



**MOD Commercial
Contract No: CT/INT13/0025**

BOOKLET 2

CONDITIONS OF CONTRACT

FOR THE

**PRIME CONTRACT (PC)
INFRASTRUCTURE
SUPPORT PROVIDER (ISP) –
AFGHANISTAN**

AND

BASTION AIRFIELD MAINTENANCE



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INTRODUCTORY STATEMENT

Separate Invitation to Tender's (ITT) were issued for each of the ISPA and BNAF scopes but they have been awarded to a single Prime Contractor under one Contract. These Conditions therefore apply equally to both the ISPA and BNAF scopes except where expressly stated otherwise.

1. DEFINITIONS

- 1.1 In these Conditions "the Contract" or "this Contract" means the agreement concluded between the Authority and the Prime Contractor including all specifications, plans, drawings and other documents which are relevant to the Contract.
- 1.2 The following provisions shall have effect with respect to the interpretation of the Contract except where the context otherwise requires:
- 1.2.1 the "Accepted Risks" means the risks of:-
- 1.2.1.1 pressure waves caused by the speed of aircraft or other aerial devices;
 - 1.2.1.2 ionising radiation or contamination by radioactivity from any nuclear fuel or from nuclear waste from the combustion of nuclear fuel;
 - 1.2.1.3 the radioactive, toxic, explosive or other hazardous properties of any explosive nuclear assembly (including any nuclear component);
 - 1.2.1.4 war, invasion, act of foreign enemy, hostilities (whether or not war has been declared), Civil war, rebellion, insurrection, terrorism, industrial action (save where such industrial action arises from, or relates solely to, personnel of the Prime Contractor or its Supply Chain), or military or usurped power or similar events;
- and on the occurrence of any of the Accepted Risks:
- (a) the Authority shall grant the Prime Contractor such extension of time as is fair and reasonable in all the circumstances;
 - (b) the Prime Contractor shall be entitled to such compensation as is fair and reasonable in all the circumstances; and
 - (c) the Authority may terminate the Contract on the basis set out in Condition 47 (Break) where the occurrence of such Accepted Risk has substantially prevented the performance by the Prime Contractor of its obligations under the Contract for a period of 60 days.
- 1.2.2 "Actual Cost" is deemed to be the costs properly incurred in executing the Works and shall include; wages, salaries and materials constituting a direct charge to the Works, indirect charges appropriate to the Contract and Sub-Contractor costs;
- 1.2.3 "AG Form 173" is the MoD Form used for payment of Prime Contractors bills for Property Management or Services, hereinafter known as AG 173, this form will be used as part of the audit trail, once signed by the DEDM it will not be returned to the Prime Contractor or forwarded to FMSSC, as all payments will be made electronically under P2P.
- 1.2.4 Not Used
- 1.2.5 "Articles" means "Things", "Works" or "Materials" which the Prime Contractor is required under the Contract to supply;

1.2.6 the "Authority" means the Secretary of State for Defence or his authorised representative;

1.2.7 "Barrack Damages" are any damage caused to the infrastructure arising from the direct result of negligence or a deliberate act;

1.2.8 "Booklet 3A" is a fully comprehensive record of the Prime Contractors proposals in delivering the Authority's requirements and must take account of all revisions made through the evaluation/clarification process.

1.2.9 "Prime Contractor" means the person who by the Contract undertakes to render such Services for the Authority as is provided by the Contract and, where the Prime Contractor is an individual or a partnership, the expression shall include the personal representatives of that 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 Prime Contractor with the consent of the Authority.

1.2.10 "DEL" means Directly Employed Labour, for the purpose of this contract DEL are personnel employed by the Prime Contractor for the delivery of specific Works under the Contract.

1.2.11 "Facilities Manager" (FM)" means the individuals appointed by the Authority (or his nominated representative) as the responsible officials for the purposes of the contract;

1.2.12 "Delivery Packages (DPs)" means items in the Contract which are specific areas of work as described in the Requirements Document, Booklet 3, e.g. Delivery Package 1: Management.

1.2.13 "Demobilisation" is the period at the end of contract where the outgoing contractor works towards completion of his contract in liaison with the incoming Prime Contractor to ensure all services are delivered and transferred with no detrimental effect on the Authority.

1.2.14 "Designated Officer" means an Authorised Representative of the Secretary of State for Defence appointed by the Authority to act on his behalf in carrying out those duties described in the Contract or such other person as may be appointed in that capacity for the time being by the Authority.

1.2.15 "Dispute Resolution Procedure" means the procedure detailed at Annex F to Booklet 2;

1.2.16 "Document" includes Briefs, specifications, plans, drawings, photographs and books;

1.2.17 "Establishment" or "Site" means any Land and Buildings owned and/or occupied by the Authority and any other location in which the Authority's personnel are employed.

1.2.18 "Government Provision" means any Statute, warrant, order, scheme, regulations or conditions of service applicable to a Servant of the Crown providing for continuance of pay or for payment of sick pay or any allowance to or for the benefit of Servants of the Crown or their families or dependants, during or in respect of sickness, injury or disablement suffered by such servants;

1.2.19 "IRL" means:

Background

1.2.19.1 An Inclusive Repair Limit (IRL) shall govern the repairs/replacements arising from the Planned Preventative Maintenance programme and Remedial Repair service.

1.2.19.2 The value of the annual Lump Sum payments for the Planned Preventative Maintenance Programme and Remedial Repair service shall be linked, directly, to the value of the IRL. All Works tasks that are priced below the upper limit of the IRL shall be conducted by the Prime Contractor at no additional cost to the Authority.

1.2.19.3 The essential tenet of the IRL is to significantly reduce the volume of transactions (i.e. the raising of Works Orders) undertaken by the Authority and empower the Prime Contractor to manage service provision within an environment that provides opportunities for commercial judgements and ensuring reasonable behaviour by both the Authority and the Prime Contractor.

Definition

1.2.19.4 The IRL shall be:

- a. The maximum value for a Works task and shall include all relevant and implicit resource costs (e.g. labour, materials, plant and consumables) necessary for its completion.
- b. The entire activity related to an occurrence (i.e. a single intervention rather than the aggregation of like activity).
- c. Repair or replacement with an item of the latest modern equivalent.

Exceptions

1.2.19.5 In the instance that a Works task exceeds the IRL, the matter shall be referred to the Designated Officer for direction. Where the Works task is agreed, as an exception, by the Designated Officer the Prime Contractor shall be reimbursed for the total cost of the Works task (i.e. the value of the IRL shall **not** be deducted from the total cost).

1.2.19.6 Examples of exceptions that would breach the IRL threshold would include:

- a. Where the unit cost of procuring a single component (e.g. boiler heating pump) exceeds the IRL.
- b. Where the failure of a component has, by direct cause and effect, generated connected repairs/replacements (e.g. a burst pipe within a wall) exceeds the IRL. However, separate, but related, incidents cannot be aggregated together in order to get the costs above the IRL.
- c. Where it is more cost effective, to the Authority, for the Prime Contractor to undertake related repairs/replacements to a major component observed when responding to the repair/replacement of a related component (e.g. the necessity to replace the gearing mechanism of a Gantry Crane which was detected when replacing a fan belt).

1.2.20 "Issued Property" means – Any Authority owned property given to the Prime Contractor for use in delivery of this contract.

1.2.21 "Key Personnel" means those Prime Contractor's personnel identified by the Authority as key to the delivery of the Contract.

1.2.22 "loss" includes destruction;

1.2.23 "Loss of Property" includes damage to property;

1.2.24 the "Management Fee" is the firm lump sum fee for the management of all activities associated with the requirement and includes the provision of all planning, organisation, procurement and management of the operation, repair, maintenance, facilities management and the design and planning of all works identified (i.e. above and below any agreed IRLs) in the Requirements Document, Booklet 3.

1.2.25 the masculine includes the feminine and vice versa;

1.2.26 "Materials" means raw materials, components and bought-out parts (including fixed assets, stores, supplies and spares);

1.2.27 "Mobilisation" means – The period from Contract award to day 1 of single running where upon the Prime Contractor shall assume full responsibility for contracted service delivery.

1.2.28 "month" means calendar month;

1.2.29 "Order or Orders" means the requisition of and the description of the work to be performed under the Contract. In addition, "Order or Orders" means any instruction varying or modifying the terms of any Order or Orders or cancelling any Order or Orders;

1.2.30 "Ordered Works" means all works that are not part of any Firm Price Delivery Package and ordered separately via a F1097/1 or Works Order;

1.2.31 "Payment Approval" means completion by the Representative of the Authority, including signature, of the relevant parts of the AG Form 173 as appropriate, sufficient for the Representative of the Authority to enable electronic submission as claim for payment;

1.2.32 "permanently employed personnel" are any contractor employed personnel, employed directly by the Prime Contractor in the delivery of the Contract;

1.2.33 "person" includes a corporation;

1.2.34 "Personal Injury" includes sickness and death;

1.2.35 "Schedule of Rates" means the Schedules of Rates for Ordered Works detailed in the Pricing Information Booklet 5.

1.2.36 "Redundant Material" means material that is no longer required by the Authority and which, when identified, will be disposed of by the Authority.

1.2.37 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 by any subsequent enactment, order, regulation or instrument;

1.2.38 "Relevant Day" means the day, which is 30 days after the day upon which a valid request for Payment Approval is received by the Authority or by the Prime Contractor if it is a Sub-Contractor invoice;

1.2.39 "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;

1.2.40 "Secret Matter" means any matter connected with or arising out of the execution of the Contract or the work to be carried out thereunder which has been, or may hereafter be, by a notice in writing by the Authority to the Prime Contractor, designated "top secret", "secret", or "confidential";

1.2.41 "Servant" where the Prime Contractor is a body corporate shall include a director of that body and any person occupying in relation to that body the position of director by whatever name called;

1.2.42 the "Services" means all Services which the Prime Contractor is required to provide in accordance with the Contract including managing any Works the carrying out of which he is to procure through Sub-Contractors or his own DEL;

1.2.43 "Specialist Tooling and Equipment" means bespoke tooling and equipment for particular items of plant provided by the Authority

1.2.44 "Sub-Contractor" means any person, firm or company under contract to the Prime Contractor to perform work or provide professional services and/or supply goods in connection with the Works and includes any other person or persons taken as a partner or director by such person, firm or Company during the currency of the Contract and the surviving member or members of any such firm or Company;

1.2.44a "Supply Chain" means any and all of the Prime Contractor's Sub-Contractors, suppliers or vendors in respect of the Works and/or Services;

1.2.45 "Tenderer" means any person, firm or company submitting a completed Invitation to Tender Package for the Contract which has complied with the terms and conditions therein;

1.2.46 The singular includes the plural and vice versa;

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

1.2.48 "Works" means any work required to be carried out by a Sub-Contractor or the Prime Contractor's own personnel included in an Order on MOD Form 1097/1;

1.2.49 "Works Order" means an order that is placed on the Prime Contractor by the Authority and which may be held against a F1097/1/1 or a Works Order;

1.2.50 The headings to these Conditions shall not affect the interpretation thereof;

1.2.51 Any decision, act or thing which the Authority is required or authorised to take or do under the Contract may be taken or done by any person authorised, either generally or specifically, by the Authority to take or do that decision, act or thing;

1.2.52 Any notice or other communication whatsoever which the Authority is required or Authorised by the Contract to give or make to the Prime Contractor shall, without prejudice to any other method of giving or making it, be sufficiently given or made if it is sent by post in a prepaid letter addressed to the Prime Contractor by name at the last known place of abode or business of the Prime Contractor and if that letter is not returned through the post undelivered, that notice or communication shall be deemed for the purposes of the Contract to have been given or made at the time at which the letter would in the ordinary course of post be delivered.

2. LAW

2.1 The Contract shall be considered as a contract made in England and subject to English law. Subject to Condition 59 (Dispute Resolution Procedures), 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.

2.2 All notices, orders, or other forms of communication required to be given under or in connection with the Contract shall be in the English Language.

3. REQUIREMENTS

3.1 The Prime Contractor shall deliver a full service and provide and maintain, at all times, an organisation having the necessary facilities and employees, in accordance with Conditions 6 (Contract Structure) and 9 (Prime Contractor's Personnel).

3.2 The Prime Contractor shall undertake the tasks specified in Booklet 3 (Requirements Document) and any agreed future tasks, to the satisfaction of the Authority, except to the extent of any discrepancy or inconsistency between Booklet 3 and Booklet 3A, in which event the requirements of Booklet 3A shall take precedence.

3.3 The Prime Contractor shall provide additional inspection and advisory services as requested and agreed by the PM or his nominated representative.

3.4 In respect of routine, urgent and emergency works the Prime Contractor shall comply with the response times as stipulated at Annex A.

3.5 Any specialist inspections (where appropriate) as advised by the Prime Contractor shall be carried out as directed by the Authority.

3.6 The Prime Contractor shall provide a materials and consumables procurement service to suit the requirements of the contract.

3.7 The Prime Contractor will provide and use a Management Information System that will ensure the smooth electronic transfer of information between the Prime Contractor and the Authority for the duration of the Contract. The Prime Contractor is to provide the necessary hardware, links and software, as detailed in Booklet 3, to enable the Authority to share the information generated by the Prime Contractor.

3.8 The Prime Contractor shall, as directed, work alongside Military personnel on different aspects of the same task.

3.9 The Prime Contractor shall co-operate with training by or to, Military personnel on systems operated by the Prime Contractor.

3.10 The Prime Contractor shall provide a call-out support facility out with the normal working hours of 0800hrs to 2000hrs.

3.11 The Prime Contractor may be requested, or may request, by means of a F1097/1 or Works Order raised by the FM to provide the services beyond the normal working hours as stated at 3.10 above. Where overtime working is specified within the Requirements Document, Booklet 3, and associated Delivery Packages, the additional cost will be deemed to be included within the Prime Contractor's firm price management fee.

3.12 NOT USED.

4. DRAWINGS, SPECIFICATIONS AND OTHER DATA

4.1 Within 2 weeks of completion and acceptance of any Ordered Works and any maintenance works involving structural changes, including the routing of utilities, roads, walls, fences and landscaping, as detailed in Condition 36 (Acceptance), the Prime Contractor shall supply the FM with one copy of the following documents as a minimum and as appropriate;

4.1.1 The specification(s) including structural calculations and design loads;

4.1.2 As-built drawings, including front, rear and side elevations showing all points of ingress and egress, architectural features etc;

4.1.3 Plans of each floor showing details of structure including floor loadings, lighting, water, heating and ventilation services etc;

4.1.4. Schematics of services showing arrangements of and connections to main services, drains and sewers;

4.1.5 Location plans showing the site and position of the Ordered Works in relation to existing facilities, roads and services;

4.1.6 Installation, operating and maintenance manuals and as-built drawings for Mechanical and Electrical equipments and systems;

4.1.7 Any test instructions and the results achieved at any post-installation tests or commissioning.

4.2 Drawings shall be of a size appropriate to show the detail to be depicted clearly without magnifying aids and shall conform to BS 1192 or BS 308 as appropriate. Where by prior agreement the Authority has agreed to accept microfilm, microfiche or other modern storage media, drawings and other documents shall be supplied by the Prime Contractor in such form as has been agreed.

