause concerning recovery of sums due;

b) all related rights of the Authority under the Contract in relation to the recovery of sums due but unpaid; and

c) the Authority receiving notification under both clause 4 and sub-clause 5(b) below.

4. In the event that the Contractor obtains from the Authority the consent to assign the right to receive the Contract Price (or any part thereof) under clause 2 above, the Contractor shall notify the Authority in writing of the assignment and the date upon which the assignment becomes effective.

5. The Contractor shall ensure that the Assignee:

a) is made aware of the Authority's continuing rights under sub-clauses 3(a) and 3(b) of this DEFCON 518; and

b) notifies the Authority of the Assignee's contact information and bank account details, to which the Authority shall make payment, subject to any reduction made by the Authority in accordance with sub-clauses 3(a) and 3(b) above.

6. The provisions of the Contract, including any clauses concerning payment, shall continue to apply in all other respects after the assignment and shall not be amended without the prior approval of the Authority.

#### DEFCON520 (Edn.08/15) - Corrupt Gifts and Payments of Commission

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

a. offer, promise or give to any Crown servant any gift or financial or other advantage of any kind as an inducement or ward;

(1) for doing or not doing (or for having done or not having done) any act in relation to the obtaining or execution of this or any other contract with the Crown; or

(2) for showing or not showing favour or disfavour to any person in relation to this or any other Contract with the Crown.

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

2. If the Contractor, its employees, agents or any subcontractor (or anyone acting on its behalf or any of its or their employees) does any of the prohibited acts or commits any offence under the Prevention of Corruption Acts 1889 -1916 or under sub sections 108 -109 of the Anti-Terrorism, Crime and Security Act 2001 before those Acts or sub sections are revoked, or an offence under the Bribery Act 2010 with or without the knowledge or authority of the Contractor in relation to this Contract or any other contract with the Crown, the Authority shall be entitled:

a. to terminate the Contract and recover from the Contractor the amount of any loss resulting from the termination;

b. to recover from the Contractor the amount or value of any such gift, consideration or commission; and

c. to recover from the Contractor any other loss sustained in consequence of any breach of this Condition, where the Contract has not been terminated.

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

a. act in a reasonable and proportionate manner having regard to such matters as the gravity of, and the identity of the person performing, the prohibited act;

b. give all due consideration, where appropriate, to action other than termination of the Contract, including (without being limited to);

(1) requiring the Contractor to procure the termination of a subcontract where the prohibited act is that of a subcontractor or anyone acting on its or their behalf;

(2) requiring the Contractor to procure the dismissal of an employee (whether its own or that of a subcontractor or anyone acting on its behalf) where the prohibited act is that of such employee.

4. Where the Contract has been terminated under Clause 2 of this Condition, the powers given by DEFCON 614 (Default) or DEFCON 514 (Material Breach) shall apply as if there had been a failure in delivery.

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

DEFCON521 (Edn.04/12) - Sub-Contracting to Supported Businesses

1. When placing sub-contracts, the Contractor is asked to give consideration, as far as possible, to placing work on a competitive basis with subcontractors that are Supported Businesses.

2. For the purpose of Clause 1: "Supported Businesses" means establishments or services where more than 50% of the workers are disabled persons who by reason of the nature or severity of their disability are unable to take up work in the open labour market.

3. The Contractor can find details of Supported Businesses in the United Kingdom on the Supported Business Directory that is British Association for Supported Employment at Unit 4, 200 Bury Road, Tottington, Lancashire BL8 3DX (Telephone: 01204 880733) or <http://business.base-uk.org/directory>.

#### DEFCON526 (Edn.08/02) - Notices

1. All notices, orders, or other forms of communication required to be given in writing ('Notices') under or in connection with this Contract shall:

- a) be given in writing;
- b) be authenticated by signature or by such other method as agreed between the parties;
- c) be marked for the attention of the appropriate department or officer; and
- d) be marked in a prominent position with the relevant Contract number.

2. Notices should be delivered by:

- a) hand;
- b) first-class prepaid post (or airmail, in the case of Notices to or from overseas);
- c) facsimile;
- d) telex; or
- e) electronic mail, where such a means of communication has been agreed for the purposes of the Contract

3. Notices shall be deemed to have been received:

- a) if delivered by hand, on the day of delivery if it is the recipient's business day and otherwise on the first business day of the recipient immediately following the day of delivery;
- b) if sent by first-class prepaid post (or airmail, if appropriate), on the third business day (or on the tenth business day, in the case of airmail) after the day of posting;
- c) if sent by facsimile, telex or other electronic means;
  - i. if transmitted between 09.00 and 17:00 hours on a business day (recipient's time) on completion of receipt by the sender of verification of the transmission from the receiving instrument;
  - ii. if transmitted at any other time, at 09.00 on the first business day (recipient's time) following the completion of receipt by the sender of verification of the transmission from the receiving instrument.

4. The addresses (including electronic addresses) of each party to the Contract to which all Notices shall be sent are those specified in the Contract, or such other address as either party may by written Notice specify to the other for the purpose of this Condition.

5. Where either party requests written confirmation of any communication which does not constitute a Notice such request shall not unreasonably be refused.

#### DEFCON527 (Edn.09/97) - Waiver

1. No act or omission of either party shall by itself amount to a waiver of any right or remedy unless expressly stated by that party in writing. In particular, no reasonable delay in exercising any right or remedy, shall by itself constitute a waiver of that right or remedy.

2. No waiver in respect of any right or remedy shall operate as a waiver in respect of any other right or remedy.

#### DEFCON528 (Edn.05/12) - Overseas Expenditure, Import and Export Licences

##### Overseas Expenditure

1. In this Condition, "foreign" and "overseas" shall be understood from the position of the Authority and be regarded as "non-UK".

2. The Contractor shall report, in writing, to the Authority details of any direct overseas expenditure valued over £1 million likely to be incurred in the execution of the Contract immediately the possibility is known if such details were not furnished at the time of tendering. The details to be provided are as follows:

- a. Contract No;
- b. Country in which subcontract placed / to be placed;
- c. Name, Division and full postal address of subcontractor;
- d. Value of subcontract as applicable to main contract;
- e. Date placed / to be placed.

3. If no overseas orders valued over £1 million are to be placed, or are placed, the Contractor shall advise the Authority to this effect.

4. For the purpose of Clauses 2 and 3 of this Condition overseas expenditure comprises only those direct payments made by the Contractor to overseas firms and to UK firms, including UK branches or subsidiaries of overseas firms, for the supply of finished or semi-finished manufactured products imported directly into the UK by the Contractor or by such UK firms.

5. The Contractor shall submit any information required by Clause 2 to the Commercial Officer identified in the Appendix to the Contract.

#### Import Licence

6. If, in the performance of the Contract, the Contractor needs to import materiel into the UK for which an import licence is required, the responsibility for applying for the licence shall rest with the Contractor. The Authority shall provide the Contractor with all reasonable assistance in obtaining any necessary import licence with regard to any defence or security issue that may arise.

#### Export Licence

7. The Contractor shall notify the Authority promptly if the Contractor becomes aware that all or part of any Article or Service (including information and software) to be delivered under the Contract is or will be subject to

- a. a non-UK export licence, authorisation or exemption, or
- b. any other related transfer control,

that imposes or will impose end use, end user or re-transfer or re-export restrictions, or restrictions on disclosure to individuals based upon their nationality. This does not include the Intellectual Property-specific restrictions of the type referred to in DEFCON 632.

8. If requested by the Authority, the Contractor shall give the Authority a summary of every existing or expected licence and restriction referred to in Clause 7 and any related obligation or restriction to the extent that they place an obligation or restriction on the Authority with which the Authority must comply, including, to the extent applicable to such obligations or restrictions:

- a. the exporting nation, including the export licence number (where known);
- b. the Article or Service (including information and software) affected;
- c. the nature of the restriction and obligation;
- d. the authorised end use and end users;
- e. any specific restrictions on access by third parties, or by individuals based upon their nationality, to the Articles or to anything delivered or used in the performance or fulfilment of the Services; and
- f. any specific restrictions on the end user or on re-transfer or re-export to third parties of the Articles or of anything delivered or used in the performance or fulfilment of the Services.

The Contractor shall not be required to disclose any of the provisos to a licence (or even the existence of them) to the extent that they do not relate to an obligation or constraint with which the Authority must comply.

9. When an export licence is required from a foreign government for the performance of the Contract, the Contractor shall promptly consult with the Authority on the licence requirements and, where the Contractor is the applicant for the licence:

a. ensure that when end use or end user restrictions, or both, apply to all or part of any Article or Service to be delivered under the Contract, the Contractor, unless otherwise agreed with the Authority, identifies in the licence application:

(1) the end user as: Her Britannic Majesty's Government of the United Kingdom of Great Britain and Northern Ireland (hereinafter "HM Government"), and

(2) the end use as: For the Purposes of HM Government;

b. include in the submission for the licence a statement that "information on the status of processing this licence application may be shared with the Ministry of Defence of the United Kingdom";

10. If the information required under Clauses 7 and 8 has been provided previously to the Authority by the Contractor, the Contractor may satisfy these requirements by giving details of the previous notification and confirming they remain valid and satisfy the provisions of Clauses 7 and 8.