4.3 Any specification, plan, drawing or other document prepared by the Prime Contractor under this Contract shall include on the title page or in the title box the month and year that it was prepared and the legend "Prepared by (Prime Contractor's name) for the Ministry of Defence, Defence Estates, under Contract No. CT/INT13/0025".

4.4 The Authority shall be entitled at any time to make copies of any prints, tracings, specifications or other data supplied under the Contract as the Authority may think fit and to use such prints, tracings, specifications and other data (or copies of them) in any UK Government Department, Establishment or Depot and such use shall extend to the use for tendering or manufacturing purposes or any other reasonable purpose.

5. PERIOD OF CONTRACT

5.1 Following the award of Contract(s), the Prime Contractor's mobilisation period(s) shall commence immediately up to day 1 of single-running.

5.2 **Applies to ISPA only:** The period of the Contract shall be three years from day 1 of single running commencement date (with the option to extend for further periods up to a maximum of 3 years each year being independent of each other, i.e. Year 4, Year 5 and Year 6, or 1 + 1 + 1 at the Authority's discretion) subject to the Authority's right of earlier termination under the Conditions of Contract.

5.2 **Applies to BNAF only:** The period of the Contract shall be three years from day 1 of single running commencement date (with the option to extend for further periods up to a maximum of 2 years

each year being independent of each other, i.e. Year 4 and Year 5, or 1 + 1 at the Authority's discretion) subject to the Authority's right of earlier termination under the Conditions of Contract.

5.3 Applies to ISPA only: In consideration for the Contract, the Prime Contractor agrees to provide the services detailed within the Requirements Document, Booklet 3, and related Contract documentation, including any agreed revisions for a further option period(s) up to a maximum period of 3 years. Should the Authority decide to call up any option to extend, the Prime Contractor will be notified 3 months prior to the Contract expiry date. Thereafter any further option period(s) will be advised a minimum of 3 months prior to the extant Contract expiry date.

5.3 Applies to BNAF only: In consideration for the Contract, the Prime Contractor agrees to provide the services detailed within the Requirements Document, Booklet 3, and related Contract documentation, including any agreed revisions for a further option period(s) up to a maximum period of 2 years. Should the Authority decide to call up any option to extend, the Prime Contractor will be notified 3 months prior to the Contract expiry date. Thereafter any further option period(s) will be advised a minimum of 3 months prior to the extant Contract expiry date.

6. CONTRACT STRUCTURE

6.1 The Prime Contractor shall provide suitable personnel and in sufficient number for the delivery of the requirement to the agreed standard on each order. However, should the workload within an individual site(s) increase or decrease significantly on a permanent basis, substantiated, and agreed to, by the, Prime Contractor or Authority may request to negotiate an amendment to the price to reflect these changes in accordance with the agreed change control process. The amendment to the price will be calculated using the labour and overhead and profit rates stated in the Contract.

6.2 Additionally the Authority reserves the right to review prices if the actual salary rates paid to personnel are at least 10% less than the contract rates.

7. CONTRACT DOCUMENTATION

7.1 Except where expressly stated otherwise, in any case of discrepancy between any of the documents forming part of the Contract, such documents shall take precedence in the following order (with the documents described in Condition 7.1.1 having the highest precedence):

- 7.1.1 these Booklet 2 Conditions (excluding the Annexes hereto);
- 7.1.2 the Annexes hereto;
- 7.1.3 Booklets , 3, 3A, 5A and 5B; and
- 7.1.4 any other documents forming part of the Contract.

8. AMENDMENTS TO CONTRACT

8.1 Any amendments to this Contract shall be agreed between the DE Commercial Team and the Prime Contractor and shall incorporate where appropriate such extension of time as is fair and reasonable in all the circumstances. The Contract may not be amended except by the written agreement of the duly authorised representatives of the parties. Only the Commercial Team named in Annex D to Booklet 2 has the authority to amend the Contract. The Authority will not be liable for any additional costs incurred otherwise.

8.2. The written agreement of the parties shall be obtained only by:

8.2.1 a serially numbered amendment being issued to the Prime Contractor by the Authority. The amendment shall come into force only when the Prime Contractor has despatched to the Authority an unqualified acceptance of the Authority's offer; or

8.2.2 the despatch by the Authority of a serially numbered amendment letter as an

unqualified acceptance of an offer from the Prime Contractor.

8.3. Any purported amendment to the Contract which does not satisfy the terms of this Condition shall be of no effect.

8.4. Where an amendment to Contract covering changed or additional requirements involves a change in price, the price shall be agreed prior to any authority to proceed being given by the Authority. However, in exceptional circumstances where the Authority wishes to add to the Contract requirement work which is unpriced, the Authority shall have the right to negotiate prices under the terms of DEFCON 643 (Annex O – Price Fixing). The Prime Contractor shall ensure that, in the case of DEFCON 643, arrangements with his supply chain include the provisions set out in Appendix I or II to DEFCON 643 and Appendix to DEFCON 648.

8.5. If a change of law, or a change in the interpretation of law, comes into effect after the date on which the Prime Contractor's proposal for the Contract was submitted to the Authority and was not reasonably foreseeable at such date, then, if the Contract is affected by any such change, the price provisions herein shall be adjusted fairly and reasonably to avoid the Prime Contractor suffering any adverse consequences or enjoying a gain as a result of any such change.

9. PRIME CONTRACTOR'S PERSONNEL

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

9.2 All personnel working for the Prime Contractor will require the FM's approval for access to the Establishment(s).

9.3 The Prime Contractor shall submit in writing to the Authority for approval, initially and as necessary from time to time, a list of those representatives who may need to enter a Government Establishment for the purpose of, or in connection with, work under the contract, giving such particulars as the Authority may require including satisfactory evidence as to the identity of each such person and full details of birthplace and nationality of any such representative who:

9.3.1 was not born in the United Kingdom; or

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

9.4 The Authority will issue passes for those representatives who are approved by it in accordance with Condition 9.2 herein for admission to a Government Establishment and a representative shall not be admitted unless in possession of such a pass. Passes will remain the property of the Authority and shall be surrendered on demand or on completion of the work.

9.5 Anyone who cannot produce a proper pass when required to do so by any appropriate agent of the Authority, or who contravenes any conditions on the basis of which a pass was issued, may be refused admission to the Establishment or required to leave it if already there.

9.6 The Prime Contractor shall promptly return any pass if at any time the so requires or if the person for whom it was issued ceases to be involved in the performance of the Contract, with the exception of temporary cessations. He shall promptly return all passes on completion of the Works or termination of the Contract.

9.7 Any passes issued for entry to a MOD Establishment must be removed from site on leaving the

premises and must not under any circumstances be displayed outside the Establishment.

9.8 The Prime Contractor shall make due allowance for the time needed to obtain such approvals bearing in mind that approvals obtained from one Establishment are not necessarily valid for another. Exceptionally, arrangements may be made to accompany the Prime Contractor's personnel for short period visits but this is entirely at the discretion of the Authority.

9.9 The Prime Contractor shall be responsible for ensuring that his servants, agents, suppliers and Prime Contractors and any other person under his control have the necessary Probity by undertaking a Basic Check and where appropriate are cleared to the appropriate level of security when employed within the boundaries of an Establishment. The Prime Contractor's representatives shall comply with such rules, regulations and requirements as may be in force whilst at an Establishment.

9.10 For the purposes of this Condition only, a Basic Check is defined as providing a fundamental level of assurance about a potential Government employee or an employee of a Government Prime Contractor. This is done by confirming the individual's identity and nationality as well as ascertaining to a degree his background and career. Where the Prime Contractor requires information on the Basic Check procedures or security clearance for his representative and/or is not in possession of the relevant rules, regulations and requirements and/or requires guidance thereon he shall apply in the first instance to the FM.

9.11 Notwithstanding the provision of Condition 9.4 hereof if, in the opinion of the Authority, any representative of the Prime Contractor shall misconduct himself, or it shall not be in the public interest for any person to be employed or engaged by the Prime Contractor, the Prime Contractor shall remove such person without delay on being required to do so by the Authority and shall cause the work to be performed by such other person as may be necessary. The Authority will not be liable for any costs incurred in complying with such an instruction. Any decision of the Authority under this Condition shall be final and conclusive.

9.12 The Prime Contractor is to ensure that a full, satisfactory service is provided during periods of absence. The Prime Contractor shall agree with the DE a programme of planned absence for key personnel employed in the execution of this Contract.

9.13 The Prime Contractor shall take all reasonable steps to avoid changes of key personnel assigned to the Contract except when changes are unavoidable or of a temporary nature caused by sickness, compassionate repatriations etc. Proposed changes to key personnel must be notified in advance in writing to, and for consideration and approval as appropriate, by, the FM and DE.

9.14 The key personnel on the contract will be those occupying the following posts:

- 9.14.1 Prime Contractor Manager
- 9.14.2 Prime Contractor Deputy Manager
- 9.14.3 Prime Contractor Site management staff
- 9.14.4 Authorised Engineer
- 9.14.4 Authorised Persons

9.15 The Prime Contractor shall ensure that his personnel are clearly distinguishable from both Military and Civilian personnel, i.e. by issuing Prime Contractor's uniform, which shall be approved by the FM prior to Contract start. The Prime Contractor should also ensure that all personnel are issued with and utilise the correct personal protective clothing and safety equipment.

10. PRICE

Applies to ISPA only:

10.1 The Firm Prices for Mobilisation detailed within Item 1A of the Price Information Booklet, Booklet 5 shall include for all deliverables contained within the Requirements Document, Booklet 3, and those identified within the Prime Contractor's mobilisation plan agreed by the Authority and completed during the period stated at Condition 5.1. Payment shall be made in accordance with Condition 48 (Payment Under P2P).

10.2 The Firm Price Management Fee detailed within Item 1 of the Price Information Booklet, Booklet 5 is the price for the management of all activities associated with the requirement and includes the provision of the provision of all planning, organisation, procurement and management of the operation, repair, maintenance, facilities management and the design and planning of all works as identified in the Requirements Document (i.e. above and below any agreed IRLs), Booklet 3. Payment will be made in accordance with Condition 48 (Payment Under P2P).

10.3 The Firm Price shown for Delivery Package (DP) 2 at Item 2A.1 in the Price Information Booklet, Booklet 5 are the prices (excluding any procurement & management costs included at Item 1) for undertaking the relevant tasks as identified in the Requirements Document, Booklet 3 for all works up to the agreed Inclusive Repair Limit (IRL) identified in the Price Information Booklet, Booklet 5. Payment will be made in accordance with Condition 48 (Payment Under P2P).

10.4 The Inclusive Repair Limit (IRL) is the maximum value for all works inclusive of all relevant costs e.g. labour, materials, plant and consumables, but exclusive of VAT, necessary for the completion of the task. Decoration works integral to the element of work within the IRL (making good) shall be deemed included. Application of the IRL should be limited to a single item or repair; however a Works Order may contain more than one item of related repair. The collective value of similar, but unrelated, repairs cannot be aggregated in order to exceed the IRL.

10.4.1 The Authority will choose which of the IRL options it will be taking up prior to Year 1 of the Contract. Thereafter, the chosen IRL options will remain the same for the first year of the Contract. These may be reviewed for Year 2 and will be advised 3 months prior to the start of year 2.

10.5 Schedule of Rates (SoR)

10.5.1 The agreed Schedules of Rates detailed within Item 3H of the Price Information Booklet 5, are to be used primarily for the pricing of determining works above/below the IRL, and Minor New Works (MNW) up to £30K. The percentage increase or decrease shown is a firm percentage variance against the each SoR stated. Payment will be made in accordance with Condition 48 (Payment Under P2P).

10.5.2 Where the pricing of Ordered Works on the basis of the agreed SoRs is considered by the FM to be inappropriate due to the value and complexity of the works, the Prime Contractor will be required to obtain a minimum of 3 quotes obtained in competition in order to demonstrate best value for money to the Authority.

10.5.3 Where there is a necessity for the Prime Contractor to seek quotes for any work, a minimum of 1 quote must be sought in addition to any from a subsidiary or associated firm where the latter is considered appropriate. The original quotes are to be supplied to the FM or his authorised representative and he shall attend the Prime Contractor's tender boards when deemed required by the Authority.

10.6 NOT USED.

10.7 Daywork Rates

10.7.1 Similarly, where there is no measurable rate(s) contained within the SoRs detailed at Item 3H of the Price Information Booklet 5, it may be considered appropriate for Remedial/Response Maintenance and MNW to be priced on the basis of agreed daywork rates detailed within Items 3C of the Price Information Booklet 5.

10.7.2 General daywork rates and overtime daywork rates are to be provided for each category of personnel employed on the contract and reflect the actual salary and responsibilities for each category of personnel.

10.8 **Supply Only of Materials**

10.8.1 The Prime Contractor is to provide a facility for provision of material only with any mark up included within Item, 3D of Booklet 5.

10.9 **Specialist Works**

10.9.1 For specialist work carried out by the Prime Contractor's Sub-Contractor, not already covered within Item 1 (Management Fee) and Items 2A.1 to 2A.8 (Delivery Packages), prices must be fair and reasonable and provide best value for money for the Authority subject to the agreement of the FM.

10.10 **Changes to the Asset Register**

10.10.1 The rates detailed within Items 4A of the Price Information Booklet, Booklet 5, relate to the pricing of future changes to the Contract asset register (additions and deletions) throughout the period of the Contract, as described in the Requirements Document, Booklet 3.

10.10.2 Following agreement with the FM the Prime Contractor shall apply only those elements that are applicable to each individual asset addition or deletion in accordance with the agreed breakdown of rates set against pre-determined asset types contained within Item No 4A – Pricing Schedule, Addition and Deletion of Assets in the Price Information Booklet, Booklet 5.

10.10.3 A consolidated reconciliation exercise of all price changes is to be undertaken by the Prime Contractor at the end of Year 1, or other agreed timescale with the Authority and thereafter on an annual basis (or other agreed timescale with the Authority). Once agreed with the, Contract price will be adjusted by means of a formal Contract Amendment issued by the DE Commercial Team.

Applies to BNAF only:

10.1 The Firm Prices for Mobilisation detailed within Item 1A of the Price Information Booklet, Booklet 5 shall include for all deliverables contained within the Requirements Document, Booklet 3, and those identified within the Contractor's mobilisation plan agreed by the Authority and completed during the period stated at Condition 5.1. Payment shall be made in accordance with Condition 48 (Payment Under P2P).

10.2 The Firm Price Management Fee detailed within Item 1B of the Price Information Booklet, Booklet 5 is the price for the management of all activities associated with the requirement and includes the provision of the provision of all planning, organisation, procurement and management of the operation, repair, maintenance, facilities management and the design and planning of all works as identified in the Requirements Document (i.e. above and below any agreed IRLs), Booklet 3. Payment will be made in accordance with Condition 48 (Payment Under P2P).