11. If the Contractor becomes aware of any changes in the information notified previously under Clause 7, 8 or 10 that would affect the Authority's ability to use, disclose, re-transfer or re-export an item or part of it as is referred to in those Clauses, the Contractor shall notify the Authority promptly of the change.

12. If the Contractor or any sub-contractor in the performance of the Contract needs to export materiel for which an export licence from a foreign government is required, the responsibility for instituting expeditious action to apply for and obtain the licence shall rest with the Contractor or that subcontractor. The Authority shall provide all reasonable assistance in obtaining and maintaining any export licence from the foreign government with regard to any defence or security issue that may arise.

13. Where the Contract performance requires the export of items for which a foreign export licence is required, the Contractor shall include the dependencies for the export licence application, grant and maintenance in the Contract risk register and in the risk management plan for the Contract, with appropriate review points. Where there is no requirement under the Contract for a risk management plan the Contractor shall submit an Export Licence Plan for agreement with the Authority.

14. The Authority may make a written request to the Contractor to seek a variation to the licence conditions to a foreign export licence to enable the Authority to re-export or re-transfer a licensed item or licensed information from the UK to a non-licensed third party. If the Authority makes such a request:

a. the Contractor shall, or procure that the Contractor's subcontractor will, expeditiously consider whether or not there is any reason why it should object to making the request and, where it has no objection, file an application to seek a variation of the applicable export licence in accordance with the procedures of the licensing authority;

b. the Authority shall provide sufficient information, certification and other documentation necessary to support the application for the requested variation; and

c. The Authority will pay the Contractor a fair and reasonable charge for this service based on the cost of providing it.

15. Where the Contractor subcontracts work under the Contract, which is likely to be subject to foreign export control, the Contractor shall use reasonable endeavours to incorporate in each subcontract the terms set out in the Appendix to this Condition. Where it is not practicable to include the terms set out in the Appendix, the Contractor shall report that fact and the circumstances to the Authority.

16. Where the Authority provides materiel (information and items, including software) to enable the Contractor to perform the Contract, and that materiel is subject to a non-UK export licence or other related technology transfer control as described in the provisions of Clause 7 above:

a. the Authority may, or at the request of the Contractor undertakes to, give the Contractor a summary of every non-UK export licence or other related technology transfer control of which it is aware that would affect the Contractor's ability to perform

the Contract, including, to the extent applicable, to the Contractor's performance of the Contract:

- (1) the exporting nation, including the export licence number (where known),
  - (2) the items or information affected,
  - (3) the nature of the restriction and obligation,
  - (4) the authorised end use and end users,
  - (5) any specific restrictions on access or use by third parties, or by individuals based upon their nationality, to the items or information affected, and
- (6) any specific restrictions on re-transfer or re-export to third parties of the items or information affected.

b. This will not include Intellectual Property specific restrictions of the type mentioned in DEFCON 632, Clauses 1.b) and c) in relation to the Authority instead of the Contractor.

c. The Contractor and its subcontractors, where access by these restrictions is also authorised, shall abide by the lawful restrictions so notified by the Authority.

d. The Contractor shall notify the Authority immediately if it is unable for whatever reason to abide by any restriction advised by the Authority to the Contractor under Clause 16.

17. Where restrictions are advised by the Authority to the Contractor under Clause 16, the Authority and the Contractor shall act promptly to mitigate their impact. If these restrictions adversely affect performance of the Contract, the restrictions shall be regarded as a change to the Specification and handled under the terms of DEFCON 502 and the Contract Price or delivery schedule or both shall be adjusted as appropriate. If the Contractor is unable to perform the Contract as a result of these restrictions then the Authority shall consult with the Contractor on alternative solutions requiring amendment of the Contract under DEFCON 502 and DEFCON 503 and may terminate the Contract if no alternative solution satisfies the essential terms of the Contract. Termination under these circumstances will be under the terms of DEFCON 656.

18. Without prejudice to United Kingdom Government's position on the validity of any claim by a foreign government to extra-territoriality, the Authority undertakes to provide the Contractor with all reasonable assistance to facilitate the granting an export licence by a foreign Government in respect of performance of the Contract. The Contractor's attention is drawn to clause 1 of DEFCON 528 requiring notification of overseas expenditure. In this connection, the Contractor shall, within one month of acceptance of the Contract, notify the Contracts Branch of details of any overseas sub-contract or order he has placed, or intends to place, in aid of the contract. Details to be provided are: Contract No; Country in which sub-contract placed/to be placed; Name, Division and full postal address of sub-contractor; Value of sub-contract as applicable to main contract; Date placed/to be placed. If no overseas orders are to be placed, the Contractor shall advise the Contracts Branch to this effect in the same timescale

DEFCON528App (Edn.) - Appendix to DEFCON 528 – Overseas Expenditure, Import and Export Licences

Condition to be included in relevant subcontracts

Export Licence

1. In this Condition the following words and expressions shall have the meanings set respectively against them:-

- a "Agreement" means this subcontract;
- b. "Authority" means the Secretary of State for Defence of the United Kingdom of Great Britain and Northern Ireland;
- c. "Contract" means Contract No [insert MOD Contract No] between the Authority and the Contractor;
- d. "Contractor" means [insert name of prime contractor];
- e. "First Party" means [insert name of purchaser];
- f. "Second Party" means [insert name of supplier].

2. In this Condition, "foreign" and "overseas" shall be understood from the position of the Authority and be regarded as "non-UK".

3. The Second Party shall notify the First Party promptly if the Second Party becomes aware that all or part of any article or service (including information and software) to be delivered under the Agreement is or will be subject to a non-UK export licence, authorisation or exemption or any other related transfer control that imposes or will impose end use, end user, re-export or re-transfer or re-export restrictions, or restrictions on disclosure to individuals based upon nationality, affecting the Authority, the Contractor or both. This does not include the Intellectual Property-specific restrictions of the type referred to in DEFCON 632.

4. If requested by the First Party, the Second Party shall give the First Party a summary of every existing or expected licence and restriction referred to in Clause 3 and any related obligation or restriction to the extent that they place an obligation or restriction upon the First Party or the Authority with which the First Party or the Authority must comply, including to the extent applicable to such obligations or restrictions:

- a. the exporting nation, including the export licence number (where known);
- b. the article or service (including software and information) affected;
- c. the nature of the restriction and obligation;
- d. the authorised end use and end users and other parties;
- e. any specific restrictions on access by third parties, or by individuals based upon their nationality, to the articles or to anything delivered or used in the performance or fulfilment of the services, and
- f. any specific restrictions on re-transfer or re-export of the articles or of anything delivered or used in the performance or fulfilment of the services.

The Second Party shall not be required to disclose any of the provisos to a licence (or even the existence of them) to the extent that they do not relate to an obligation or constraint with which the First Party or the Authority must comply.

5. When an export licence is required from a foreign government for the performance of the Agreement, the Second Party shall promptly consult with the First Party on the licence requirements and, where the Second Party is the applicant for the licence:

a. ensure that when end use or end user restrictions, or both, apply to all or part of any Article or Service to be delivered under the Contract, the Second Party, unless otherwise agreed with the Authority, identifies in the licence application:

(i) the end user as: Her Britannic Majesty's Government of the United Kingdom of Great Britain and Northern Ireland (hereinafter "HM Government"), and

(ii) the end use as: For the Purposes of HM Government;

b. include in the submission for the licence a statement that "information on the status of processing this license application may be shared with the [insert name of the Contractor] and the Ministry of Defence of the United Kingdom";

c. include in the submission the information that the First Party (and any intermediary parties in the supply chain, as applicable) and the Contractor will be recipients and users of the items, including information, for the performance of the Contract;

6. If the information required under Clauses 3 and 4 has been provided previously to the First Party by the Second Party, the Second Party may satisfy these requirements by giving details of the previous notification and confirming they remain valid and satisfy the provisions of Clauses 3 and 4.

7. If the Second Party becomes aware of any changes in the information notified previously under Clause 3, 4 or 6 that would affect the Contractor's or the Authority's ability to use, disclose, re-transfer or re-export an item or part of it as is referred to in those Clauses, the Second Party shall notify the First Party promptly of the change.

8. If the Second Party or any sub-contractor in the performance of the Agreement needs to export materiel for which an export licence from a foreign government is required, the responsibility for instituting expeditious action to apply for and obtain the licence shall rest with the Second Party or that subcontractor. The First Party will liaise with his purchaser to enable the Authority to provide all reasonable assistance in obtaining and maintaining any

export licence from the foreign government with regards to any defence or security issue that may arise.

9. Where the Agreement performance requires the export of items for which a foreign export licence is required, the Second Party shall include the dependencies for the export licence application, grant and maintenance in the Agreement risk register and in the risk management plan for the Agreement, with appropriate review points. Where there is no requirement under the Agreement for a risk management plan the Second Party shall submit an Export Licence Plan for agreement with the First Party.

10. The Authority may make a written request to the Contractor to seek a variation to the licence conditions to a foreign export licence to enable the Authority to re-export or re-transfer a licensed item or licensed information from the UK to a non-licensed third party. If the Authority makes such a request that is transmitted to the Second Party by the First Party, the Second Party shall, or procure that the Second Party's subcontractor will, expeditiously consider whether or not there is a reason why it should object to making the request and, where it has no such objection, file an application to seek a variation of the applicable export licence in accordance with the procedures of the licensing authority. The First Party shall provide information, certification and other documentation necessary to support the application for the requested variation that it has received. A fair and reasonable charge for this service based on the cost of providing it will be borne by the Authority.