10.3 The Firm Price shown for the Delivery Package (DP) 2 at Item 2A, 2B, 2C, 4B, 4C in the Price Information Booklet, Booklet 5 are the prices (excluding any procurement & management costs included at Item 1B) for undertaking the relevant tasks as identified in the Requirements Document, Booklet 3 for all works up to the agreed Inclusive Repair Limit (IRL) identified in the Price Information Booklet, Booklet

5. Payment will be made in accordance with Condition 48 (Payment Under P2P).

10.4 The Inclusive Repair Limit (IRL) is the maximum value for all works inclusive of all relevant costs e.g. labour, materials, plant and consumables, but exclusive of VAT, necessary for the completion of the task. Decoration works integral to the element of work within the IRL (making good) shall be deemed included. Application of the IRL should be limited to a single item or repair; however a Works Order may contain more than one item of related repair. The collective value of similar, but unrelated, repairs cannot be aggregated in order to exceed the IRL.

10.4.1 The Authority will choose which of the IRL options it will be taking up prior to Year 1 of the Contract. Thereafter, the chosen IRL options will remain the same for the first year of the Contract. These may be reviewed for Year 2 and will be advised 3 months prior to the start of year 2.

10.5 Schedule of Rates (SoR)

10.5.1 The agreed Schedules of Rates detailed within Item 12H of the Price Information Booklet 5, are to be used primarily for the pricing of determining works above/below the IRL, and Minor New Incidental Works (MNW) up to £1k and Ordered Works. The percentage increase or decrease shown is a firm percentage variance against the each SoR stated. Payment will be made in accordance with Condition 48 (Payment).

10.5.2 Where the pricing of Ordered Works on the basis of the agreed SoRs is considered by the FM to be inappropriate due to the value and complexity of the works, the Contractor will be required to obtain a minimum of 3 quotes obtained in competition in order to demonstrate best value for money to the Authority.

10.5.3 Where there is a necessity for the Prime Contractor to seek quotes for any work, a minimum of 1 quote must be sought in addition to any from a subsidiary or associated firm where the latter is considered appropriate. The original quotes are to be supplied to the FM or his authorised representative and he shall attend the Prime Contractor's tender boards when deemed required by the Authority.

10.6 NOT USED.

10.7 Daywork Rates

10.7.1 Similarly, where there is no measurable rate(s) contained within the SoRs detailed at Item 12H of the Price Information Booklet 5, it may be considered appropriate for Remedial/Response Maintenance and MNW Ordered Works to be priced on the basis of agreed daywork rates detailed within Items 12C of the Price Information Booklet 5.

10.7.2 General daywork rates and overtime daywork rates are to be provided for each category of personnel employed on the contract and reflect the actual salary and responsibilities for each category of personnel.

10.8 Supply Only of Materials

10.8.1 The Contractor is to provide a facility for provision of material only with any mark up included within Item 12D of Booklet 5

10.9 Specialist Works

10.9.1 For specialist work carried out by the Contractor's sub-contractor, not already covered within Item 1B (Management Fee) and Items 2A to 9B (Delivery Packages), prices must be fair and reasonable and provide best value for money for the Authority subject to the agreement of

the FM.

10.10 Changes to the Asset Register

10.10.1 The rates detailed within Items 13A & 13B of the Price Information Booklet, Booklet 5, relate to the pricing of future changes to the Contract asset register (additions and deletions) throughout the period of the Contract, as described in the Requirements Document, Booklet 3.

10.10.2 Following agreement with the FM the Contractor shall apply only those elements that are applicable to each individual asset addition or deletion in accordance with the agreed breakdown of rates set against pre-determined asset types contained within Item Nos 13A & 13B – Pricing Schedule, Addition and Deletion of Assets in the Price Information Booklet, Booklet 5.

10.10.3 A consolidated reconciliation exercise of all price changes is to be undertaken by the Contractor at the end of Year 1, or other agreed timescale with the Authority and thereafter on an annual basis (or other agreed timescale with the Authority). Once agreed with the, Contract price will be adjusted by means of a formal Contract Amendment issued by the DE Commercial Team.

10.21 NOT USED.

10.22 For statutory notices issued in accordance with Condition 30, the Prime Contractor shall be reimbursed the net amount of any fee or charge, excluding any overheads or profit, properly incurred.

10.23 The costs associated with transition and demobilisation at the end of the Contract shall be subject to the further discussion and agreement. Any cost will be based on the pricing mechanisms contained with Booklet 5.

10.24 The Prime Contractor undertakes to maintain and on request furnish such particulars as the Authority may reasonably require in order to be satisfied that the prices paid by the Prime Contractor to his subsidiary or associated companies or firms and to Sub-Contractors and suppliers are fair and reasonable and to permit the same to be verified by representatives of the Authority by inspection of such particulars, his and his Sub-Contractors books, accounts and any other documents and records.

10.25 Each element of the Contract Price shall be considered as a stand-alone price.

11. LIMITATION OF EXPENDITURE ON INDIVIDUAL ORDERS

11.1 If in the course of carrying out the works the Prime Contractor finds further works (which did not form part of the Statement of Requirement in the original MOD F1097/1 or Works Order) are needed to enable the works to be completed, then a MOD F1097/1/Variation or Works Order Variation must be raised. The MOD F1097/1 Variation or Works Order Variation offering a variation to the original price offered at Part 2 of the MOD F1097/1 or Works Order must be considered and authorised if appropriate by the FM at Part 3. The Prime Contractor shall on no account enter into commitments beyond the price accepted on the original MOD F1097/1 or Works Order, until he has made an offer at Part 2 and received the acceptance by the FM at Part 3 of MOD F1097/1 Variation or Works Order Variation.

12. REPORTS

12.1 The Prime Contractor shall provide all reports and information in accordance with the Requirements Document, Booklet 3. The method of collecting, storing, retrieving and submitting the information to the Authority shall be as set out by the Prime Contractor in his formal offer and agreed by the Authority.

12.2 In addition to the regular progress and financial reports required to be provided during the

period of the Contract, the Prime Contractor shall provide the FM with whatever additional reports are requested within the specified timescales.

12.3 In addition to complying with the Montreal Protocol, where the Prime Contractor for any work ordered on MOD Form 1097 (or approved variant) proposes to incorporate in the Works any of the substances named in Condition 12.4 below he shall provide to the FM a report containing the following information:

12.3.1 all Substances (adopting the nomenclature used in Condition 12.4) to be incorporated in the Works;

12.3.2 the quantity of each substance to be used;

12.3.3 the location in the Works where each substance to be used is contained.

12.4 The substances upon which the Prime Contractor is required to submit a report under Condition 12.3 above are:

| <u>SUBSTANCE</u> | <u>CHEMICAL NAME</u> |
|----------------------|---|
| Carbon Tetrachloride | Tetrachloromethane |
| Methyl Chloroform | Trichloroethane |
| CFC 11 | Trichlorofluoromethane |
| CFC 12 | Dichlorodifluoromethane |
| CFC 13 | Chlorotrifluoromethane |
| CFC 111 | Pentachlorofluoroethane |
| CFC 112 | Tetrachlorodifluoroethane |
| CFC 113 | Trichlorotrifluoroethane |
| CFC 114 | Dichlorotetrafluoroethane |
| CFC 115 | Chloropentafluoroethane |
| CFC 211 | Heptraclorofluoropropane |
| CFC 212 | Hexachlorodifluoropropane |
| CFC 213 | Pentachlorotrifluoropropane |
| CFC 214 | Tetrachlorotetrafluoropropane |
| CFC 215 | Trichloropentafluoropropane |
| CFC 216 | Dichlorohexafluoropropane |
| CFC 217 | Chloroheptafluoropropane |
| CFC 500 | (CFC 500 is a blend of CFC 12 and HFC 152a) |
| CFC 502 | (CFC 502 is a blend of CFC 115 and HCFC 22) |
| Halon 1211 | Bromochlorodifluoromethane |
| Halon 1301 | Bromotrifluoromethane |
| Halon 2402 | Dibromotetrafluoroethane |

CFCs

Production of controlled CFCs has stopped

| | | |
|---------|----------------------------|---------|
| CFC-11 | (trichlorofluoromethane) | CFC-211 |
| CFC-12 | (dichlorodifluoromethane) | CFC-212 |
| CFC-13 | | CFC-213 |
| CFC-111 | | CFC-214 |
| CFC-112 | | CFC-215 |
| CFC-113 | (trichlorotrifluoroethane) | CFC-216 |

CFC-114 (dichlorotetrafluoroethane) CFC-217
CFC-115 (chloropentafluoroethane)

The above substances are also used in blends; e.g.

CFC-500 (CFC-12/HFC-152a)
CFC-502 (CFC-115/HCFC-22)

Halons

Production of controlled Halons has stopped.

Halon-1211 (bromochlorodifluoromethane - BCF)
Halon-1303 (bromotrifluoromethane - BTM)
Halon-2402

HBFCs

No production after 31 December 1995.

| | | | |
|--|--|--|--|
| CH ₂ FBr ₂ | C ₂ H ₂ F ₂ Br ₂ | C ₃ H ₂ F ₄ Br ₃ | C ₃ H ₃ F ₂ Br ₃ |
| CH ₂ F ₂ Br | C ₂ H ₂ F ₃ Br | C ₃ H ₂ F ₅ Br ₂ | C ₃ H ₃ F ₃ Br ₂ |
| CH ₂ FBr | C ₂ H ₃ FBr ₂ | C ₃ H ₂ F ₆ Br | C ₃ H ₃ F ₄ Br |
| | C ₂ H ₃ F ₂ Br | C ₃ H ₂ F ₇ | C ₃ H ₄ FBr ₃ |
| C ₂ H ₂ FBr ₄ | C ₂ H ₄ FBr | C ₃ H ₂ F ₃ Br ₄ | C ₃ H ₄ F ₂ Br ₂ |
| C ₂ H ₂ F ₂ Br ₃ | | C ₃ H ₂ F ₃ Br ₃ | C ₃ H ₄ F ₃ Br |
| C ₂ H ₂ F ₃ Br ₂ | C ₃ H ₂ F ₆ | C ₃ H ₂ F ₄ Br ₂ | C ₃ H ₅ FBr ₂ |
| C ₂ H ₂ F ₄ Br | C ₃ H ₂ F ₅ | C ₃ H ₂ F ₅ Br | C ₃ H ₅ F ₂ Br |
| C ₂ H ₂ FBr ₃ | C ₃ H ₂ F ₄ | C ₃ H ₃ FBr ₄ | C ₃ H ₆ FBr |

HCFCs

| | | | |
|----------|-----------|------------|----------|
| HCFC-21 | HCFC-141 | HCFC-225ca | HCFC-243 |
| HCFC-22 | HCFC-141b | HCFC-225cb | HCFC-244 |
| HCFC-31 | HCFC-142 | HCFC-226 | HCFC-251 |
| HCFC-121 | HCFC-142b | HCFC-231 | HCFC-252 |
| HCFC-122 | HCFC-151 | HCFC-232 | HCFC-253 |
| HCFC-123 | HCFC-221 | HCFC-233 | HCFC-261 |
| HCFC-124 | HCFC-222 | HCFC-234 | HCFC-262 |
| HCFC-131 | HCFC-223 | HCFC-235 | HCFC-271 |
| HCFC-132 | HCFC-224 | HCFC-241 | |
| HCFC-133 | HCFC-225 | HCFC-242 | |

1,1,1 - TRICHLOROETHANE (C₂H₃Cl₃)

METHYL BROMIDE (CH₃Br)

13. USE OF DOCUMENTS, INFORMATION, ETC

13.1 Except with the consent in writing of the Authority, the Prime Contractor shall not disclose the Contract or any provision thereof to any person other than a person employed by the Prime Contractor in the carrying out of the Contract or any other person concerned with the same. Such disclosure shall be made in confidence and extend so far only as may be necessary for the purposes of the Contract.

13.2 Except with the consent in writing of the Authority the Prime Contractor shall not make use of the Contract or any information issued or furnished by or on behalf of the Authority otherwise than for the purpose of the Contract.

13.3 Any specifications, plans, drawings, or any other documents issued by or on behalf of the Authority for the purposes of the Contract remain the property of the Authority and must be returned on completion or determination of the Contract.

13.4 In the event of any inconsistency or conflict between this Condition and Condition 44 (Security Measures) the provision of Condition 44 shall prevail.

14. STAFF TRAVEL, ACCOMMODATION AND WELFARE

14.1 Transport of Personnel to and from a Government Establishment Overseas

14.1.1 The Authority shall be responsible for providing free of charge, Military air transport between the United Kingdom and the place of duty (but excluding transport within the United Kingdom) for Prime Contractor's personnel who are required by the Prime Contractor to join or visit a Government Establishment Overseas for all Prime Contractors' personnel. These flights shall be provided:

14.1.1.1 When evacuation is necessary on medical grounds due to war risk;

14.1.1.2 When evacuation is necessary in times of increased tension;

14.1.1.3 Internal flights where appropriate in accordance with theatre policy.

14.1.2 The Prime Contractor shall be responsible, and bear the costs, for all other flights (both Military Charter or Commercial Airline).

14.1.3 The Commercial Branch shall make all arrangements necessary for booking military flights in accordance with the relevant Theatre procedures following requests from the Prime Contractor. If the Prime Contractor is advised that no military transport is available and they are unable to reschedule the visit to a time when such transport is available then request may be made for travel to the Designated Officer by an alternative method at the Authority's cost, providing it is the most economical means of transport, subject to the prior approval of the Commercial Branch. However this is unlikely to be granted unless there are strong extenuating circumstances. Late booking is not considered an extenuating circumstance.

14.1.4 Should alternative transport be agreed the Authority shall reimburse the Prime Contractor the actual flight cost on presentation of the appropriate receipt. The Authority shall not be responsible for the payment of travelling time to the Prime Contractor under any circumstances. Any journey made by the Prime Contractor without the Authority's prior approval is done so at the Prime Contractor's own risk and expense.

14.1.5 The Prime Contractor will be required to travel by Military transport, in these instances the Prime Contractor is not covered by any form of insurance, it is therefore strongly recommended that the Prime Contractor takes out adequate insurance for his personnel, the cost of any additional insurance will be the responsibility of the Prime Contractor.

14.1.6 The baggage allowance for personnel travelling on Military flights will be limited to the weights stated in the extant JSP 356. The cost of transporting any baggage in excess of these allowances shall be the Prime Contractor's responsibility.

14.1.7 Passengers are required to have a 10-year passport, valid for a minimum of 6 months after the anticipated return date, to travel.

14.1.8 As far as can be reasonably ascertained the Prime Contractor is to inform the Authority every 4 weeks of the contract personnel requiring flights for the following 20-week period together with details of dates and whether the flight is to or from theatre.

14.1.9 For travel to Afghanistan it is recommended that all personnel will normally need Polio, Tetanus, Diphtheria, Hepatitis A, Typhoid, Yellow Fever vaccinations and Malarial Prophylaxis at certain times of year (periods of use can be advised by in-theatre medical staff). Personnel may also be advised to be vaccinated against Hepatitis B, Meningitis A & C and Rabies. The Cost for the above will be borne by the Prime Contractor

14.2 Living Accommodation, Catering and Laundry Facilities

14.2.1 All living accommodation, messing and laundry facilities will be provided free of charge for the Prime Contractors Management and DEL.

14.2.1.1 Prime Contractors personnel will be entitled to accommodation (where available) comparable to that of Military personnel of equivalent rank, for guidance:

14.2.1.2 Locally Recruited Workers (LRW) will **NOT** be permitted use of messing facilities.

14.2.2 Mains electricity and water for the personal use of Prime Contractors personnel will be provided free of charge subject to current Theatre policy on energy and water consumption.

14.3 Welfare Facilities

14.3.1 Prime Contractors DEL are allowed to make use of welfare, Internet and telephones free of charge. Gym facilities, where available, are available on a fill-up basis with service personnel having primacy. There is no guarantee of the availability of these facilities.

14.3.2 Spiritual welfare, where available, is provided free of charge.

14.4 Prime Contractor's Property

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

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

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

14.5 Medical Treatment

14.5.1 Prime Contractors UK, or third party nationals, DEL will be afforded emergency and non-emergency medical treatment to the same standard as that provided for deployed military personnel

14.5.2 The Authority will not provide medicines or treatment for chronic or existing complaints.

14.5.3 Prime Contractors locally employed personnel will be provided first aid treatment whilst at work, for the purposes of this Condition first aid is defined as:

14.5.3.1 " in cases where a person will need help from a medical practitioner or nurse, treatment for the purpose of preserving life and minimising the consequences of injury or illness until such help is obtained".

14.5.4 In the event of the death of any Prime Contractor's personnel repatriation to the UK shall be provided free of charge.

14.6 **Contractors on Deployed Operations (CONDO)**

14.6.1 The operation of this contract shall be subject to DEFCON 697 and Appendix detailed at Annex M, save that all the services, facilities and other benefits to be provided to the Prime Contractor under DEFCON 697 shall be provided free of charge.

15. **SERVICE INSTALLATIONS**

15.1 In this Condition "service installations" means gas mains; water mains; electricity and control cables and wires; sewers; drains; conduits; culverts and ditches; any other form of main and/or service; anything associated therewith including lagging and protective coverings, brackets, posts, fittings, foundations and supporting structures.

15.2 The Prime Contractor shall allow for any necessary diversion of stored, surface and sub-soil water to requisite channels and drains including any temporary connections required. Where service installations are to be diverted on the instruction of the FM, the work shall be carried out with the minimum of interference with the existing installations.

15.3 Before commencing any Site operations the Prime Contractor shall:-

15.3.1 At any Site where the existing service installations are the responsibility of services and utility authorities, notify in writing those services and utility authorities and/or private owners and enquire the details and locations of all installations (whether buried, hidden or visible) existing in the vicinity of the Works.

15.3.2 At any Site where existing service installations are the responsibility of both the services and utility authorities and the occupying Department, notify in writing the FM and ascertain from him such details and locations of all service installations on the Site as he has ascertained, and services and utility authorities and/or private owners and enquire the details and locations of all installations (whether buried, hidden or visible) existing in the vicinity of the Works.

15.4 The Prime Contractor shall:

15.4.1 Not use or interfere with the existing service installations without permission of the FM and, where applicable, of services and utility authorities and/or private owners;

15.4.2 Exercise particular care to avoid damaging existing service installations;

15.4.3 Inform his employees of the details and locations of existing service and draw their attention to the attendant risk and danger.

15.4.4 Immediately notify in writing the FM and, where applicable, services and utility authorities and private owners of any damage; make arrangements for repair to the satisfaction

of the FM and, where applicable, of services and utility authorities; and for urgent repairs accept any arrangements made by the FM. Subject to the provisions of the Conditions of Contract, the Prime Contractor shall be liable for the cost of such repairs.

16. OTHER WORKS

16.1 The Authority shall have power to execute other works on any Site at the same time as any works are being executed. The Prime Contractor shall give reasonable facilities for these works.

16.2 The Prime Contractor shall not be responsible for damage done to other works except for damage caused by the negligence, omission or default of his workpeople, agents or Sub-Contractors. Any damage done to the works in the execution of other works shall, for the purposes of Condition 21 (Loss of or Damage to the Articles), where appropriate, be deemed to be damage which is wholly caused by the neglect or default of a servant of the Crown acting in the course of his employment as such.

17. INTELLECTUAL PROPERTY RIGHTS (IPR)

17.1 Unless expressly stated in the Contract, nothing in the Contract shall grant or imply the grant to the Prime Contractor of any rights whatsoever (including, without limitation, title) in the Authority Material or in any of the Intellectual Property Rights in the Authority Material.

17.2 Ownership of the Deliverable IPR (other than Third Party IPR) shall vest in the Authority, and the Prime Contractor shall ensure, where necessary, that it secures the right to assign such Deliverable IPR under Condition 17.3.

17.3 The Prime Contractor hereby assigns to the Authority with full title guarantee free from all liens, charges and encumbrances all right, title and interest in the Deliverable IPR (other than Third Party IPR) together with all common law rights connected thereto and together with all the rights of action, powers, benefits and immunities belonging to the same wherever in the world, including the right to sue for and obtain damages and other relief in respect of any act of infringement (whether past, present or future) of the Deliverable IPR or any of them or the violation of any common law rights connected with the Deliverable IPR or any of them to hold the same unto the Authority absolutely.

17.4 The Prime Contractor shall execute all such further assignments, transfers, deeds, documents or other assurances and do all further acts and things as the Authority may require in order to become the legal and beneficial owner of the Deliverable IPR assigned under Condition 17.3 and otherwise to give effect to the terms of Condition 17.3 and to secure to the Authority benefit of the rights assigned under such Condition.

17.5 Without limitation to Condition 17.4, to the extent that Deliverable IPR has been or may be acquired, developed, created, devised or discovered by any member of the Supply Chain, the Prime Contractor shall, in the case of an existing member, as soon as possible after the date of the Contract, and, in the case of a future member, immediately on entering into a contract with such member, enter into a valid and binding written assignment of Intellectual Property Rights with such member which will enable the Prime Contractor to give full effect to the provisions of Condition 17.3.

17.6 With effect from the date of the award of Contract, the Prime Contractor grants a non-exclusive, world-wide, irrevocable, perpetual, transferable and royalty-free licence to the Authority to Use, and to grant to any third party the right to Use, the Third Party IPR and Prime Contractor IPR.

17.7 The Prime Contractor warrants that the Use by the Authority of the Deliverable IPR and the Prime Contractor IPR under the Contract will not infringe the Intellectual Property Rights of any third party.

17.8 The Prime Contractor hereby agrees to indemnify the Authority against any loss, injury,

damages or costs (including all legal costs and any compensation costs and disbursements paid by the Authority to compromise or settle any claim) arising from any claim, demand, action or threatened proceedings which are a consequence of any breach of the warranty set out in Condition 17.7 or of any other allegation that the Deliverable IPR (or any part thereof) or Prime Contractor IPR (or any part thereof) infringes the Intellectual Property Rights of any third party.

18. PATENTS

18.1 All Royalties, licence fees or similar expenses for the supply or use of any invention, process, drawing, model, plan or information in connection with the Works shall be deemed to have been included in the Contract Price. The Prime Contractor shall indemnify the Authority from and against all claims and proceedings, which may be made or brought against the Authority, and any damages, costs and expenses, incurred by the Authority in respect of such supply or use.

19. ISSUED PROPERTY

19.1 General

19.1.1 All Issued Property shall remain the property of the Authority. It shall be used in the execution of the Contract and for no other purpose, without the prior approval in writing of the Authority.

19.1.2 Neither the Prime Contractor, nor any Sub-Contractor, nor any other person, shall have a lien on Issued Property, for any sum due to the Prime Contractor, Sub-Contractor or other person, and the Prime Contractor shall take all such steps as may be necessary to ensure that the title of the Authority, and the exclusion of any such lien, are brought to the notice of all Sub-Contractors, suppliers and other persons dealing with any Issued Property.

19.2 Receipt

19.2.1 Subject to 19.2.2 and 19.2.5 below, within 14 days of receipt of Issued Property, or such other longer period as may be specified in the Contract, the Prime Contractor shall:-

19.2.1.1 Check the Issued Property to verify that it corresponds with the Issued Property specified;

19.2.1.2 Conduct a reasonable visual inspection; and

19.2.1.3 Conduct any additional inspection and testing as may be necessary and practicable to check that the Issued Property is not defective or deficient for the purpose for which it has been provided;

19.2.1.4 And notify the Authority of any defects, deficiencies or discrepancies discovered.

19.2.2 Where Issued Property is packaged it shall not be unpacked earlier than is necessary. The period identified at 19.2.1 above shall count from the date on which packages are opened.

19.2.3 The Authority shall within a reasonable time after receipt of any notice under 19.2.1.4 of this Condition replace, re-issue or authorise repair of Issued Property agreed to be defective or deficient and, if appropriate, the Authority shall revise the Contract Price, delivery schedule or both. If appropriate, it shall also issue written instructions for the return or disposal of the defective or deficient Issued Property.

19.2.4 In the event that the Authority fails to provide, replace, or authorise repair of defective or deficient Issued Property within a reasonable time of receipt of a notice in accordance with

Condition 19.2.1.4, fair and reasonable revisions of the Contract Price, delivery schedule or both shall be made as may be appropriate provided that the Prime Contractor has taken all reasonable measures to mitigate the consequences of any such delay.

19.2.5 Conditions 19.2.1 to 19.2.4 do not apply in the following circumstances:-

19.2.5.1 Where Issued Property is issued for the purpose of repair, overhaul, conversion or other work to be performed on the Issued Property, inspection of such property shall be as specified in the Contract;

19.2.5.2 Where the Prime Contractor can show that the Issued Property cannot be fully tested until it has been integrated with other items, inspection of such property shall be as specified in the Contract;

19.2.5.3 Where Special Jigs and Tools etc become Issued Property refer to Annex E.

19.3 **Custody**

19.3.1 Subject to 19.3.4 below and any limitation or exclusion of liability as may be specified in the Contract, the Prime Contractor shall be responsible for the safe custody and due return of Issued Property, whether or not incorporated into the Articles, and shall be responsible for all loss or damage thereto, until re-delivered in accordance with the Authority's instructions or until the expiry of the period specified in 19.4.2.

19.3.2 The Prime Contractor shall be responsible for such calibration and maintenance of the Issued Property as is specified in the Contract and in accordance with the relevant Work Area Package.

19.3.3 If requested, the Authority, within a reasonable time, and where practicable before delivery of the Issued Property, shall notify the Prime Contractor of the value of the Issued Property.

19.3.4 The Prime Contractor shall not be liable in respect of:-

19.3.4.1 defects or deficiencies notified to the Authority in accordance with 19.2.1 of this Condition or latent defects which the Prime Contractor can show could not reasonably have been discovered by means of the activities described at 19.2.1 of this Condition subject to the agreement of the FM.

19.3.4.2 fair wear and tear in Issued Property resulting from its normal and proper use in the execution of the Contract (except insofar as the deterioration is contributed to by any misuse, lack of care or want of maintenance by the Prime Contractor);

19.3.4.3 Issued Property rendered unserviceable as a direct result of ordinary performance of the Contract;

19.3.4.4 any loss or damage to Issued Property arising from the Accepted Risks detailed at Condition 1.2.1

19.4 **Accounting and Return of Issued Property**

19.4.1 The Prime Contractor shall open and maintain a Register of Issued Property. The Register shall:

19.4.1.1 be maintained to the reasonable satisfaction of the Authority in accordance with the Equipment Accounting Instructions issued by the Authority and in force at the date of the award of Contract, or with such other requirements specified in the Contract;

19.4.1.2 be available at all reasonable times for audit and inspection by the Representatives of the Authority;

19.4.1.3 be retained for three years after disposal of the items of Issued Property, or for such other period as is specified in the Contract.

19.4.2 At Contract completion the Prime Contractor shall forward a list of Issued Property still held to the FM. Return of such Issued Property will be as specified in the Contract, or as instructed by the Authority at Contract completion.

19.5 Accounting for Property of the Authority

19.5.1 If the Authority agrees that a Sub-Contractor at whatever level of subcontracting shall have responsibility in the Sub-Contractor's Register for property of the Authority issued in aid of the Contract, the Prime Contractor shall include in any subcontract with those Sub-Contractors only the provisions corresponding to those set out in this Condition that apply to property of the Authority issued in aid of the subcontract, in particular Conditions 19.4.1 and Annex E, 19.5.2, 19.5.4 and 19.5.7; and

19.5.1.1 manage the Issued Property component of the Register to the reasonable satisfaction of the Authority in accordance with the Equipment Accounting Instructions issued by the Authority and in force at the date of the award of Contract, or with such other requirements specified in the Contract; and implement any new edition of or amendment to the Equipment Accounting Instructions within three months of the publication date of the new edition. These amendments shall not have retrospective effect.

19.5.2 For the purposes of this Condition 'property of the Authority' means fixed assets, and Issued Property issued under Condition 19 and property of the Authority issued to the Prime Contractor under any other authorising document.

19.5.3 For the avoidance of doubt, it is a condition of this Contract that this Condition shall apply to all property issued to the Prime Contractor from the date of this Contract, whether in aid of the Contract, any other contract or other agreement with the Authority. Property of the Authority issued prior to the date of this Contract may be subject to separate contractual arrangements.

19.5.4 The obligations of the Prime Contractor arising under this Condition in respect of property of the Authority issued in aid of the Contract shall survive completion of the Contract and shall not be completed until all such obligations are fulfilled including the provisions of 19.4.1.3.

19.5.5 The obligations of the Prime Contractor arising under this Condition in respect of property of the Authority unconnected with the Contract shall survive completion of the Contract and shall not be completed until all those obligations are fulfilled including the provisions of 19.4.1.3 unless and until a subsequent contract containing this Condition is placed with the Prime Contractor at which time obligations in respect of any remaining property of the Authority unconnected with the Contract shall be subsumed in the subsequent contract.

19.5.6 If, after completion of the Contract, no subsequent contract is placed containing this Condition within the period detailed at 19.4.1.3, then the obligations of the Prime Contractor

arising under this Condition in respect of property of the Authority unconnected with the Contract shall cease on expiry of the period detailed at 19.4.1.3.

19.5.7 The Authority reserves the right to amend Annex E without further consultation where the amendments arise from the Department's proper and reasonable accounting requirements. For the purposes of this Condition, Annex E shall be regarded as a Specification and subject to the terms of DEFCON 502. If the Authority exercises this right:

19.5.7.1 the Prime Contractor shall implement the amendment to Annex E at the commencement of the Department's next accounting year provided that a notice of six months or such other period as may expressly be agreed between the Authority and Prime Contractor is given to the Prime Contractor. These amendments shall not have retrospective effect; and

19.5.7.2 the Prime Contractor shall inform the Authority as soon as practicable, but in any event within three months of notice having been given, if the Prime Contractor cannot comply with the amendment to Annex E.

20. ARCHAEOLOGICAL REMAINS AND FOSSILS

20.1 Any Ancient Relics, Antiquities or fossils discovered on the Establishment which shall in all cases be deemed to be the property of the Authority shall be handed over by the Prime Contractor to the Authority against the receipt of the Authority therefore. Upon discovering any Ancient Relics, Antiquities or fossils the Prime Contractor shall take all reasonable steps necessary to preserve them in the exact position and condition in which they were found and shall inform the Authority of the discovery and precise location thereof.