11. Where the Second Party subcontracts work under the Agreement, which is likely to be subject to foreign export control, the Second Party shall use reasonable endeavours to incorporate in each subcontract the terms set out in the Appendix to DEFCON 528. Where it is not practicable to include the terms set out in the Appendix, the Second Party shall report that fact and the circumstances to the First Party.

12. Where the First Party provides materiel (information and items, including software) to enable the Second Party to perform the Agreement, and that materiel is subject to a non-UK export licence or other related technology transfer control as described in Clause 3 above:

a. the First Party may, or at the request of the Second Party undertakes to, give the Second Party a summary of every non-UK export licence or other related technology transfer control of which it is aware that would affect the Second Party's ability to perform the Agreement including, to the extent applicable to the Second Party's performance of the Agreement:

(1) the exporting nation, including the export licence number (where known);

(2) the items or information affected;

(3) the nature of the restriction and obligation;

(4) the authorised end use and end users;

(5) any specific restrictions on access or use by third parties, or by individuals based upon their nationality, to the items or information affected; and

(6) any specific restrictions on re-transfer or re-export to third parties of the items or information affected.

b. This will not include Intellectual Property specific restrictions of the type mentioned in DEFCON 632, Clauses 1.b) and c) in relation to the First Party instead of the Contractor.

c. The Second Party and its subcontractors, where access by these restrictions is also authorised, shall abide by the lawful restrictions so notified by the First Party.

d. The Second Party shall notify the First Party immediately if it is unable for whatever reason to abide by any restriction advised by the First Party to the Second Party under Clause 12.

13. Where restrictions are advised by the First Party to the Second Party under Clause 12, the First Party and the Second Party shall act promptly to mitigate their impact. If these restrictions adversely affect performance of the Agreement by the Second Party, then the First Party shall consult with the Second Party on alternative solutions and the terms of the Agreement shall be amended to give effect to the agreed solution. If no alternative solution satisfying the essential terms of the Agreement is agreed by the Parties then the First Party shall have the right to terminate the Agreement. Termination under these circumstances will be in accordance with the principles of DEFCON 656.

14. Without prejudice to United Kingdom Government's position on the validity of any claim by a foreign government to extra-territoriality, the Authority has undertaken to provide

the Second Party with all reasonable assistance to facilitate the granting an export licence by a foreign Government in respect of performance of the Agreement.

DEFCON529 (Edn.09/97) - Law (English)

1. The Contract shall be considered as a contract made in England and subject to English Law.

2. Subject to DEFCON 530 and without prejudice to the dispute resolution process set out in that Condition, each party hereby irrevocably submits and agrees to the exclusive jurisdiction of the Courts of England to resolve, and the laws of England to govern, any actions, proceedings, controversy or claim of whatever nature arising out of or relating to the Contract or breach thereof.

3. Other jurisdictions may apply solely for the purpose of giving effect to this Condition and for the enforcement of any judgement, order or award given under English jurisdiction.

DEFCON530 (Edn.12/14) - Dispute Resolution (English Law)

1. The parties will attempt in good faith to resolve any dispute or claim arising out of or relating to this Contract through negotiations between the respective representatives of the parties having authority to settle the matter, which attempts may include the use of any Alternative Dispute Resolution (ADR) procedure on which the parties may agree.

2. In the event that the dispute or claim is not resolved by negotiation, or where the parties have agreed to use an ADR procedure, by the use of such procedure, the dispute shall be referred to arbitration.

3. The party initiating the arbitration shall give a written Notice of Arbitration to the other party. The Notice of Arbitration shall specifically state:

- a) that the dispute is referred to arbitration; and
- b) the particulars of the Contract out of or in relation to which the dispute arises.

4. Unless otherwise agreed in writing by the parties, the arbitration and this Condition shall be governed by the provisions of the Arbitration Act 1996.

5. It is agreed between the parties that for the purposes of the arbitration, the arbitrator shall have the power to make provisional awards as provided for in Section 39 of the Arbitration Act 1996.

6. For the avoidance of doubt it is agreed between the parties that the arbitration process and anything said, done or produced in or in relation to the arbitration process (including any awards) shall be confidential as between the parties, except as may be lawfully required in judicial proceedings relating to the arbitration or otherwise. No report relating to anything said, done or produced in or in relation to the arbitration process may be made beyond the tribunal, the parties, their legal representatives and any person necessary to the conduct of the proceedings, without the concurrence of all the parties to the arbitration.

DEFCON531 (Edn.11/14) - Disclosure of Information

1. 'Information' means any information in any written or other tangible form disclosed to one party by or on behalf of the other party under or in connection with the Contract, including information provided in the tender or negotiations which preceded the award of the Contract.

2. Subject to Clauses 5 to 9 each party:

- a) shall treat in confidence all Information it receives from the other;
  - b) shall not disclose any of that Information to any third party without the prior written consent of the other party, which consent shall not unreasonably be withheld, except that the Contractor may disclose Information in confidence, without prior consent, to such persons and to such extent as may be necessary for the performance of the Contract;
  - c) shall not use any of that Information otherwise than for the purpose of the Contract;
- and

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

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

a) is disclosed to its employees and sub-contractors, only to the extent necessary for the performance of the Contract; and

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

4. The Contractor shall ensure that his employees are aware of his arrangements for discharging the obligations at Clauses 2 and 3 before they receive Information and take such steps as may be reasonably practical to enforce such arrangements.

5. Clauses 2 and 3 shall not apply to any Information to the extent that either party:

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

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

c) can show:

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

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 the 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 the Contract; provided the relationship to any other Information is not revealed.

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

7. The Authority may disclose the Information:

a) 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;

b) to Parliament and Parliamentary Committees or if required by any Parliamentary reporting requirement;

c) to the extent that the Authority (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions;

d) on a confidential basis to a professional adviser, consultant or other person engaged by any of the entities defined in DEFCON 501 (including benchmarking organisation) for any purpose relating to or connected with this Contract;

e) on a confidential basis for the purpose of the exercise of its rights under the Contract;  
or

f) 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 the 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 DEFCON.

8. Before sharing any Information in accordance with clause 7 above, the Authority may redact the Information. Any decision to redact information made by the Authority shall be final.

9. The Authority shall not be in breach of the Contract where it can show that any disclosure of Information is made solely and to the extent necessary to comply with the Freedom of Information Act 2000 ("the Act") or the Environmental Information Regulations 2004 ("the Regulations"). To the extent permitted by the time for compliance under the Act or the Regulations, the Authority shall consult the Contractor where the Authority is considering the disclosure of Information under the 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 Act or the Regulations is a matter in which the Authority shall exercise its own discretion, subject always to the provisions of the Act or the Regulations. For the avoidance of doubt, nothing in this Condition shall affect the Contractor's rights at law.

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

DEFCON532A (Edn.06/10) - Protection Of Personal Data (Where Personal Data is not being processed on behalf of the Authority)

1. In this Condition, the expressions "Data Controller" and "Personal Data" shall have the same meanings as in the Data Protection Act 1998 ("the Act") in which they are defined in section 1 but used in lower case letters.

2. In the performance of the Contract, both parties shall comply with their obligations as a Data Controller under the Act.

3. If the Contract is amended to add a requirement for the Contractor to process Personal Data on behalf of the Authority, DEFCON 532B shall be included in the Contract.

DEFCON537 (Edn.06/02) - Rights of Third Parties

1. Except as provided in Clause 2 of this Condition and notwithstanding anything to the contrary elsewhere in the Contract, no right is granted to any person who is not a party to the Contract to enforce any term of the Contract in his own right and the parties to the Contract declare that they have no intention to grant any such right.

2. Where, and only where, either by a term in a DEFCON which has been expressly included in the Contract or by another term which specifically refers to this DEFCON, the Contract expressly states that a third party shall be entitled to enforce a term of the Contract:

a) the said third party shall be entitled to enforce that term in his own right;

b) the Contractor shall inform the said third party as soon as is reasonably practicable of the existence of the relevant right together with any other terms (including the terms of this Condition) relevant to the exercise of that right; and

c) the third party's rights shall be subject to any provision in the Contract:

i. that provides for the submission of disputes under the Contract generally or the said rights in particular to arbitration (such as DEFCON 530 or DEFCON 530A); and

ii. that stipulates the law and jurisdiction that will govern the Contract (such as DEFCON 529 or DEFCON 529A).

#### DEFCON538 (Edn.06/02) - Severability

1. If any provision of the Contract is held to be invalid, illegal or unenforceable to any extent then:

a) such provision shall (to the extent it is invalid, illegal or unenforceable) be given no effect and shall be deemed not to be included in the Contract but without invalidating any of the remaining provisions of the Contract; and

b) the parties shall use all reasonable endeavours to replace the invalid, illegal or unenforceable provision by a valid, legal and enforceable substitute provision the effect of which is as close as possible to the intended effect of the invalid, illegal or unenforceable provision.

#### DEFCON539 (Edn.08/13) - Transparency

1. For the purpose of this Condition the expressions:

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

b. "Contractor Commercially Sensitive Information" shall mean the information listed in the DEFFORM 539A Schedule to the Contract, being information notified by the Contractor to the Authority which is acknowledged by the Authority as being commercially sensitive information.