20.2 Following the reported discovery of any Ancient Relics, Antiquities or fossils the Authority shall issue instructions in respect thereof. In the event that the discovery of any such Ancient Relics, Antiquities or fossils shall have been the primary cause of the Prime Contractor failing to comply with any response and rectification period, then such response and rectification period shall be excluded from consideration from the Performance Recovery System for the period in which the failure to comply occurred. There shall be added to the Pricing Provisions any additional costs and/or expenses incurred by the Prime Contractor as a direct result of the discovery of Ancient Relics, Antiquities or fossils.

21. LOSS OF OR DAMAGE TO THE ARTICLES

21.1 Until receipt of delivery, the risk of loss of or damage to the Articles remains with the Prime Contractor (Subject to the applicability of Condition 84 War Risk Indemnity [Defcon 661/661A]). Without prejudice to any other rights or remedies of the Authority, the Prime Contractor shall make good any such loss or damage however caused or occasioned which occurs before receipt of delivery. Delivery is normally considered to be effected on incorporation and acceptance of the articles by the Authority.

21.2 Condition 21.1 shall apply notwithstanding:

21.2.1 that the Articles may have been inspected by the Authority; or

21.2.2 that the property therein may have passed earlier than upon receipt of delivery.

21.3 Unless otherwise agreed and save for the provisions of 21.4 of this Condition, the Prime Contractor shall not after receipt of delivery be at risk in respect of the Articles, except where the Authority rejects any Article under Condition 37 (Rejection), in which case the risk in the rejected Article shall revert to the Prime Contractor on the earlier of:

21.3.1 the removal of the Article by the Prime Contractor in accordance with Condition 37 (Rejection); or

21.3.2 the close of business on the last day of the period in which the Prime Contractor is required to remove the rejected Article in accordance with Condition 37 (Rejection); or

21.3.3 the return of the Article by the Authority in accordance with Condition 37 (Rejection).

21.4 Notwithstanding the provisions of 21.3 of this Condition, if the Prime Contractor has given notice of objection under Condition 37 (Rejection) he shall not be at risk in respect of the rejected Article where a dispute between the parties relating to the rejection remains unresolved and the Article remains in the possession of the Authority.

21.4.1 This Condition shall not apply to any Articles issued to the Prime Contractor by or on behalf of the Authority in connection with which the Prime Contractor is required to carry out any Service. Such Articles shall be subject to Condition 19 (Issued Property).

22. CONDITIONS AFFECTING THE EXECUTION OF THE WORKS

22.1 The Prime Contractor shall be deemed to have satisfied himself in relation to any site as to:-

22.1.1 the existing roads, railways and other means of communication with or access to it;

22.1.2 its contours and boundaries;

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

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

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

22.1.6 the facilities for obtaining any Things whether or not for incorporation;

22.1.7 the conditions under which the Works shall have to be carried out, including precautions to prevent nuisance and pollution; and

22.1.8 any other matters or information affecting or likely to affect the execution of the Works.

22.2 No claim by the Prime Contractor for additional payment shall be allowed on the grounds of the misunderstanding or misinterpretation of anything mentioned in Condition 22.1 hereof. The Prime Contractor shall not be released from any risks or obligations, imposed on or undertaken by him under the Contract, for those reasons or because he did not foresee any matter which might affect or have affected the execution of the Works.

23. LIABILITY IN RESPECT OF DAMAGE TO GOVERNMENT PROPERTY

23.1 Without prejudice to the provisions of Condition 19 (Issued Property) and Condition 21 (Loss of or Damage to The Articles), the Prime Contractor shall, except as otherwise provided for in the Contract, make good or, at the option of the Authority, pay compensation for, all damage occurring to any Government property which includes land or buildings, occasioned by the Prime Contractor or by any of his servants, agents, suppliers or Prime Contractors and all other Persons under his control, arising from his or their presence on a Government Establishment in connection with the Contract, provided that this Condition shall not apply to the extent that the Prime Contractor is able to show that any such damage was not caused or contributed to by his neglect or default or the neglect or default of his servants, agents, suppliers or Prime Contractors or by any circumstances within his or their control.

23.2 The liability of the Prime Contractor under Condition 23.1 (Liability in Respect of Damage to Government Property) shall be limited [REDACTED] in respect of any single incident but shall not be limited in any other respect.

24. INDEMNIFICATION AGAINST LOSS OR DAMAGE CAUSED BY MUNITIONS OF WAR

24.1 The Prime Contractor, his servants and agents, must not knowingly tamper with, interfere with or remove any unexploded mine, bomb, shell, grenade or other projectile or munitions of war which he may find in, under or on any site, but must immediately inform the FM.

24.2 Notwithstanding any other Condition of Contract if, at any time, as a result of operations on any site, there occurs an explosion of, and/or any escape of gas, acid or other deleterious substance from, any mine, bomb, shell grenade or other projectile or munitions of war, the following provisions shall apply:

24.2.1 The Authority shall indemnify the Prime Contractor in respect of:

24.2.1.1 All sums which he shall become legally liable to pay by way of damages or compensation for any loss of life or bodily injury caused to any person by any such explosion and/or escape as above whether such loss of life or bodily injury shall occur on Site or elsewhere;

24.2.1.2 All loss of or damage to things whether or not for incorporation, vehicles or other property of whatever nature and wherever situated belonging to or used by the Prime Contractor caused by any such explosion and/or escape as above;

24.2.1.3 All costs and expenses which may be recovered from the Prime Contractor by any person making any claim upon him in respect of any such loss of life, bodily injury or loss of or damage to property caused by any such explosion and/or escape as above;

24.2.1.4 All costs and expenses incurred by him with the consent of the Authority in resisting or contesting or otherwise in relation to any such claim.

24.2.2 The Prime Contractor shall, as directed in writing by the FM, remove from any site any debris and as much of the work as has been damaged,

24.2.3 The Prime Contractor shall, unless the Authority exercises its power to determine the Contract, proceed with the erection and completion of the Works under and in accordance with the provision and Conditions of the Contract.

24.2.4 The Authority shall, in addition to the sum payable for the execution of the works, pay to the Prime Contractor the amount due, ascertained in the same manner as alterations or additions under the Contract, in respect of the re-execution of the work lost or damaged, the replacement of any things whether or not for incorporation (other than things provided by the Authority) lost or damaged, but not incorporated in the Works at the date when the loss or damage occurred and the removal by the Prime Contractor, of the debris and damaged work referred to in Condition 24.2.2.

24.2.5 Provided always that the provisions of Condition 24.2 shall not apply in cases where any such loss of life, bodily injury or loss or damage to property is caused by:

24.2.5.1 An explosion of and/or an escape of gas, acid or other deleterious substance from a mine, bomb, shell, grenade or other projectile or munitions of war which has been knowingly tampered or interfered with or removed from site by the Prime Contractor, his servants, agents suppliers or Prime Contractors or

24.2.5.2 An explosion and/or an escape of gas acid or other deleterious substance due to the neglect or default of the Prime Contractor, his servants, agents, suppliers or Prime Contractors.

24.2.6 The Prime Contractor shall immediately notify the Authority of any claim or demand made in respect of any loss, damage or injury caused by any such explosion and/or escape as above and shall comply with any relevant directions given by the Authority from any liability arising in connection with any such loss, damage or injury.

25. TRANSITION TO WAR ROLE BY PRIME CONTRACTOR'S EMPLOYEES

25.1 The Prime Contractor shall continue to provide the services required, as declared by the Authority in peace, during periods of tension, in transition to war and during hostilities. The Prime Contractor shall also provide any additional support required in the event that the Authority is directed to respond to any national or international emergency, disaster or other unforeseen task. The Prime Contractor shall continue to co-operate with the military authorities to ensure that the handover of the duties to military personnel is carried out in such a manner that operational integrity of the Theatre's military installations is protected.

25.2 If the Authority notifies the Prime Contractor that a time of increased tension has been declared the Prime Contractor shall comply with any relevant directives or orders issued by the Head of Establishment or his Officers. During a time of increased tension the Prime Contractor and his workforce may be subject to military discipline and regulations.

25.3 In the event of tension, hostilities or emergency the Authority will advise the Prime Contractor of any necessary alterations to the Contract and will negotiate a suitable adjustment to its terms and conditions in appropriate circumstances.

25.4 If a time of increased tension appears likely to continue beyond 14 days, the Authority will use his best endeavours to arrange for evacuation of the Prime Contractor, however, Military movements will have priority.

25.5 When a time of increased tension has ceased, the Prime Contractor will be given 48 hours notice to have his workforce back on duty. For the purpose of this Condition 25.5, 'back on duty' shall mean available to return to Afghanistan as soon as reasonably practicable, having regard to the availability of flights. The Prime Contractor shall thereafter resume the duties specified in the Contract.

25.6 If in the event of tension, conflict or invasion the Prime Contractor is evacuated, all his stores, plant and equipment holding will be taken as those recorded on his last report.

26. OCCUPATION OF GOVERNMENT PREMISES

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

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

26.3 Technical Accommodation.

26.3.1 The Prime Contractor will be offered the office, workshop and storage accommodation

stipulated and agreed in their tender submission. Any additional requirements following Contract award will be provided subject to agreement by the Designated Officer,

26.3.2 The Prime Contractor will provide all furniture and equipment.

26.4 **Living Accommodation**

26.4.1 Should the Prime Contractor require additional living accommodation above that which is made available to him by the Authority, he shall, subject to the prior approval of the Designated Officer, provide it himself and shall position it in accordance with the Designated Officer's instructions, at no additional cost to the Authority.

26.4.2 The Prime Contractor shall be responsible for its installation and for its removal from each site when it is no longer required or at the end of the Contract.

26.5 Any land or premises made available to the Prime Contractor by the Authority shall be made available solely for the purposes of performing this contract. The Prime Contractor shall vacate any premises upon completion of the Contract, or upon earlier termination of the Contract howsoever the termination arises.

27. HEALTH, SAFETY AND THE ENVIRONMENT

27.1 The Prime Contractor shall carry out the Work in accordance with the Authority's internal regulations on safety, health, environment and fire (SHEF) and all applicable legal requirements. For the avoidance of doubt, the Prime Contractor shall be required to ensure, as a minimum, that all Works are constructed to meet UK legal requirements. However, the Authority's internal regulations may impose additional requirements.

27.2 The Prime Contractor shall throughout the performance of the Contract have full and proper regard to the safety and health of all Persons entitled to enter a MOD Establishment and shall keep each Establishment in such a manner so as to keep to a minimum any danger and/or hazard to such Person including any health & safety and/or environmental risks to such Persons. The Prime Contractor shall be required to appoint a competent person to act as a focal point

27.3 In the event of a breach of this Condition the Prime Contractor shall fully indemnify the Authority against all resulting claims, losses, demands, costs expenses and damages, provided always that:

27.3.1 such indemnity shall apply only in respect of sudden and accidental pollution or contamination and the Prime Contractor shall have no liability for any pollution or contamination which exists at the date of day 1 of single running commencement date;

27.3.2 the Prime Contractor shall have no liability under this Condition 27 for any act or omission of any person other than the Prime Contractor, its Sub-Contractors and its and their personnel; and

27.3.3 the Prime Contractor's maximum aggregate liability to the Authority under this Condition 27.3 whether in contract, tort (including negligence), for breach of duty (statutory or otherwise), for any delay, loss, damage or liability whatsoever and howsoever arising which is suffered or incurred by the Authority directly or indirectly shall be limited £10,000,000.00 (Ten Million Pounds).

27.4 The Prime Contractor may be required to attend safety training at any Establishment, which may be arranged from time to time by the Authority. Any additional costs whatsoever incurred by the Prime Contractor in attending such safety training may be considered for payment on the basis of Actual Costs, excluding any profit and overheads, subject to the prior agreement of the FM.

27.5 In the event that the Authority is not satisfied that the Prime Contractor is complying with this Condition, the Authority may serve a notice of dissatisfaction specifying the steps that the Prime Contractor has to take to comply with this Condition. In the event that the Prime Contractor fails to comply with the Notice of Dissatisfaction within 5 Working Days, the Authority shall be entitled to terminate the Contract in accordance with the provisions of Condition 46 (Termination).

27.6 The Prime Contractor shall report to the Authority any injury, disease or dangerous occurrence arising out of the performance of this Contract which is required to be reported under the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995 (RIDDOR). This shall be in addition to any report, which the Prime Contractor may be required to submit under RIDDOR to the relevant enforcing authority. The Prime Contractor shall immediately notify the Commanding Officer/Head of Establishment and FM of any fatality or any major accidents, as defined under the RIDDOR regulations. The Prime Contractor shall ensure that all accidents are investigated and suitable arrangements put in place to prevent a recurrence. A full report is to be forwarded to the FM once the investigation is complete. .

27.7 Where the Prime Contractor enters an Establishment for the purpose of performing work under the Contract he shall notify the Authority of:

27.7.1 any health and safety hazards associated with the work to be performed by him or any of his servants, agents, suppliers or Sub-Contractors and all other persons under his control;

27.7.2 any foreseeable risks to the health and safety of all Persons associated with such hazards; and

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

27.8 The Authority shall notify the Prime Contractor of:

27.8.1 any known health and safety hazards which may be encountered by the Prime Contractor or any of his servants, agents, suppliers or Sub-Contractors and all other persons under his control;

27.8.2 any foreseeable risks to the health and safety of the Prime Contractor or any of his servants, agents, suppliers or Sub-Contractors and all other persons under his control; and

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

27.9 The Prime Contractor shall notify his servants, agents, suppliers or Sub-Contractors and all other Persons under his control of and, where appropriate, provide adequate instruction in relation to:

27.9.1 the hazards, risks and precautions notified by him to the Authority under Condition 27.7.

27.9.2 the hazards, risks and precautions notified by the Authority to the Prime Contractor under Condition 27.8 and

27.9.3 the precautions which, in his opinion, ought to be taken by his servants, agents, suppliers or Sub-Contractors and all other Persons under his control in order to control those risks.

27.10 The Prime Contractor shall provide the Authority with:

27.10.1 copies of those sections of his own and, where appropriate, his servants, agents,

suppliers or Sub-Contractors and all other Persons under his control Safety Policies which are relevant to the risks notified under Condition 27.7.

27.10.2 copies of any related risk assessments; and

27.10.3 copies of any notifications and instructions issued by him to his servants, agents, suppliers or Sub-Contractors and all other Persons under his control under Condition 27.7.3.

27.11 The Authority shall provide the Prime Contractor with:

27.11.1 copies of those sections of his own Safety Policies which are relevant to the risks notified under Condition 27.8;

27.11.2 copies of any related risk assessments; and

27.11.3 copies of any notifications and instructions issued by it to his employees similar to those called for from the Prime Contractor under Condition 27.7.3.

27.12 Any such notification or advice given by the Authority in accordance with this Condition shall not in anyway affect the Prime Contractor's liability in respect of health and safety under the Contract and the Prime Contractor whilst complying with the matters notified by the Authority shall rely upon his own assessment and understanding of such. Any such matters so notified by the Authority shall not constitute an Accepted Risk.

28. PERSONAL INJURY AND LOSS OF PROPERTY

28.1 This Condition applies to any personal injury or loss of property (not falling within the scope of Condition 21 (Loss or Damage to Articles) which arises out of or in any way in connection with the execution or purported execution of the Contract.

28.2 For the purposes of Condition 28, a "Servant of the Crown" includes persons who are Servants of the Crown at the time when a Personal Injury or Loss of Property to which Condition 28 applies occurs, notwithstanding that they cease to be such before any payment in respect of the Personal Injury or Loss of Property is made and, where they have ceased to be such by reason of their deaths, includes their personal representatives;

28.3 Subject to the following provisions of this Condition, the Prime Contractor shall:

28.3.1 be responsible for and reinstate and make good to the satisfaction of the Authority, or make compensation for, any loss of or damage to property suffered by the Crown to which this Condition applies;

28.3.2 indemnify the Crown and servants of the Crown against all claims and proceedings made or brought against the Crown or servants of the Crown in respect of any personal injury or loss of or damage to property to which this Condition applies and against all costs and expenses reasonably incurred in connection therewith;

28.3.3 indemnify the Crown against any payment by the Crown in order to indemnify in whole or in part a servant of the Crown against any such claim, proceedings, costs or expenses; and

28.3.4 indemnify the Crown against any payment by the Crown to a Crown servant in respect of loss of property to which this Condition applies suffered by that servant of the Crown and against any payment made under any Government provision in connection with any personal injury to which this Condition applies suffered by any servant of the Crown.

28.4 If the Prime Contractor shows that any personal injury or loss of or damage to property to which

this Condition applies was not caused nor contributed to by his neglect or default or by that of his servants, agents or Sub-Contractors or any other persons under his control, or by any circumstances within his or their control, he shall be under no liability under this Condition, and if he shows that the neglect or default of any other person (not being his servant, agent or Sub-Contractors or any other person under his control) was in part responsible for any personal injury or loss of property to which this Condition applies, the Prime Contractor's liability under this Condition shall not extend to the share of the responsibility attributable to the neglect or default of that person.

28.5 Claims by the Crown and servants of the Crown made under this Condition shall be dealt with as follows:

28.5.1 The Authority shall notify the Prime Contractor of any claim or proceeding made or brought in respect of any personal injury or loss of property to which this Condition applies.

28.5.2 If the Prime Contractor admits that he is liable wholly to indemnify the Crown in respect of any such claim or proceeding, and the claim or proceeding is not an excepted claim, he, or if he so desires his insurers, shall be responsible (subject to the condition imposed by Condition 28.5.3 for dealing with or settling that claim or proceeding).

28.5.3 If, in connection with any such claim or proceeding with which the Prime Contractor or his insurers are dealing, any matter of issues shall arise which involves or may involve any privilege or special right of the Crown (including any privilege or right in relation to the discovery or production of documents) the Prime Contractor or his insurers shall before taking any action thereon, consult the legal adviser to the Authority and act in relation thereto as may be required by the Authority, and if either the Prime Contractor or his insurers fail to comply with this paragraph, Condition 28.5.2 shall cease to apply.

28.6 For the purposes of Condition 28.5.2 "an excepted claim" means a claim or proceeding in respect of a matter failing to be dealt with under a Government provision or a claim or proceeding made or brought by or against a servant of the Crown.

28.7 Where any such claim or proceeding as is mentioned in Condition 28.5.2 and 28.5.3 of this Condition is settled otherwise than by the Prime Contractor or his insurers, he shall not be required to pay by way of indemnity any sum greater than that which would be reasonably payable in settlement having regard to the circumstances of the case and in particular to the damages which might be recoverable at law.

28.8 While at any MOD Establishment (which includes without limitation any of Her Majesty's Ships, Vessels or Service Stations) all property of the Prime Contractor shall be at the Prime Contractor's risk and the Authority shall accept no liability for any loss or damage howsoever occurring thereto or caused thereby, except to the extent any such loss or damage was caused or contributed to by any act, neglect or default of the Authority.

28.9 The Authority shall throughout the life of the Contract notify the Prime Contractor of any known significant health and safety hazards that may be involved or introduced on site that may affect the Prime Contractor.

29. VESTING

29.1 Neither the Prime Contractor nor any of his Sub-Contractors nor any other third party shall have a lien on any such part of the Works which is vested in the Authority for any sum due to the Prime Contractor, Sub-Contractor or other third party. The Prime Contractor shall take all such steps as may be reasonably necessary to ensure that the title of the Authority, and the exclusion of any such lien, is brought to the notice of all Sub-Contractors and other third parties dealing with any such part of the

Works.

29.2 The Prime Contractor shall ensure that as from the time when the Works is vested in the Authority or as soon thereafter as is practicable, such materials or equipment as so acquired, or allocated, such a mark shall be placed thereon or attached thereto where possible, or where this is not possible, such a notice shall be displayed and a record made in the books of the Prime Contractor, Sub-Contractor or other third party as may be necessary for the purpose of ensuring that all such materials or equipment used for the construction, operation and maintenance are readily identifiable as being the property of the Authority. If any direction is given by the Authority to the Prime Contractor as to the steps to be taken to ensure that any such material shall be readily identifiable as being the property of the Authority, the Prime Contractor shall comply with that direction forthwith.

29.3 In the event of the rejection by the Authority of any part of the Works the part so rejected shall forthwith re-vest in the Prime Contractor.

29.4 In the event of termination by the Authority under Condition 46 (Termination) any part of the Works which has not been incorporated in the Works shall re-vest in the Prime Contractor on the expiration of 5 Working Days from the date on which such termination takes effect unless the Authority shall have given to the Prime Contractor written notice that the Authority elects to retain the property in such part of the services.

29.5 Any payment made by the Authority in respect of any part of the Works, which re-vests in the Prime Contractor under Conditions 29.3 or 29.4, shall be recoverable from the Prime Contractor as a debt.

29.6 The Prime Contractor shall hand over to the Authority any part of the Works the property in which the Authority has elected to retain under Condition 29.4, and if he shall fail to do so the Authority may enter any premises of the Prime Contractor and remove such part of the Works and recover the costs of so doing from the Prime Contractor.

29.7 The Authority shall pay a fair and reasonable price for any part of the Works the property in which the Authority has elected to retain under this Condition and which are handed over to it by the Prime Contractor or otherwise come into his possession to the extent that payment for the part of the Works has not already been made.

29.8 Where any part of the Works in the possession or control of the Authority has re-vested in the Prime Contractor in accordance with Conditions 29.4 or 29.5 the Prime Contractor shall bear the expense of resuming possession and control of them and if they are on the Establishment or other premises of the Authority he shall remove them within 10 Working Days of their re-vesting.

30. STATUTORY NOTICES

30.1 The Prime Contractor shall give all notices required by any Competent Authority in connection with the Contract. The Prime Contractor shall pay any fees, costs, demands or charges required to be paid by such authorities and if required forthwith supply all drawings, plans and other documents in connection with any notice.

30.2 The Prime Contractor shall obtain the consent, permission or licence of any statutory undertaker and any adjoining owner whose services, Land, or rights may be affected by the Works or whose consent is necessary in connection with the same. The Prime Contractor shall forthwith pay any licence fee or charge required in connection with any consent or licence and take all practical steps to obtain such consents and licences as required by this Contract.

30.3 The Prime Contractor shall, where appropriate, obtain the consent or permission required from the competent Authority.

31. DESIGN LIABILITY

31.1 The Prime Contractor shall be responsible for ensuring that all reasonable skill, care and diligence are exercised in carrying out the design, and that the design complies with the requirements specified by the Designated Officer on the relevant Order.

31.2 In any Works Order the Prime Contractor shall provide the Authority with a fitness for purpose warranty, provided that such Order has been agreed between the Authority and the Prime Contractor. Compliance by the Prime Contractor with the specifications contained in any such Works Order shall be deemed to constitute compliance in full with such warranty and it is acknowledged by the Authority and the Prime Contractor that the Authority's assessment of whether such warranty has been complied with, will take place once the relevant Works Order is complete. Such warranty shall be limited to the purpose for which the design was originally conceived, as specified in the relevant Order.

31.3 Notwithstanding any form of warranty obtained for the Authority by the Prime Contractor from a third party the Prime Contractor shall accept as his own and be liable in respect of any design prepared by or on behalf of any Sub-Contractor or agent.

31.4 Where the Prime Contractor, either by himself or by means of any servant, agent, Sub-Contractor or supplier is required under the Contract to undertake the design of any part of the Works, he shall in accordance with the Contract or as required by the Authority submit to the Authority for concurrence a suitable drawing or other design document relating to that work and shall define all the work proposed to be done. The Prime Contractor shall not commence any work to which such a drawing or design document relates unless the design has been accepted in writing by the Authority, and the Prime Contractor shall not alter that design without the further written acceptance of the Authority.

31.5 In addition to his liability under this Condition the Prime Contractor shall be liable for the rectification of any defects which occur during a period of 3 years from handover which is caused by a fault in the design or proven defective workmanship.

31.6 The acceptance of the Authority under Condition 31.4 shall not relieve the Prime Contractor of any liability, which he would otherwise have in respect of the design in accordance with Condition 31.1 to 31.3.

32. INSURANCE

32.1 The Prime Contractor shall effect and maintain insurance necessary to cover jointly the Authority, the Prime Contractor and all his servants, agents, suppliers and Sub-Contractors or any other persons under his control for the risks faced under these Conditions with regard to fire, loss of or damage to the Articles, Works or Things, injury to persons and loss of or damage to property.

32.2 The Prime Contractor shall ensure that any person or organisation engaged as a Consultant by him in connection with the Contract takes out and maintains appropriate professional indemnity insurance in respect of their businesses generally throughout the period from the date of commencement of their services under the Contract until the expiration of six years from the date of completion of each Works project provided such insurance is available in the insurance market generally at commercially reasonable rates. Such insurance shall be limited to [REDACTED] in respect of any one claim and to no more than [REDACTED] in the aggregate.

32.3 The Prime Contractor shall, whenever required by the Authority, produce to the Authority certificates signed on behalf of the Prime Contractor's and/or his Consultant's insurers stating that insurance complying with the requirements set out in Conditions 32.1 and 32.2 is in force and the period for which it has been taken out.

32.4 If, for whatever reason, the Prime Contractor fails to maintain the insurance described in

Condition 32.1, or without the approval of the Authority obtains a different policy of insurance from that which he notified to the Authority at the time when he submitted his tender, the Authority may make alternative arrangements necessary to protect his interests and recover loss and damages from the Prime Contractor.

32.5 The terms of any insurance or the amount of cover shall not relieve the Contractor or his Sub-Contractors or Consultants of any liabilities under the Contract unless the provisions of DEFCON 661 apply and are agreed beforehand with the Authority.

33. RACIAL DISCRIMINATION

33.1 The Prime Contractor shall not unlawfully discriminate within the meaning and scope of the provisions of the Race Relations Act 1976 or any statutory modification or re-enactment thereof relating to discrimination in employment.

33.2 The Prime Contractor shall take all reasonable steps to secure the observance of the provisions of Condition 33.1 hereof by all his servants, agents, suppliers and Sub-Contractor and all other persons under his control employed in the execution of the Contract.

33.3 The Prime Contractor shall immediately notify the Authority, of any prosecution or proceedings, brought under the legislation detailed in Condition 33.1, against the Prime Contractor, his servants, agents, suppliers and Sub-Contractors and all other persons under his control employed in the execution of the Contract.

33.4 Notification by the Prime Contractor of such information shall not prejudice any rights of the Authority or the Prime Contractor under the Contract.

34. TIMBER AND WOOD-CONTAINING PRODUCTS SUPPLIED UNDER THE CONTRACT

34.1 It is the Authority's policy that all timber or wood-containing products should be procured from sustainable sources. In addition, tropical hardwood should be independently verified as sourced from forests and plantations which are managed to sustain their bio-diversity, productivity and vitality, and to prevent harm to other ecosystems and any indigenous or forest-dependent people. Where practicable, the use of reclaimed timber or timber products should be considered. All procurements must comply with international agreements such as the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), where applicable.

34.2 The Prime Contractor shall as far as reasonably possible comply with the Authority's policy on procurement of timber as set out In Condition 34.1. The Prime Contractor shall as far as reasonably possible and unless otherwise agreed by the FM ensure that:

34.2.1 all Timber (as defined in Condition 34.2.3), delivered to the Authority under the Contract or consumed during performance of the Contract shall derive from trees or other plants that have been harvested and exported in strict accordance with the applicable law or laws of the country in which the trees or other plants grew; and

34.2.2 where any Timber delivered to the Authority under the Contract or consumed during performance of the Contract derives from any species of tree, trade in which is regulated by the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), the Prime Contractor shall comply with the CITES requirements that permit trade in that species of tree; and

34.2.3 all timber and wood-containing products ('Timber'), including, but not limited to joinery, fittings, furniture, veneers and non-returnable packaging delivered to the Authority under the Contract or consumed during performance of the Contract is

derived from timber lawfully obtained from forests and plantations which are managed to sustain their biodiversity, productivity and vitality, and to prevent harm to other ecosystems and any indigenous or forest-dependent people.

34.3 In respect of each delivery of Timber to the Authority under the Contract, and all Timber consumed during performance of the Contract:

34.3.1 The Prime Contractor shall obtain and retain documentary evidence that such Timber has been procured in accordance with Condition 34.2;

34.3.2 such documentary evidence shall include, but may not be limited to, certification by properly accredited organisations to meet the standards set by the Forest Stewardship Council or equivalent body. The Prime Contractor shall be responsible for demonstrating the authenticity of such certification; and

34.3.3 where the Timber to be delivered under the Contract or consumed during performance of the Contract is tropical hardwood, the Prime Contractor shall obtain independent verification of the documentary evidence required under this Condition.

34.4 The Authority reserves the right at any time during the performance of the Contract and for a period of 6 years from final delivery under the Contract to require the Prime Contractor to produce the documentary evidence, and independent verification where applicable, required by Condition 34.3, for the Authority's inspection within 14 days of the Authority's written request.

34.5 The Prime Contractor shall provide to the Authority, using DEFFORM 691A, such data or information as the Authority requires in respect of Timber delivered to the Authority in accordance with Condition 34.2 under the Contract every 3 months from the start of Contract Year. The Prime Contractor shall send all completed DEFFORMs 691A, including Nil Returns where appropriate, to the DE/FM. DEFFORM 691A may be amended by the Authority from time to time.

34.6 The Prime Contractor shall provide all documentary evidence, independent verification, data and other information required by this Condition in a form acceptable to the Authority, which may include electronic means.

34.7 The Authority reserves the right to reject any Timber delivered which does not comply with the provisions of Condition 34.2, or for which the Prime Contractor has not obtained such documentary evidence or independent verification of such evidence as required by Condition 34.3. Where the Authority exercises his right to reject any Timber, the Prime Contractor shall supply alternative Timber which complies with the provisions of Condition 34.2 at no additional cost to the Authority and within a period to be determined by the Authority.

34.8 The obligations of this Condition do not extend to the delivery of reclaimed or recycled Timber, which may be used where it fully meets the Contract requirements.

34.9 The Prime Contractor shall place similar obligations on his Sub-Contractors and shall require his Sub-Contractors to flow down similar obligations to all levels in the Supply Chain.