2. Notwithstanding any other term of this Contract, including DEFCON 531 where applicable, 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.

3. Before publishing the Transparency Information to the general public in accordance with clause 2 above, the Authority shall redact any information that would be exempt from disclosure if it was the subject of a request for information under the Freedom of Information Act 2000 ("the Act") or the Environmental Information Regulations 2004 ("the Regulations"), including the Contractor Commercially Sensitive Information.

4. The Authority may consult with the Contractor before redacting any information from the Transparency Information in accordance with clause 3 above. The Contractor acknowledges and accepts that its representations on redactions during consultation may not be determinative and that the decision whether to redact information is a matter in which the Authority shall exercise its own discretion, subject always to the provisions of the Act or the Regulations.

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

#### DEFCON550 (Edn.02/14) - Child Labour and Employment Law

1. In this Condition, "Child Labour Legislation" means those International Labour Law Conventions concerning economic exploitation of children through the performance of work which is likely to be hazardous or to interfere with a child's health or development, including but not limited to slavery, trafficking, debt bondage or forced labour, which are ratified and enacted into domestic law and directly applicable to the Contractor in the jurisdiction(s) in which it performs the Contract.

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

3. The Contractor agrees to take reasonable efforts to reflect this Condition in any subcontract that it enters into to satisfy the requirements of the Contract and to require its subcontractors to reflect this Condition in their subcontracts that they enter into to satisfy the requirements of the Contract.

#### DEFCON566 (Edn.10/16) - Change of Control of Contractor

1. The Contractor shall notify the Representative of the Authority at the address given in clause 3, as soon as practicable, in writing of any intended, planned or actual change in

control of the Contractor. The Contractor shall not be required to submit any notice which is unlawful or is in breach of either any pre-existing non-disclosure agreement or any regulations governing the conduct of the Contractor in the UK or other jurisdictions where the Contractor may be subject to legal sanction arising from issuing such a notice.

2. For the purposes of this Condition 'control' means the power of a person to secure that the affairs of the Contractor are conducted in accordance with the wishes of that person:

a. by means of the holding of shares, or the possession of voting powers in, or in relation to, the Contractor; or

b. by virtue of any powers conferred by the constitutional or corporate documents, or any other document, regulating the Contractor.

and a change of control occurs if a person who controls the Contractor ceases to do so or if another person acquires control of the Contractor.

3. Each notice of change of control shall be taken to apply to all contracts with the Authority. Notices shall be submitted to:

Mergers & Acquisitions Section  
Strategic Supplier Management Team  
Poplar 1 # 2119  
MOD Abbey Wood,  
Bristol, BS34 8JH

4. The Representative of the Authority shall consider the notice of change of control and advise the Contractor in writing of any concerns the Authority may have. Such concerns may include but are not limited to potential threats to national security, the ability of the Authority to comply with its statutory obligations or matters covered by the declarations made by the Contractor prior to Contract Award.

5. The Authority may terminate the Contract by giving written notice to the Contractor within six months of the Authority being notified in accordance with clause 1. The Authority shall act reasonably in exercising its right of termination under this Condition.

6. If the Authority exercises its right to terminate in accordance with clause 5 the Contractor shall be entitled to request the Authority to consider making a payment representing any commitments, liabilities or expenditure incurred by the Contractor in connection with the Contract up to the point of termination. Such commitments, liabilities or expenditure shall be reasonably and properly chargeable by the Contractor, and shall otherwise represent an unavoidable loss by the Contractor by reason of the termination of the Contract. Any payment under this clause 6 must be fully supported by documentary evidence. The decision whether to make such a payment shall be at the Authority's sole discretion.

7. Notification by the Contractor of any intended, planned or actual change of control shall not prejudice the existing rights of the Authority or the Contractor under the Contract nor create or imply any rights of either the Contractor or the Authority additional to the Authority's rights set out in this Condition.

DEFCON620 (Edn.06/14) - Contract Change Control Procedure

#### 1. Authority Changes

Subject always to DEFCON 503 (Formal Amendments to Contract), the Authority shall be entitled, acting reasonably, to require changes to the Contractor Deliverables (a "Change") in accordance with this DEFCON.

#### 2. Notice of Change

a. If the Authority requires a Change, it shall serve a Notice (an "Authority Notice of Change") on the Contractor.

b. The Authority Notice of Change shall set out the change required to the Contractor Deliverables in sufficient detail to enable the Contractor to provide a written proposal (a "Contractor Change Proposal") in accordance with Clause 3 below.

#### 3. Contractor Change Proposal

a. As soon as practicable, and in any event within fifteen (15) Business Days (or such other period as the Parties may agree) after having received the Authority Notice of Change, the Contractor shall deliver to the Authority a Contractor Change Proposal.

b. The Contractor Change Proposal shall include:

- (1) the effect of the Change on the Contractor's obligations under the Contract;
- (2) a detailed breakdown of any costs which result from the Change;
- (3) the programme for implementing the Change;
- (4) any amendment required to this Contract as a result of the Change, including, where appropriate, to the Contract Price; and
- (5) such other information as the Authority may reasonably require.

c. The price for any Change shall be based on the prices (including all rates) already agreed for the Contract and shall include, without double recovery, only such charges that are fairly and properly attributable to the Change.

#### 4. Contractor Change Proposal – Process and Implementation

a. As soon as practicable after the Authority receives a Contractor Change Proposal, the Authority shall:

- (1) Evaluate the Contractor Change Proposal;
- (2) Where necessary, discuss with the Contractor any issues arising and following such discussions the Authority may modify the Authority Notice of Change and the Contractor shall as soon as practicable, and in any event not more than ten (10) Business Days (or such other period as the Parties may agree) after receipt of such modification, submit an amended Contractor Change Proposal.

b. As soon as practicable after the Authority has evaluated the Contractor Change Proposal (amended as necessary) the Authority shall:

- (1) Indicate its acceptance of the Contractor Change Proposal by issuing a serially numbered amendment letter in accordance with DEFCON 503 (Formal Amendments to Contract); or
- (2) Serve a Notice on the Contractor rejecting the Contractor Change Proposal and withdrawing (where issued) the Authority Notice of Change.

c. If the Authority rejects the Change Proposal it shall not be obliged to give its reasons for such rejection.

d. The Authority shall not be liable to the Contractor for any additional work undertaken or expense incurred unless a Contractor Change Proposal has been accepted in accordance with Clause 4.b.(1) above.

#### 5. Contractor Changes

If the Contractor wishes to propose a Change, it shall serve a Contractor Change Proposal on the Authority, which shall include all of the information required by Clause 3.b above, and the process at Clause 4 above shall apply.

DEFCON630 (Edn.03/15) - Framework Agreements

#### Definitions

1. In this Condition:

a. "Framework Agreement" means an agreement or other arrangement between the Authority or the Authority and one or more other contracting authorities, and one or more contractors that establishes the terms (in particular the terms as to price and, where appropriate, quantity) under which the contractor(s) will enter into one or more contracts with the Authority in the period during which the Framework Agreement applies.

- b. "Authorised Demander" means the person(s) authorised by the Authority to place orders or tasks being the person(s) listed in the Framework Agreement.

#### Standing Offer

2. In consideration for the payment of the sum of £1 (one pound) by the Authority to the Contractor(s), the Contractor(s) shall not for the duration of the Framework Agreement withdraw from or amend in any way the standing offers contained in the Framework Agreement except by agreement in accordance with DEFCON 503.

#### Duration Period

3. The duration period of this Framework Agreement was stated in the Contract Notice and shall start from the date that the Framework Agreement entered into force. This period, shall be the period in which Contractor Deliverables may be ordered and / or tasks authorised by the Authority under the Framework Agreement. The fulfilment of such orders or tasks may take place after the end of the duration period in accordance with the terms of the orders or tasks.

#### Estimated Quantities

4. Where applicable, the quantities referred to in the Schedule of Requirements (SOR) are estimates only. The Authority may order less than the estimated quantities and shall not be bound to place orders or tasks for any of the Contractor Deliverables referred to in the SOR. The Authority shall not be bound to accept or pay for any Contractor deliverables other than those actually ordered and / or authorised under the terms of the Framework Agreement.

#### Alternative Sourcing of Contractor Deliverables

5. The Contractor(s) accept that, subject to the Authority having necessary rights, the Authority has the right to award contracts separate from this Framework Agreement for any or all of the Contractor Deliverables listed in the SOR during the period of the Framework Agreement.

#### Orders or Tasks (Contracts) for Contractor Deliverables placed or awarded under the Framework Agreement

6. A Contract for the Contractor Deliverables shall only be created when either the Authorised Demander(s) places an order for each requirement, communicating an unqualified acceptance of the Contractor's standing offer or when the Contractor communicates its unqualified acceptance to the Authority for any tasks awarded by the Authorised Demander(s) under the Framework Agreement by the means specified in the Framework Agreement.