35. INSPECTION

35.1 The Authority may inspect or arrange for the inspection of all or any of the Works, in course of design, construction, modification, commissioning, maintenance or repair, at any reasonable time.

35.2 The Prime Contractor shall ensure that the Authority, and any other person authorised by the Authority are given access at all times to all places where work is being executed or where materials, plant and equipment are being supplied and/or manufactured and/or tested for any purpose in connection with this Contract.

35.3 Without prejudice to the Authority's right of inspection under 35.1 of this Condition, the Authority may inspect or arrange for inspection of Works selected for audit for compliance with Building Regulations at the appropriate construction stage and may inspect or arrange for the inspection of all or any of the completed Works prior to acceptance.

35.4 The Prime Contractor shall ensure that for the purposes of carrying out any audit the Authority's internal and nominated auditors and the Comptroller and Auditor General are given access to inspect and examine such documents as may reasonably be required which are owned, held or otherwise within the control of the Prime Contractor. The Prime Contractor shall also promptly provide such oral and written explanations as he considers necessary in order to assist the auditors referred to above to carry out their functions.

35.5 When the Authority wishes to exercise its right of inspection under this Condition, the Prime Contractor shall give to the representative of the Authority full and free access to the said Works as and when required for that purpose and shall provide at his own expense all such facilities in connection with the inspection as the Authority may reasonably require, and all appliances, materials and labour required for inspection purposes.

35.6 The Prime Contractor shall inform the FM in writing as soon as each Works is completed and is ready for inspection and handover. The FM shall arrange for the inspection to be carried out as soon as possible but not later than 14 days from the date of notification. A pre-handover inspection will take place 7 days before the handover date to permit snagging to occur in the intervening period. The Prime Contractor shall include identical provisions to Conditions 35.2, 35.4 and 35.5 in any sub-contract he enters into in relation to the performance of this Contract and shall provide, when requested in writing by the Authority, a copy of the same.

36. ACCEPTANCE

36.1 Unless otherwise stated by the Authority the Prime Contractor shall be responsible for certifying the satisfactory completion of maintenance tasks carried out under the Contract.

36.2 Acceptance of completed Works shall take place when the Authority confirms acceptance of the Works in accordance with the procedure specified in the Contract F1097/1 or Works Order, or if none is specified then the Authority shall be deemed to have accepted the Works without prejudice to any other remedies when and as soon as any of the following events has occurred:

36.2.1 The Authority has taken the Works into use excluding beneficial use.

36.2.2 The Authority has not exercised his right of rejection of the Works under Condition 37 (Rejection) within any period specified for that purpose in the Contract.

36.2.3 There being no period for exercising the right of rejection specified in the Contract a reasonable time has elapsed since the completion of the Works was notified to the Authority in accordance with Condition 35.6, all the circumstances having been taken into account.

36.3 The Prime Contractor shall demonstrate to the Authority's satisfaction that any specified standards required with respect to the Works can be achieved by the Works or Things incorporated therein, as part of the acceptance process.

36.4 Unless stated otherwise in the Order the FM shall be the certifying officer for the acceptance of all new Works.

37. REJECTION

37.1 The Authority may reject any Works which on inspection in accordance with Condition 35

(Inspection) does not conform with the requirements of the Contract, contravenes building regulations or any other Statutory or Mandatory regulations.

37.2 When under this Condition the Authority rejects any Works the Prime Contractor shall at his own expense rectify the defects or contravention within the periods stated at Condition 38.

37.3 If the Prime Contractor considers himself aggrieved by a rejection under this Condition in respect of a defect he may give the Authority notice of objection. Such notice shall be given within 8 working days from receipt of notification of rejection and before any rectification work is commenced. The objection shall constitute a dispute between the parties, which if not otherwise resolved between the parties within a reasonable time shall be dealt with in accordance with the provisions of the Contract relating to the settlement of disputes. If the Prime Contractor gives notice of objection no rectification of the defect shall be carried out until the Authority so directs.

38. DEFECTS LIABILITY

38.1 The Prime Contractor shall without delay make good at his own expense to the satisfaction of the Authority any defects in the Works identified at the time of acceptance and any defects notified by the Authority as having appeared subsequent to the acceptance of the Works, as defined in Condition 36 (Acceptance), as follows:-

38.1.1 **Maintenance Jobs.** During a period of 12 months from the date of completion;

38.1.2 **Ordered Works.** During a period of 12 months from the date of acceptance by the Authority.

38.1.3 **Latent Defects.** During a period of 6 years from the date of notification of the said defect, provided always that:

38.1.3.1 such 6 year period begins on the date of the acceptance of the relevant Works pursuant to Condition 36;

38.1.3.2 such liability shall cease immediately upon the transfer of ownership, occupation or use of the relevant Works from the Authority to any third party; and

38.1.3.3 the Prime Contractor shall have no liability for any defect to the extent caused by fair wear and tear or by inadequate maintenance, except where such maintenance was the responsibility of the Prime Contractor or its Sub-Contractors pursuant to the Contract.

38.1.4 **Specific Fixtures or Fittings.** In accordance with the manufacturer's guarantee.

38.2 If it becomes necessary for the Prime Contractor to make good any defective portions of the Works under this Condition, the provisions of this Condition 38.1 shall apply in full to the portions of the Works so made good.

39. FRAUD

39.1 The Prime Contractor shall maintain a robust Fraud Prevention and Ethics policy, which concurs with the Authority's zero tolerance regime with regard to Fraud and Theft and in accordance with his tender submission.

39.2 The Prime Contractor shall produce and maintain a Fraud Risk Register of potential fraud and

theft risks to the contract and show what controls they propose to address the risks identified. This is to be reviewed and updated annually from the start of Contract Year 1.

39.3 The Prime Contractor shall provide the FM with a Programme and details of Fraud Awareness Training which is to be provided to the Prime Contractor's servants, suppliers and Sub-Contractors or any other persons under his control at regular intervals. Training is to clearly show what is expected from them to fulfil the Fraud Prevention measures under the contract.

39.4 The Prime Contractor warrants that in entering the Contract he has not committed any fraud and shall have a robust Fraud Prevention and Ethics Policy which concurs with the Authority's zero tolerance regime with regard to Fraud and Theft.

39.5 The Prime Contractor shall procure that his first tier / nominated Supply Chain members are under equivalent contractual obligations as are set out in this Condition and shall take all practicable steps to prevent Fraud or the risk of Fraud arising and shall disclose the relevant provisions within the Supply Chain Contracts upon request by the Authority.

39.6 The Prime Contractor warrants that he has read, and that his employees, agents and first tier / nominated Supply Chain members shall comply with the detailed anti-fraud measures and recommendations set out in the Fraud Prevention Manual Booklet at Annex G hereto and upon entering into this Prime Contract shall circulate copies of the said Manual/Booklet to each and every member of his personnel at any time engaged in relation to the Prime Contract, and to each and every member of the personnel within his first tier / nominated Supply Chain members.

39.7 The Prime Contractor shall, in complying with the measures and recommendations contained within Annex G, produce and maintain a Fraud Risk Register of potential fraud and theft risks to the Contract and show what controls they propose to address the risks identified. This Fraud Risk Register is to be reviewed monthly.

39.8 The Prime Contractor shall, in complying with the measures and recommendations contained within Annex G, keep and maintain all relevant records, invoices, approvals, notes, minutes of meetings and all such other original contract documents as may be required to verify work carried out by the Prime Contractor and his Supply Chain so that they may be provided upon request by the Authority.

39.9 The Prime Contractor shall, in accordance with Annex G (MOD Fraud Prevention Manual), carry out an internal audit on a period not greater than 6 monthly basis in respect of the Contract. Where the Prime Contractor or its parent is a PLC the audit committee of the Prime Contractor or PLC Company shall manage and be responsible for such audit. Where the Prime Contractor is a joint venture company, or a non-PLC, that company or Joint Venture Company shall be set up as an audit committee to manage and be responsible for such audit. The audit committee shall:

39.9.1 Report to the Authority in respect of the standards achieved in the audit;

39.9.2 Notify the Authority of any fraud identified in any internal or external audit; and

39.9.3 Make recommendations to the Authority as to measures should be taken to improve fraud prevention and forward an action plan to show recommendations are put in place and ensure that these are acted upon.

39.10 Without prejudice to Condition 43 and 44 dealing with Confidentiality, the Prime Contractor shall immediately report to the Authority any circumstances giving rise to Fraud within his own organisation, that of his Supply Chain or the Authority or otherwise in relation to the contract and shall provide all such relevant information which may assist the Authority in dealing with such report efficiently and effectively.

39.11 The Prime Contractor shall immediately report to the Authority any act or omission, whether fraudulent, inadvertent or accidental which has resulted or could result in the Authority being charged for

work and/or services which have not been carried out.

39.12 The Prime Contractor shall comply with Condition 46 (Termination) in the event that a Fraud is, in the opinion of the authority deemed to entitle the Authority to terminate the Prime Contractor's employment forthwith or entitle the Authority to insist on the Prime Contractor removing any integral part of his Supply Chain as a result of Fraud.

39.13 The Prime Contractor shall fully co-operate and comply with any investigations and enquiries initiated by the Authority, the Defence Fraud Unit, the National Audit Office, the Police, or any other organisation identified by the Authority and/or any organisation acting on behalf of them. The Prime Contractor shall procure that his Supply Chain Contract, extracts of which are to be provided upon request by the Authority.

39.14 The Authority shall be entitled to set-off, deduct, abate or recover as a debt against the Prime Contractor all monies and losses howsoever arising in connection with or sustained as a consequence of Fraud including all associated investigation costs.

39.15 Any Fraud related actions under this Condition may be brought by the Authority or such other appropriate body by civil or criminal proceedings. Such proceedings shall be brought in the English courts unless the parties otherwise agree.

40. AUDIT

40.1 In addition to any other rights under the Contract, the Authority and its agents shall have an immediate right to audit the books and records being maintained by the Prime Contractor whilst undertaking this Contract, including those books and records relating to any costs and expenses incurred by the Prime Contractor or charged to the Authority and including those books and records being maintained by the Prime Contractor's Sub-Contractors.

41. CORRUPT GIFTS AND PAYMENTS OF COMMISSION

41.1 The Prime Contractor shall not do, and warrants that in entering the Contract he has not done any of the following (hereafter referred to as "prohibited acts"):

41.1.1 offer, give or agree to give to any Crown servant any gift or consideration of any kind as an inducement or reward;

41.1.1.1 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

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

41.1.2 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 him or on his behalf, or to his 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.

41.2 If the Prime Contractor, his servants, agents, suppliers and Sub-Contractors or any other persons under his control does any of the prohibited acts or commits any offence under the Prevention of Corruption Acts 1889 -1916 with or without the knowledge or authority of the Prime Contractor in relation to this Contract or any other contract with the Crown, the Authority shall be entitled to:

41.2.1 terminate the Contract and recover from the Prime Contractor the amount of any loss

resulting from the termination;

41.2.2 recover from the Prime Contractor the amount or value of any such gift, consideration or commission; and

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

41.3 It is not necessary for any of the acts or offences under Condition 41.1 to have been committed with the knowledge or authority of the Prime Contractor for the provisions of this Condition to become effective.

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

41.4.1 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;

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

41.4.2.1 requiring the Prime Contractor to procure the termination of a sub-contract where the prohibited act is that of a Sub-Contractor or anyone acting on its or their behalf;

41.4.2.2 requiring the Prime Contractor to procure the dismissal of an employee (whether it's own or that of a Sub-Contractor or anyone acting on its behalf) where the prohibited act is that of such employee.

41.5 Where the Contract has been terminated under 41.2 of this Condition, the powers given by Condition 45 (Default) shall apply as if there had been a failure in delivery.

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

42. OFFICIAL SECRETS ACTS

42.1 The Prime Contractor's attention is drawn to the provisions of the Official Secrets Acts 1911 to 1989 in general, and to the provisions of Section 2 of the Official Secrets Act 1911 (as amended by the Act of 1920) in particular. The Prime Contractor shall take all reasonable steps by display of notices or by other appropriate means to ensure that all persons employed on any work in connection with the Contract have notice that these statutory provisions apply to them and will continue so to apply after the completion or earlier determination of the Contract or of any sub-contract placed by him for carrying out the Core Services or Core Works.

43. DISCLOSURE OF INFORMATION

43.1 The Prime Contractor shall take every precaution to ensure that information about the Contract, or arising from or connected with the Contract, is divulged only to the minimum number of employees and then only to the extent essential to each person's action in carrying out the Contract. The Prime Contractor shall not in any circumstances allow access by employees to general information not relating to the Establishment with which such employee is personally concerned. No information regarding the services being provided under the Contract or facilities to photograph or film shall be given or permitted by the Prime Contractor except with prior written permission of the Authority.

43.2 The Prime Contractor shall not communicate with representatives of the general and technical press, radio, television or other communications media unless specifically granted permission to do so in

writing by the FM.

43.3 The Prime Contractor shall fully indemnify the Authority, his servants or agents against the costs of dealing with any claims made in respect of information subject to the Data Protection Act 1998, which claims would not have arisen but for some act, omission or negligence on the part of the Prime Contractor, his servants, agents, suppliers and Prime Contractors or any other person under his control.

43.4 The Authority shall not be in breach of the Contract where it can show that any disclosure of Information as detailed in DEFCON 531 (Edn 05/05) Annex H 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 Prime Contractor where the Authority is considering the disclosure of Information under the Act and Regulations and in any event, shall provide prior notification to the Prime Contractor of any decision to disclose the information. The Prime Contractor acknowledges and accepts that it's 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 it's 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 Prime Contractors rights at law.

44. SECURITY MEASURES

44.1 In this Condition:

44.1.1 "secret matter" means any matter connected with or arising out of the execution of the Contract or the work to be carried out thereunder which has been, or may hereafter be, by a notice in writing given by the Authority to the Prime Contractor, designated "top secret" "secret", or "confidential";

44.1.2 "document" includes Briefs, specifications, plans, drawings, photographs and books;

44.1.3 "servant" where the Prime Contractor is a body corporate shall include a director of that body and any person occupying in relation to that body the position of director by whatever name called;

44.1.4 references to a person employed by the Prime Contractor shall be construed as references to any person employed or engaged by the Prime Contractor to do anything in connection with the Contract, whether under a contract of Service with the Prime Contractor or under any other contract or arrangement whatsoever.

44.2 The Prime Contractor shall not, either before or after the completion or determination of the Contract or an Order which forms part of the Contract, do or permit to be done anything which he knows or ought reasonably to know may result in information about a secret matter being:

44.2.1 without the prior consent in writing of the Authority disclosed to or acquired by a person who is an alien or who is a British subject by virtue only of a certificate of naturalisation in which his name was included;

44.2.2 disclosed to or acquired by a person as respects whom the Authority has given to the Prime Contractor a notice in writing which has not been cancelled stating that the Authority requires that secret matters shall not be disclosed to that person;

44.2.3 without the prior consent in writing of the Authority, disclosed to or acquired by any person who is not a servant of the Prime Contractor;

44.2.4 disclosed to or acquired by a person who is a servant of the Prime Contractor except

where it is necessary for the proper performance of the Contract that that person shall have the information.