7. Where the Framework Agreement does not specify the means by which the Authority will place orders and / or award tasks (contracts) under the Framework Agreement, the Authority will comply with:

- a. the procedures for the award of contracts set out at Regulation 20 of the Defence and Security Public Contracts Regulations (DSPCR) 2011 or any successor, where applicable;
- b. the procedures for the award of contracts set out at Regulation 33 of the Public Contracts Regulations (PCR) 2015 or any successor, where applicable; or
- c. if the PCR and DSPCR do not apply, the principles of non-discrimination and equal treatment for any Contractor party to the Framework Agreement subject to any essential security measures that the Authority may adopt under Article 346 Treaty on the Functioning of the European Union.

8. Occasionally, and subject to the agreement of both parties to the Framework Agreement, an order or task may contain specific terms or conditions additional to those contained in the Framework Agreement or which are at variance to those contained in the Framework Agreement.

9. The order or task shall expressly reference the Framework Agreement, and shall be in the format specified in the Framework Agreement.

10. The Contractor shall deliver the Contractor Deliverables within the times specified in the Framework Agreement or as otherwise agreed between the parties in accordance with the provisions of the Framework Agreement. If it becomes obvious that the Contractor Deliverables will not be delivered within the specified timescale, the Contractor shall immediately notify the Authority of the cause of the delay together with a forecast delivery date. Such information shall be supplied without prejudice to the Authority's rights under the Framework Agreement.

11. In the event that the Authority agrees to a revised delivery date it shall immediately issue an amendment to the applicable order in accordance with the provisions of DEFFCON 503.

12. All correspondence issued by the Contractor shall be directed to the addressee specified in the Framework Agreement or, if no addressee is specified, to the project manager, equipment support manager or project team leader named in the DEFFORM 111 appended to the Framework Agreement. In each case a copy shall be sent to the applicable commercial officer.

13. The Contractor shall either accept or reject an order or task within the period specified in the Framework Agreement or, if no period is specified in the Framework Agreement, within ten business days.

14. Where an order or task has been rejected by the Contractor, the Contractor shall specify in writing the reason for the rejection.

15. Each order or task issued by the Authority and each quotation, order, task acceptance and rejection issued by the Contractor shall be issued in the manner specified in the Framework Agreement. If the Framework Agreement does not specify the means by which an order or task is to be issued then the provisions of clause 7 of DEFFCON 501 shall apply.

#### 2.1. Compliance with the Electronic Transactions Agreement

The Authority and the Contractor shall comply with the Electronic Transactions Agreement comprised in the completed DEFFORM 30, reference [@ETAgreementRef,@] dated [@ETDateAgreed.@] The meaning of Purchase Order and Order Acknowledgement messages shall be as defined in the Contract and the terms and conditions of the Contract shall take precedence in all circumstances.

### **3 SPECIFICATIONS, PLANS, ETC**

DEFFCON129J (Edn.02/16) - The Use Of The Electronic Business Delivery Form

#### Form Usage

1. The Contractor must use the electronic business delivery form for all deliveries of Articles and performance of Services.

2. The electronic business delivery form, DEFFORM 129J, must accompany the package or consignment to which it applies. The Contractor must either

- a. attach the form as a label, directly to the package surface, or
- b. forward the form in a document envelope as provided in Clauses 3 and 4 of this Condition.

#### Form Structure

#### For the provision of Articles

3. Where delivery is for a physical Article, the following criteria apply:

- a. 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, see Clause 6.

- b. The Contractor must use the bar coded Unique Identifier as defined in

DEFCON 5J, unless specified otherwise in the Contract.

c. 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 MOD receipting system.

#### For the provision of Services

4. Where performance is for a Service, the following criteria apply:

a. Standard size is A4 (210 mm x 297 mm).

b. The Contractor must use the bar coded Unique Identifier as defined in DEFCON 5J unless specified otherwise in the Contract.

c. The Contractor must provide one form either on completion of the Service or on completion of each agreed stage of the Service.

#### Bar Code Symbology and Print Quality

5. The bar code symbology used shall meet the requirements of STANAG 4329, "NATO Standard Bar Code Symbologies", specifically Code 39 (ISO/IEC 16388), unless otherwise specified.

6. 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

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

#### DEFCON502 (Edn.06/14) - Specifications Changes

1. For the purposes of the Contract "the Specification" shall include any document or item which, individually or collectively, is referenced in the Schedule of Requirements.

2. The Specification forms part of the Contract.

3. All Articles or Services to be supplied under the Contract shall conform in all respects with the Specification.

4. The Contractor shall use a configuration control system to control changes to the Specification. The configuration control system shall be compatible with ISO 9001 (latest published version) or as specified in the Contract.

5. The Authority, or the Representative of the Authority may, alter the Specification. Any alterations shall not alter the fit, form, function or characteristics of the Articles or Services to be supplied under the Contract.

6. The changes will be provided in writing and shall apply from the date specified by the Authority. The Authority shall provide an updated Specification. The Articles or Services shall be delivered in accordance with the altered Specification. These alterations shall not constitute a formal amendment of the Contract and shall be implemented upon receipt, or at the date specified in the Authority's notice.

7. Any alterations that cause a change to:

a. fit, form, function or characteristics of the Articles or Services;

b. the cost;

c. Delivery dates;

d. period required for the production or completion; or

e. other work caused by the alteration;  
shall be subject to DEFCON 503 (Amendments of Contract). Each amendment under DEFCON 503 shall be classed as a formal change.

8. In the event that either party considers that there may be any conflict within the Specification it shall immediately notify the other party.

9. Any documentation provided by the Authority outside of this condition shall not alter the Specification.

DEFCON602B (Edn.12/06) - Quality Assurance (Without Deliverable Quality Plan)

1. A Deliverable Quality Plan is not required for the purposes of this Contract.

2. The Contractor shall ensure that the Contract is carried out in accordance with the quality requirements specified in the Contract.

DEFCON627 (Edn.12/10) - Quality Assurance - Requirement for a Certificate of Conformity

1. The Contractor shall provide a Certificate of Conformity (CofC) in accordance with the Schedule of Requirements and any applicable Quality Plan. One copy of the CofC shall be sent to the Authority (Box 2 DEFFORM 111) upon delivery and one copy shall be provided with the Articles or to the recipient of the Service.

2. The CofC shall be considered by the Contractor as a record and DEFCON 609 shall apply.

3. The information provided on the CofC shall include:

- a. Contractor name and address;
- b. Contractor unique CofC reference number;
- c. Contract number and where applicable Contract Amendment number;
- d. Details of any approved concessions;
- e. Acquirer name and organisation;
- f. Delivery address;
- g. Contract Item Number from the Schedule of Requirements;
- h. Description of Article or Service including part number, Specification and configuration status;
- i. Identification marks, batch and serial number(s) in accordance with the Specification;
- j. Quantities;
- k. A signed and dated statement by the Contractor that Articles or Services provided comply with the requirements of the Contract, and approved concessions.

Exceptions or additions to the above are to be documented.

4. Where the Schedule of Requirements and any applicable Quality Plan requires demonstration of traceability and design provenance through the supply chain, the Contractor shall include in any relevant sub-contract the requirement for the information called for at Clause 3. The Contractor shall ensure that this information is available to the Authority through the supply chain, upon request in accordance with DEFCON 609.

### 3.1. Contractor Working Parties

For the purposes of the Contract any Contractor Working Parties shall be provided in accordance with Defence Standard 05-061 Part 4 (Issue 3) entitled "Quality Assurance Procedural Requirements – Contract Working Parties".

### 3.2. Quality Assurance Representative

All reference to the QAR in documents which form part of this Contract shall be read as referring to the Authority specified in Box 7 of DEFFORM 111.

## **4 PRICE**

Not Applicable

## 5 INTELLECTUAL PROPERTY RIGHTS

### DEFCON90 (Edn.11/06) - Copyright

1. This Condition shall apply to all copyright works generated under the Contract, or delivered to the Authority under the provisions of the Contract, except that it shall not apply to copyright works covered by DEFCON 91 or such other software clause as may appear in the Contract or for which the Authority is otherwise licensed, or to any work deliverable under the Contract and subject to the terms of DEFCON 15/15A, DEFCON 16 and/ or DEFCON 21.

2. The Contractor shall use all reasonable endeavours to ensure that copyright in any work generated under the Contract shall be the property of and vest in the Contractor, subject to the rights of third parties in pre-existing works.

3. The Contractor agrees not to publish any copyright work generated under the Contract without the consent in writing of the Authority. The Authority will not normally raise objection to publication unless delay or limited publication only is considered necessary in the national interest. The Authority will review, upon request by the Contractor, any such restriction on publication.

4. The Authority shall have, in respect of any copyright work to which this Condition applies, a free licence;

a) to copy the work and to circulate and use the work or any copy thereof within any United Kingdom Government Department (which term includes the United Kingdom Armed Forces) provided that no part of the work nor any copy thereof shall, except with the prior written permission of the Contractor or pursuant to sub-clause b or c of this Clause, be made available to any third party;

b) to issue the work or any part of the work or any copy of the work or any part thereof to another supplier or potential supplier to the United Kingdom Government for the purpose of use only under a contract, or tendering for a proposed contract, for a United Kingdom Government purpose, provided that the supplier or potential supplier is placed under an obligation which restricts disclosure and use of such work to the said purposes;

c) to issue the work or any part of the work or any copy of the work or any part thereof to the government(s) of the nation(s) prescribed in the Contract, for information only, in pursuance of information exchange arrangements for defence purposes, provided that the recipient government is placed under an obligation not to use such work for other than information purposes or disclose it to a third party;

provided that, subject to any pre-existing rights of the Authority, sub-Clauses 4.b) and c) above shall only apply to the work or any part of the work or any copy of the work or any part thereof if such work or part thereof is generated under the Contract. Sub-Clauses 4.b) and c) shall apply to all works or parts thereof unless otherwise marked by the Contractor in accordance with Clause 5 below.

5. As soon as he becomes aware that any copyright work or part thereof delivered or proposed to be delivered is a work subject to special conditions or any third party rights known to the Contractor, or is a work or part thereof not generated under the Contract, the Contractor shall inform the Authority and upon delivery shall appropriately mark such work or part thereof to identify the same and indicate the relevant conditions or rights.

6. The Contractor may mark or include in any copyright work to which this Condition applies a copyright notice provided that such copyright notice acknowledges the Authority's rights under this Condition. Any such notice shall be perpetuated in any copies of such work made by the Authority or any other United Kingdom Government Department or its agents or contractors.

7. This Condition shall constitute an 'agreement to the contrary' for the purposes of Section 48 of the Copyright, Design and Patents Act 1988.

8. In this Condition 'copyright work' shall be understood to include any works, data or other materials in which a database right subsists.

#### Notifications

1. As he becomes aware, the Contractor shall promptly notify the Authority of:

a) any invention or design the subject of Patent or Registered Design rights (or application therefor) owned by a third party which appears to be relevant to the performance of the Contract or to use by the Authority of anything required to be done or delivered under the Contract;

b) any restriction as to disclosure or use, or obligation to make payments in respect of any other intellectual property (including technical information) required for the purposes of the Contract or subsequent use by the Authority of anything delivered under the Contract and, where appropriate, the notification shall include such information as is required by Section 2 of the Defence Contracts Act 1958;

c) any allegation of infringement of intellectual property rights made against the Contractor and which pertains to the performance of the Contract or subsequent use by the Authority of anything required to be done or delivered under the Contract.

This Clause 1 does not apply in respect of Articles or Services normally available from the Contractor as a commercial off the shelf (COTS) item or service.

2. If the information required under this Condition has been notified previously, the Contractor may meet his obligations by giving details of the previous notification.

#### Patents and Registered Designs in the UK – COTS Articles or Services

3. In respect of any question arising (by way of an allegation made to the Authority or Contractor, or otherwise) that the manufacture or supply under the Contract of any Article or Service normally available from the Contractor as a COTS item or service is an infringement of a United Kingdom Patent or Registered Design not owned or controlled by the Contractor or the Authority, the Contractor shall, subject to the agreement of the third party owning such Patent or Registered Design, be given exclusive conduct of any and all negotiations for the settlement of any claim or the conduct of any litigation arising out of such question. The Contractor shall indemnify the Authority, its officers, agents and employees against any liability and cost arising from such allegation. This Clause will not apply if:

a) the Authority has made or makes an admission of any sort relevant to such question;

b) the Authority has entered or enters into any discussions on such question with any third party without the prior written agreement of the Contractor;

c) the Authority has entered or enters into negotiations in respect of any relevant claim for compensation in respect of Crown Use under Section 55 of the Patents Act 1977 or Section 12 of the Registered Designs Act 1977;

d) legal proceedings have been commenced against the Authority or the Contractor in respect of Crown Use, but only to the extent of such Crown Use that has been properly authorised.

4. The indemnity in Clause 3 does not extend to use by the Authority of anything supplied under the Contract where that use was not reasonably foreseeable at the time of the Contract.

5. In the event that the Authority has entered into negotiation in respect of a claim for compensation, or legal proceedings in respect of the Crown Use have commenced, the Authority shall forthwith authorise the Contractor for the purposes of performing the Contract (but not otherwise) to utilise a relevant invention or design in accordance with Sections 55 and 56 of the Patents Act 1977 or Section 12 of the Registered Designs Act 1949 and to use any model, document or information relating to any such invention or design which may be required for that purpose.

#### Patents and Registered Designs in the UK - All other Articles or Services

6. If a relevant invention or design has been notified to the Authority by the Contractor prior to the date of the Contract, then unless it has been otherwise agreed, under the provisions of Sections 55 and 56 of the Patents Act 1977 or Section 12 of the Registered Designs Act

1949, the Contractor is hereby authorised to utilise that invention or design, notwithstanding the fact that it is the subject of a United Kingdom Patent or United Kingdom Registered Design, for the purpose of performing the Contract.

7. If, under Clause 1, a relevant invention or design is notified to the Authority by the Contractor after the date of Contract, then:

a) if the owner (or his exclusive licensee) takes or threatens in writing to take any relevant action against the Contractor, the Authority shall issue to the Contractor a written authorisation in accordance with the provisions of Sections 55 and 56 of the Patents Act 1977 or Section 12 of the Registered Designs Act 1949, and

b) in any event, unless the Contractor and the Authority can agree an alternative course of action, the Authority shall not unreasonably delay the issue of a written authorisation in accordance with the provisions of Sections 55 and 56 of the Patents Act 1977 or Section 12 of the Registered Designs Act 1949.

Patents, Utility Models and Registered Designs outside the UK

8. The Authority shall assume all liability and shall indemnify the Contractor, its officers, agents and employees against liability, including the Contractor's costs, as a result of infringement by the Contractor or his suppliers of any Patent, Utility Model, Registered Design or like protection outside the United Kingdom in the performance of the Contract when such infringement arises from or is incurred by reason of the Contractor following any specification, statement of work or instruction in the Contract or using, keeping or disposing of any item given by the Authority for the purpose of the Contract in accordance with the Contract.

9. The Contractor shall assume all liability and shall indemnify the Authority, its officers, agents and employees against liability, including the Authority's costs, as a result of infringement by the Contractor or his suppliers of any Patent, Utility Model, Registered Design or like protection outside the United Kingdom in the performance of the Contract when such infringement arises from or is incurred otherwise than by reason of the Contractor following any specification, statement of work or instruction in the Contract or using, keeping or disposing of any item given by the Authority for the purpose of the Contract in accordance with the Contract.

Royalties and Other Licence Fees

10. The Contractor shall not be entitled to any reimbursement of any royalty, licence fee or similar expense incurred in respect of anything to be done under the Contract, where:

a) a relevant discharge has been given under Section 2 of the Defence Contracts Act 1958, or relevant authorisation in accordance with Sections 55 or 57 of the Patents Act 1977, Section 12 of the Registered Designs Act 1949 or Section 240 of the Copyright, Designs and Patents Act 1988 in respect of any intellectual property, or

b) any obligation to make payments for intellectual property has not been promptly notified to the Authority under Clause 1 of this Condition.

11. Where an authorisation is given by the Authority under Clause 5, Clause 6 or Clause 7, to the extent permitted by Section 57 of the Patents Act 1977, Section 12 of the Registered Designs Act 1949 or Section 240 of the Copyright, Designs and Patents Act 1988, the Contractor shall also be:

a) released from payment whether by way of royalties, licence fees or similar expenses in respect of the Contractor's use of the relevant invention or design, or the use of any relevant model, document or information for the purpose of performing the Contract, and

b) authorised to use any model, document or information relating to any such invention or design which may be required for that purpose.

Copyright, Design Rights etc.

12. The Contractor shall assume all liability and indemnify the Authority and its officers, agents and employees against liability, including costs as a result of:

a) infringement or alleged infringement by the Contractor or his suppliers of any copyright, database right, design right or the like protection in any part of the world in respect of any item to be supplied under the Contract or otherwise in the performance of the Contract;

b) misuse of any confidential information, trade secret or the like by the Contractor in performing the Contract;

c) provision to the Authority of any information or material which the Contractor does not have the right to provide for the purpose of the Contract.

13. The Authority shall assume all liability and indemnify the Contractor, its officers, agents and employees against liability, including costs as a result of:

a) infringement or alleged infringement by the Contractor or his suppliers of any copyright, database right, design right or the like protection in any part of the world in respect of any item provided by the Authority for the purpose of the Contract but only to the extent that the item is used for the purpose of the Contract;

b) alleged misuse of any confidential information, trade secret or the like by the Contractor as a result of use of information provided by the Authority for the purposes of the Contract, but only to the extent that the Contractor's use of that information is for the purposes intended when it was disclosed by the Authority.

#### Authorisation and Indemnity - General

14.

a) The above represents the total liability of each party to the other under the Contract in respect of any infringement or alleged infringement of Patent or other Intellectual Property Right owned by a third party.

b) Neither party shall be liable, one to the other, for any consequential loss or damage arising as a result, directly or indirectly, of a claim for infringement or alleged infringement of any Patent or other Intellectual Property Right owned by a third party.

c) A party against whom a claim is made or action brought, shall promptly notify the other party in writing if such claim or action appears to relate to an infringement which is the subject of an indemnity or authorisation given under this Condition by such other party. The notification shall include particulars of the demands, damages and liabilities claimed or made of which the notifying party has notice.

d) The party benefiting from the indemnity or authorisation shall allow the other party, at its own expense, to conduct any negotiations for the settlement of the same, and any litigation that may arise therefrom and shall provide such information as the other party may reasonably require.

e) Following a notification under sub-Clause 14.c., the party notified shall advise the other party in writing within 30 days whether or not it is assuming conduct of the negotiations or litigation. In that case the party against whom a claim is made or action brought shall not make any statement which might be prejudicial to the settlement or defence of such a claim without the written consent of the other party.

f) The party conducting negotiations for the settlement of a claim or any related litigation shall, if requested, keep the other party fully informed of the conduct and progress of such negotiations.

15.

a) If at any time a claim or allegation of infringement arises in respect of copyright, database right, design right or breach of confidence as a result of the provision of any item by the Contractor to the Authority, the Contractor may at its own expense replace the item with an item of equivalent functionality and performance so as to avoid infringement or breach;

b) The parties will co-operate with one another to mitigate any claim or damage which may arise from use of third party intellectual property rights.

#### Subcontracts

16. The Contractor shall secure from any subcontractor, the prompt notification to the Authority of the information required by Clause 1 of this Condition. On receipt of any such notification the Authority will issue a written authorisation to the subcontractor in accordance

with Clause 7 of this Condition. Any such authorisation will be subject always to Clauses 10, 11 and 14 as though the subcontractor was the Contractor. If any claim or action relevant to such authorisation arises, it shall be promptly notified to the Authority. The Contractor is not authorised to enter into any substantive correspondence in such matter nor in any way to act on behalf of the Authority in such claim or action. Any arrangement between the Contractor and subcontractor to enable the Contractor to underwrite his indemnities to the Authority under this Condition is a matter between the Contractor and the subcontractor.

#### General

17. In this Condition:

a) 'design right' has the meaning ascribed to it by Section 213 of the Copyright, Designs and Patents Act 1988;

b) 'Crown Use' in relation to a patent means the doing of anything by virtue of Sections 55 to 57 of the Patents Act 1977 which otherwise would be an infringement of the patent and in relation to a Registered Design has the meaning given in paragraph 2A(6) of the First Schedule to the Registered Designs Act 1949.

18. Nothing in this Condition shall be taken as an authorisation or promise of an authorisation under Section 240 of the Copyright, Designs and Patents Act 1988.

## **6 LOANS**

Not Applicable

## **7 DELIVERY/PERFORMANCE**

DEFCON5J (Edn.11/16) - Unique Identifiers

#### Definitions

1. For the purposes of this Condition, Unique Identifiers comprise the following:

a. Unique Order Identifier (UOI) generated by the Contracting, Purchasing & Finance (CP&F) electronic procurement tool for non inventory purchase orders;

b. Unique Receipt Reference Identifier (URRI), generated by CP&F for inventory purchase orders; or

c. Electronic Business Capability (EBC) Unique Package Identifier (EUPI) generated for EBC contractor logistic support contracts. EUPIs comprise two parts, the first part being the identifier allocated by the Authority and the second part being the identifier generated by the Contractor.

#### Use

2. For CP&F purchase orders, the Contract or an order issued under a Framework Agreement will reference UOIs or URRIs, or both. The application of UOIs and URRIs is at the line item level. The Contractor must quote the applicable Unique Identifier in any communication concerning a line item.

3. For EBC contractor logistic support contracts, the Contractor will generate EUPIs in fulfilling demands raised under a contractor logistic support contract. A EUPI applies for each package and the Contractor must quote it in any communication concerning a package. Where a delivery includes more than one package, each package must have a separate EUPI.

#### Confirmation of Receipt

4. Confirmation of receipt of deliveries by Unique Identifiers shall not be construed as an acceptance of the Articles for the purposes of DEFCON 525 or any other term of the Contract relating to acceptance by the Authority.

## DEFCON507 (Edn.10/98) - Delivery

1. The Contractor shall deliver the Articles in accordance with the terms of the Contract.
2. Unless otherwise agreed, delivery of Articles shall occur upon the Articles being handed over by the Contractor to the Authority or to the Representative of the Authority.
3. Unless otherwise agreed, where:
  - a) the Contractor is required under the Contract to carry out any Service in connection with any Issued Property; or
  - b) the results of a Service which the Contractor is required to deliver are to be received by the Authority in the form of a deliverable, such as a report or in the form of computer software, delivery of the Service, or the relevant part of the Service, shall occur upon the Issued Property or the deliverable being handed over by the Contractor to the Authority or to the Representative of the Authority.
4. Unless otherwise agreed, and subject to the provisions of DEFCON 649 where applicable, the property in the Articles shall pass from the Contractor to the Authority upon delivery in accordance with this Condition.
5. Until delivery, the risk of loss or damage to the Articles shall be with the Contractor.
6. The Contractor shall ensure that the Articles are packaged in accordance with the terms of the Contract.
7. The Authority may from time to time issue instructions that vary the transport or consignment arrangements in the Contract. These instructions will be the subject of a Contract amendment which shall also provide for any resulting change in Contract Price or delivery or both.
8. Where, after delivery, an Article is rejected by the Authority in accordance with DEFCON 524 that Article shall, for the purposes of the Contract, be considered as not having been delivered under the Contract and the property in that Article shall return to the Contractor unless a notice of objection has been issued to the Authority in accordance with Clause 7 of that Condition.

## **8 PAYMENTS/RECEIPTS**

### DEFCON509 (Edn.09/97) - Recovery of Sums Due

Whenever under the Contract any sum of money shall be recoverable from or payable by the Contractor the same may be deducted from any sum then due, or which at any time thereafter may become due, to the Contractor under the Contract, or under any other contract with the Authority, or with any Government Department.

### DEFCON513 (Edn.06/10) - Value Added Tax

1. The Contract Price excludes any UK output Value Added Tax (VAT) and any similar EU (or non-EU) taxes chargeable on the supplies of Articles and/or Services by the Contractor to the Authority.
2. If the Contractor is required by UK VAT law to be registered for UK VAT (or has registered voluntarily) in respect of his business activities at the time of any supply, and the circumstances of any supply are such that the Contractor is liable to pay the tax due to HM Revenue and Customs (HMRC), the Authority shall pay to the Contractor in addition to the Contract Price (or any other sum due to the Contractor) a sum equal to the output VAT chargeable on the tax value of the supplies of Articles and/or Services, and all other payments under the Contract according to the law at the relevant tax point. In the event of any doubt about the applicability of the tax in such cases, the Authority may require the Contractor to obtain and pass to the Authority a formal ruling from HMRC.
3. The Contractor is responsible for the determination of VAT liability. The Contractor is to consult his local VAT office (and not the Commercial Officer) in cases of doubt. The Contractor shall notify the Commercial Officer of the Authority's VAT liability under the Contract, and any changes to it, when the liability is other than at the standard rate of VAT.

4. Where supplies of Articles and/or Services come within the scope of UK VAT, but the Contractor is not required by UK VAT law to be registered for UK VAT (and has not registered voluntarily), the Authority shall be responsible for assessing and paying over directly to HMRC any UK output VAT due in respect of the Articles and/or Services.

5. Where Articles and/or Services are deemed to be supplied to the Authority outside the UK, the Contractor may be required by the laws of the country where the supply takes place to register there for EU (or non- EU) turnover or similar tax. In that event, the Authority shall pay to the Contractor in addition to the Contract Price (and any other sum due to the Contractor under the Contract) a sum equal to the tax the Contractor is liable to pay to the tax authorities of the country in question in relation to the Articles and/or Services.

6. For the avoidance of doubt, the Authority shall not be required to pay any sum in respect of the Contractor's input VAT (and/or similar EU and non-EU input taxes). In relation to the Articles and/or Services supplied under the Contract the Authority shall not be required to pay any sum in respect of the Contractor's input VAT (and/or similar EU and non-EU input taxes). However, these input taxes will be allowed where it is proven to the Authority that, despite the Contractor having taken all reasonable steps to recover them, it has not been possible to do so.

#### DEFCON522 (Edn.11/16) - Payment and Recovery of Sums

1. Payment for Contractor Deliverables under the Contract shall be made via the Contracting, Purchasing and Finance (CP&F) electronic procurement tool.

2. The Authority shall pay all valid and undisputed claims for payment submitted by the Contractor to DBS Finance on or before the day which is thirty (30) days after the later of:

a) the day upon which a valid request for approval of payment is received by the Authority; and

b) the date of completion of the part of the Contract to which the request for approval of payment relates.

3. The approval for payment of a valid and undisputed invoice by the Authority shall not be construed as acceptance by the Authority of the performance of the Contractor's obligations nor as a waiver of its rights and remedies under this Contract.

4. Without prejudice to any other right or remedy, the Authority reserves the right to set off any amount owing at any time from the Contractor to the Authority against any amount payable by the Authority to the Contractor under the Contract or under any other contract with the Authority, or with any other Government Department.

#### DEFCON523 (Edn.03/99) - Payment of Bills Using the Bankers Automated Clearing Service (BACS) System

The Bill Paying Authority shall make payment to the Contractor of all valid claims submitted for payment in accordance with the terms and conditions of the Contract by means of the Bankers Automated Clearing Service (BACS) directly into the Contractor's nominated bank account. To facilitate payment by means of the BACS system, the Contractor shall provide the Bill Paying Authority in advance of the submission of valid claims, if he has not already done so, details of the name and address of his bank, the sort code and account number.

#### DEFCON534 (Edn.11/16) - Subcontracting and Prompt Payment

1. Subcontracting any part of the Contract shall not relieve the Contractor of any obligation, duty or liability attributable to the Contractor under the Contract.

2. The Contractor shall ensure, to the extent that they are applicable, that the Conditions of the Contract are reflected in any subcontracts for any part of the Contractor Deliverables.

3. In all circumstances the Contractor shall ensure that all subcontracts in relation to this Contract include:

a) a requirement that either party to the subcontract may release to the Authority

any of those parts of the subcontract documentation as are necessary to demonstrate the Contractor's compliance with the provisions of the Contract and that any such release shall not amount to a breach of any provision of confidentiality contained within the subcontract; and

b) a term which requires payment to be made to the Subcontractor within a specified period not exceeding thirty (30) calendar days from receipt of a valid and undisputed invoice as defined by the subcontract requirements.

4. Where the Contractor places any subcontract with a value of more than £50,000 in connection with this Contract, it shall ensure that it has the right to terminate that subcontract for convenience giving twenty (20) Business Days' notice (or such other notice period as the Authority shall give under this Contract).

5. When placing subcontracts, the Contractor is asked to give consideration, as far as possible, to placing work on a competitive basis with Subcontractors that are Supported Businesses. The Contractor can find details of Supported Businesses in the United Kingdom on the Supported Business Directory that is British Association for Supported Employment at Unit 4, 200 Bury Road, Tottington, Lancashire BL8 3DX (Telephone: 01204 880733) or <http://base-uk.org/guidance-procurement-officers>.

6. Where the Contractor subcontracts work under the Contract, which is likely to be subject to foreign export control, the Contractor shall use reasonable endeavours to incorporate in each subcontract the terms set out in DEFCON 528. Where it is not practicable to include the terms set out in DEFCON 528, the Contractor shall report that fact and the circumstances to the Authority.

7. In this condition 'Subcontractor' means any subcontractor of the Contractor or associated company at any level of the supply chain who provides contractor deliverables wholly or substantially in connection with this contract.

## **9 CONTRACT ADMINISTRATION**

### **DEFCON609 (Edn.06/14) - Contractor's Records**

1. The Contractor shall maintain all records specified in and in connection with the Contract (expressly or otherwise), and make them available to the Authority when requested on reasonable notice.

2. Subject to the provisions of DEFCON 531 (Disclosure of Information), the Contractor shall permit all records referred to in this Condition to be examined and if necessary copied, by the Authority, or Representative of the Authority, as the Authority may require.

3. Unless the Contract specifies otherwise the records referred to in this Condition shall be retained for a period of at least 6 years from:

- a. the end of the Contract term;
- b. the termination of the Contract; or
- c. the final payment,

whichever occurs latest.

## Appendix - Addresses and Other Information

### 1. Commercial Officer:

Name: [REDACTED]

Address:  
No 3 Site, Nimrod Building, RAF High Wycombe, High Wycombe, HP14 4UE

Email:



### 2. Project Manager, Equipment Support Manager or PT Leader (from whom technical information is available):

Name: [REDACTED]

Address:  
DSEME, Lyneham, Chippenham, SN15 4XX

Email:



### 3. Packaging Design Authority:

Organisation and point of contact:

(where no address is shown please contact the Project Team in Box 2)



### 4. (a) Supply/Support Management Branch or Order Manager Branch/Name:



(b) U.I.N.

### 5. Drawings/Specifications are available from:

### 7. Intentionally Left Blank

### 8. Quality Assurance Representative:

Commercial staff are reminded that all Quality Assurance requirements should be listed under the General Contract Conditions.

See Contract Terms & Conditions including SOR.

**AQAPS** and **DEF STANs** are available from UK Defence Standardization, for access to the documents and details of the helpdesk visit <http://dstan.uwh.diif.r.mil.uk/> [intranet] or <https://www.dstan.mod.uk/> [extranet, registration needed]

### 8. Public Accounting Authority:

1. Returns under DEFCON 694 (or SC equivalent) should be sent to DBS Finance ADMT – Assets In Industry 1, Level 4 Piccadilly Gate, Store Street, Manchester, M1 2WD  
☎ 44 (0) 161 233 5397

2. For all other enquiries contact DES Fin FA-AMET Policy, Level 4 Piccadilly Gate, Store Street, Manchester, M1 2WD  
☎ 44 (0) 161 233 5394

### 9. Consignment Instructions:

The items are to be consigned as follows:

See Schedule of Requirement

### 10. Transport. The appropriate Ministry of Defence Transport Offices are:

A. **DSCOM**, DE&S, DSCOM, MoD Abbey Wood, Cedar 3c, Mail Point 3351, BRISTOL BS34 8JH

#### Air Freight Centre

IMPORTS ☎ 030 679 81113 / 81114 Fax 0117 913 8943

EXPORTS ☎ 030 679 81113 / 81114 Fax 0117 913 8943

#### Surface Freight Centre

IMPORTS ☎ 030 679 81129 / 81133 / 81138 Fax 0117 913 8946

EXPORTS ☎ 030 679 81129 / 81133 / 81138 Fax 0117 913 8946

#### B. **JSCS**

JSCS Helpdesk ☎ 01869 256052 (option 2, then option 3); JSCS Fax No 01869 256837 [www.freightcollection.com](http://www.freightcollection.com)

### 11. The Invoice Paying Authority:

Ministry of Defence ☎ 0151-242-2000

DBS Finance

Walker House, Exchange Flags

Fax: 0151-242-2809

Liverpool, L2 3YL

**Website is:**

<https://www.gov.uk/government/organisations/ministry-of-defence/about/procurement#invoice-processing>

### 12. Forms and Documentation are available through\*:

Ministry of Defence, Forms and Pubs Commodity Management  
PO Box 2, Building C16, C Site

Lower Arcott

Bicester, OX25 1LP (Tel. 01869 256197 Fax: 01869 256824)

**Applications via fax or email:** [DESLCCLS-](mailto:DESLCCLS-)

[OpsFormsandPubs@mod.uk](mailto:OpsFormsandPubs@mod.uk)

### NOTES

\* Many **DEFCONs** and **DEFFORMs** can be obtained from the MOD Internet Website [extranet, registration needed]: <https://www.aof.mod.uk/aofcontent/tactical/toolkit/index.htm>

## **Design Rights and Patents (Sub-Contractor's Agreement)**

THIS AGREEMENT is made the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_

BETWEEN

whose registered office is at

(hereinafter called "the Sub-Contractor") of the one part and THE SECRETARY OF STATE FOR DEFENCE (hereinafter called "the Secretary of State") of the other part

WHEREAS:-

1. The Secretary of State has placed with (hereinafter called "the main contractor") a contract bearing the reference number \_\_\_\_\_ (hereinafter called "the main contract") for the design and development of \_\_\_\_\_ the effect of which is that the costs of such design and development (including the cost referable to any sub-contracts hereinafter referred to) will be substantially borne by the Secretary of State.
2. The main contractor contemplates that the design development and supply of certain components needed for performance of the main contract will be undertaken by various third parties in pursuance of sub-contracts made between them and the main contractor.
3. With a view to securing to the Secretary of State rights as regards inventions designs and other related matters in respect of any sub-contract the main contract provides that the main contractor shall not enter into any sub-contract for any component aforesaid without obtaining the prior approval of the Secretary of State.
4. The main contractor has now informed the Secretary of State that for the purpose of performing the main contract he wishes to place with the Sub-Contractor a sub-contract for the design and development of the items described in the First Schedule (hereinafter called "the sub-contracted items") and has requested the Secretary of State's approval of the sub-contract accordingly.
5. The Secretary of State has signified his willingness to approve the sub-contract on condition that in consideration of his giving approval the Sub-Contractor enters into a direct Agreement with the Secretary of State concerning the matters hereinafter appearing and the Sub-Contractor has signified his willingness to enter into such an agreement.

NOW THIS AGREEMENT made in consideration of the premises and of the rights and liabilities hereunder mutually granted and undertaken WITNESSETH AND IT IS HEREBY AGREED AND DECLARED as follows:-

1. The Sub-Contractor and the Secretary of State hereby agree to be bound to each other by the provisions of the Conditions as set out in the Second Schedule hereto.
2. No extension alteration or variation in the terms of the sub-contract between the main contractor and the sub-contractor and no other agreement between the main contractor and the sub-contractor relating to the work to be done under the sub-contract or any modification now or hereafter made thereto shall prejudice the operation of this Agreement which shall in all respects apply to the sub-contract as so extended altered varied supplemented or modified as if such extension alteration variation supplementation or modification had been originally provided for in the sub-contract and the expression "the sub-contract items" shall have effect accordingly.

IN WITNESS whereof the parties hereto have set their hands the day and years first before written

Signed on behalf of  
the Sub-Contractor

(in capacity of )

Signed on behalf of  
The Secretary of  
State for Defence

THE FIRST SCHEDULE

The Sub-Contract Items are:-

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THE SECOND SCHEDULE

The Clauses which apply to this Agreement are:-

To be  
inserted as  
appropriate

except that:

- (i) Where "the Contractor" is stated "the Sub-Contractor" shall be substituted.
- (ii) Where "the Authority" is stated "the Secretary of State" shall be substituted.
- (iii) Where "Contract" is stated "sub-contract" shall be substituted.
- (iv) Where "sub-contractor" is stated "further sub-contractor" shall be substituted.
- (v) Where "sub-contract" is stated "further sub-contract" shall be substituted.