44.3 Without prejudice to 44.2 of this Condition, the Prime Contractor shall, both before and after the completion or determination of the Contract or an Order which forms part of the Contract, take all reasonable steps to ensure that:

44.3.1 no such person as is mentioned in 44.2.1, 44.2.2, or 44.2.3 of Condition 44.2 shall have access to any thing or document under the control of the Prime Contractor containing information about a secret matter except with the prior consent in writing of the Authority.

44.3.2 no visitor to any premises in which there is any thing to be supplied under the Contract shall see or discuss with the Prime Contractor or any person employed by him any secret matter unless the visitor is authorised in writing by the Authority to do so.

44.3.3 no photograph of any thing to be supplied under the Contract or of any portion of the work carried out in pursuance of the Contract shall be taken except so far as may be necessary for the proper performance thereof or with the prior consent in writing of the Authority and no such photograph shall, without such consent, be published or otherwise circulated.

44.3.4 all information about any secret matter and every document, model or thing which contains or may reveal any such information is at all times strictly safeguarded, and that except in so far as may be necessary for the proper performance of the Contract or with the prior consent in writing of the Authority, no copies of or extracts from any such document, model or thing shall be made or used and no designation or description which may reveal information about the nature or contents of any such document, model or thing shall be placed thereon;

44.3.5 if the Authority gives notice in writing to the Prime Contractor at any time requiring the delivery to the Authority of any such document, model or thing as is mentioned in paragraph 44.3.4 of this Condition, that document, model or thing (including all copies of or extracts therefrom) shall forthwith be delivered to the Authority who shall be deemed to be the owner thereof and accordingly entitled to retain the same.

The decision of the Authority on the question whether the Prime Contractor has taken or is taking all reasonable steps as required by the foregoing provisions of this Condition shall be final and conclusive.

44.4 If and when directed by the Authority, the Prime Contractor shall furnish full particulars of all persons who are at any time concerned with any secret matter.

44.5 If and when directed by the Authority, the Prime Contractor shall secure that any person employed by him who is specified in the direction, or is one of a class of persons who may be specified, shall sign a statement that he understands that the Official Secrets Act 1911 to 1989 and, where applicable, the Atomic Energy Act 1946, apply to the person signing the statement both during the carrying out and after completion or determination of the Contract or an Order which forms part of the Contract.

44.6 If at any time whether before or after the completion or determination of the Contract or an Order which forms part of the Contract it comes to the notice of the Prime Contractor that any person acting without lawful authority is seeking or has sought to obtain information concerning the Contract or an Order which forms part of the Contract or any thing done or to be done in pursuance thereof, the matter shall be forthwith reported by him to the Authority and the report shall in each case be accompanied by a statement of the facts including, if possible, the name, address and occupation of that person and the Prime Contractor shall be responsible for making all such arrangements as he may consider appropriate to ensure that if any such occurrence comes to the knowledge of any person employed by him, that person will forthwith report the matter to the Prime Contractor with a statement of the facts as aforesaid.

44.7 The Prime Contractor shall place every person employed by him (other than a Sub-Contractor for the carrying out of any thing to be done under the Contract) who in his opinion has or will have such knowledge of any secret matter as to appreciate its significance, under a duty to the Prime Contractor to observe the same obligations in relation to that matter as are imposed on the Prime Contractor by 44.2 and 44.3 of this Condition and shall, if directed by the Authority, place every person who is specified in the direction or is one of a class of persons so specified, under the like duty in relation to any secret matter which may be specified in the direction, and shall at all times use his best endeavours to ensure that every person upon whom obligations are imposed by virtue of this Condition observes the said obligations and the Prime Contractor shall give such instructions and information to every such person as may be necessary for that purpose and shall, immediately upon becoming aware of any act or omission which is or would be a breach of the said obligations, report the facts to the Authority with all necessary particulars.

44.8 The Prime Contractor shall before entering into any sub-contract for the carrying out of any thing to be done under the Contract, where the work to be carried out under the sub-contract includes, or will involve the disclosure of information about a secret matter, submit to the Authority for approval a statement of the work to be carried out under that sub-contract and the name (with such particulars as the Authority may require) of the proposed Sub-Contractor and the Prime Contractor shall, if directed by the Authority, include in the sub-contract provisions in such terms as the Authority may consider appropriate for placing the Sub-Contractor under obligations in relation to secrecy and security corresponding to those placed on the Prime Contractor by this Condition, but with such variations (if any) as the Authority may consider necessary. Further, the Prime Contractor shall:

44.8.1 give such notices, directions, requirements and decisions to his Sub-Contractors as may be necessary to bring the provisions relating to secrecy and security which are included in sub-contracts under this Condition into operation in such cases and to such extent as the Authority may direct;

44.8.2 if there comes to his notice any breach by Sub-Contractors of the obligations of secrecy and security included in their sub-contracts in pursuance of this Condition, notify such breach forthwith to the Authority;

44.8.3 if and when so required by the Authority, exercise his power to determine the sub-contract under the provision in that sub-contract which corresponds to 44.11 of this Condition.

44.9 The Prime Contractor shall give the Authority such information and particulars as the Authority may from time to time require for the purposes of satisfying the Authority that the obligations imposed by or under the foregoing provisions of this Condition have been and are being observed and as to what the Prime Contractor has done or is doing or proposes to do to secure the observance of those obligations and to prevent any breach thereof and the Prime Contractor shall secure that a representative of the Authority duly authorised in writing shall be entitled at reasonable times to enter and inspect any premises in which any thing is being done or is to be done under the Contract or in which there is or will be any thing to be supplied under the Contract and also to inspect any document or thing in any such premises or which is being made or used for the purposes of the Contract and that any such representative shall be given all information such as he may require on the occasion of or arising out of any such inspection.

44.10 Nothing in this Condition shall be construed as intended to prevent any person from giving any information or doing any thing on any occasion when it is, by virtue of any enactment, the duty of that person to give that information or to do that thing.

44.11 If the Authority shall consider that any of the following events has occurred, that is to say;

44.11.1 that the Prime Contractor has committed a breach of or failed to comply with any of the foregoing provisions of this Condition; or

44.11.2 that the Prime Contractor has committed a breach of any obligations in relation to secrecy or security imposed upon him by any other contract with the Authority or with any Department or person acting on behalf of Her Majesty; or

44.11.3 that by reason of an act or omission on the part of the Prime Contractor or of a person employed by the Prime Contractor which does not constitute such a breach or failure as is mentioned in Condition 44.11.1 information about a secret matter has been or is likely to be acquired by a person who, in the opinion of the Authority, ought not to have such information, and shall also decide that the interests of the State require the determination of the Contract,

the Authority may give the Prime Contractor notice in writing terminating the Contract or (at his discretion) the Services at any Establishment under the Contract and the Contract or the Services shall be terminated accordingly.

44.12 A decision of the Authority to terminate the Contract or the Services at any Establishment under Condition 44.11 hereof shall be final and conclusive and it shall not be necessary for any notice of such termination to specify or refer in any way to the event or considerations upon which the Authority's decision is based.

44.13 Further to Condition 44.12:

44.13.1 The Prime Contractor may within 7 days of the termination of the Contract or the Services at any Establishment under Condition 44.11 hereof give the Authority notice in writing requesting the Authority to state whether the event upon which the Authority's decision to terminate the Contract or the Services at any Establishment was based is an event mentioned in 44.11.1, 44.11.2 or 44.11.3 of the said Condition 44.11 and to give particulars of that event.

44.13.2 On receipt of such a notice, the Authority shall within 14 days of the receipt of such a request give notice in writing to the Prime Contractor containing such a statement and particulars as are required by the request.

44.13.3 The Authority shall state in the said statement and particulars that the event upon which the Authority's decision to terminate the Contract or the Services at any Establishment was based is an event mentioned in 44.11.1 or 44.11.2 of the said Condition 44.11.

The Prime Contractor may within 7 days of the giving of such last-mentioned notice give a further notice in writing to the Authority requesting the Authority to agree to the submission to arbitration of the question whether there has or has not occurred an event mentioned in whichever of 44.11.1 or 44.11.2 of Condition 44.11 hereof is referred to in the notice given by the Authority under 44.13.2 of this Condition and if the Authority shall within 14 days of the receipt of the notice from the Prime Contractor requesting such arbitration agree to that request, that question shall be referred to arbitration in accordance with the provision of the Contract providing for the reference of disputes to arbitration:

44.14 Provided that a reference to arbitration under this Condition shall not affect the termination of the Contract or the Services at any Establishment by virtue of the notice of termination thereof given under Condition 44.11 hereof whatever may be the decision given in that arbitration.

44.15 If, after notice of termination of the Contract for the Services at any Establishment has been given under Condition 44.11 hereof, the following provisions shall have effect:

44.15.1 the Prime Contractor shall not within 7 days of such determination request the Authority to furnish such a statement and give such particulars as are mentioned in 44.13.1 of Condition 44.13 hereof; or

44.15.2 the Prime Contractor shall not within 7 days of the giving by the Authority of a notice

under 44.13.2 of the said Condition 44.13 request the Authority to agree to arbitration as provided in that Condition; or

44.15.3 the decision given in any arbitration held under the said Condition 44.13 is that there has occurred an event mentioned in whichever of 44.11.1 or 44.11.2 of Condition 44.11 hereof and is referred to in the statement and particulars furnished by the Authority under 44.13.2 of the said Condition 44.13.

44.15.4 the following provisions of this Condition shall have effect, that is to say:

44.15.4.1 the termination of the Contract or the Services at any Establishment shall be without prejudice to any rights of either party thereto against the other which shall have accrued before the date of such termination;

44.15.4.2 the Prime Contractor shall be entitled to be paid for any Work or Service carried out under the Contract and accepted but not paid for by the Authority at the date of such termination either at the price which would have been payable under the Contract for the Work or service if the Contract had not been determined or, if there is no price specifically so payable for that Work or Service, a reasonable price;

44.15.4.3 the Authority may take over any Work or Service carried out under the Contract (whether completed or not) and not accepted at the date of such termination which the Authority may, by notice in writing to the Prime Contractor given within 30 days from the time when the provisions of this Condition shall have effect, elect to take over and the Prime Contractor shall be entitled to be paid for any Work or Service so taken over a price which, having regard to the stage which that Work or Service has reached and its condition at the time is taken over, is a reasonable price and the Prime Contractor shall in accordance with directions given by the Authority deliver any Work or Service taken over under this Condition and take all such other steps as may be reasonably necessary to enable the Authority to have the full benefit of any Work or Service taken over under this Condition;

44.15.5 save as aforesaid, the Prime Contractor shall not be entitled to any payment from the Authority.

44.16 If, after notice of termination of the Contract or the Services at any Establishment under Condition 44.11 hereof:

44.16.1 the Authority shall not within 14 days of the receipt of a request from the Prime Contractor to furnish such a statement and give such particulars as are mentioned in 44.13.1 hereof furnish such a statement and particulars, or

44.16.2 the Authority shall state in the statement and particulars furnished by the Authority under 44.13.2 that the event upon which the Authority's decision to determine the Contract or Services was based is an event mentioned in 44.11.3 hereof, or

44.16.3 the Authority shall not within 14 days of the receipt of a request from the Prime Contractor to agree to arbitration as provided for in the said Condition 44.13, agree to that request, or

44.16.4 the decision given in any arbitration held under the said Condition 44.13 is that there has not occurred an event mentioned in Condition 44.11.1 or 44.11.2 as is referred to in the statement and particulars furnished by the Authority under paragraph 44.13.2.

The respective rights and obligations of the Prime Contractor and the Authority shall be determined in accordance with the provisions of Condition 47 (Break) in all respects as if that Condition formed part of

this Condition, save that for this purpose 47.4 of the said Condition 47 (Break) shall be revised as follows:

44.16.4.1 there shall be omitted the words "in the event of such notice being given" and also the proviso.

44.16.4.2 for the words "at the expiration of the notice" in 47.4 there shall be substituted the words "upon the termination of the Contract or (at his discretion) the Services at any Establishment under the Contract under 44.2.11 of this Condition."

44.17 Subject to the operation of the said Conditions as so modified, the termination of the Contract or the Services at any Establishment shall be without prejudice to any rights of either party thereto against the other which shall have accrued before the date of the termination of the Contract or the Services at any Establishment.

44.18 For the purpose of a Contract the secret matter referred to in Condition 44.1.1, will be defined by the FM as and when it is applicable.

45. DEFAULT

45.1 Should the Services or any portion thereof not be carried out within the time or times specified or to the standards agreed in the Contract, or in an Order where used, the Authority may without prejudice to any other remedies by notice in writing to the Prime Contractor determine the Contract either as respects the Services which have not been carried out in accordance with the Contract at the time of such determination or as respects all the Services to which the Contract relates other than those carried out in accordance with the Contract before that time. The Authority's rights under this Condition 45.1 shall not apply and the Prime Contractor shall have no liability, for any delay or failure caused by the acts or omissions of the Authority or any other third party. The Prime Contractor's Supply Chain shall not constitute third parties for the purposes of this Condition 45.1.

45.2 Where the Authority has determined the Contract under Condition 45.1 hereof and without prejudice as aforesaid the Authority may obtain all or any of the Services as respects which the Contract is so determined by arranging for those Services to be carried out by alternative means and there shall be recoverable from the Prime Contractor the amount by which the aggregate of the cost of obtaining the Works and Services in this way exceeds the amount which would have been payable to the Prime Contractor in respect of all the Services so replaced if they had been carried out in accordance with the Contract.

46. TERMINATION

46.1 The provisions of this Condition are without prejudice to any other rights that the Authority may have to terminate this Contract or the Services at any Establishment under the Contract against the Prime Contractor.

46.2 The Authority may terminate this Contract or (at his discretion) the Services at any Establishment under the Contract in accordance with Conditions 41 (Corrupt Gifts And Payments Of Commission) or 44 (Security Measures) or forthwith on notice to the Prime Contractor if:

46.2.1 the Prime Contractor commits a material or persistent breach of any of its obligations under this Contract and (where that breach is capable of remedy) fails to remedy the same within 30 days or such other period of time as the Authority may reasonably require in a notice to the Prime Contractor referring to its rights to terminate;

46.2.2 the Prime Contractor is deemed to be unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986, becomes unable to pay its debts as they fall due or

suspends making payments of all or any class of its debts or announces an intention to do so;

46.2.3 any meeting of the Prime Contractor is convened to consider a resolution to present an application for an administration order; an application for an administration order in relation to the Prime Contractor is presented to a competent court and (if presented by a creditor) is not withdrawn, struck out or discharged within 21 days; the Prime Contractor passes a resolution to present an application for an administration order; or an administration order is made in relation to the Prime Contractor;

46.2.4 the Prime Contractor takes any steps with a view to proposing (under any enactment or otherwise) any kind of composition, scheme of arrangement, compromise or arrangement with any of his creditors generally or any class of them;

46.2.5 any administrative or other receiver or manager is appointed over the Prime Contractor or all or any substantial part of its assets; the directors of the Prime Contractor request any person having the power to do so to appoint such a receiver or manager; or any other lawful steps are taken to enforce any security or encumbrance over all or any part of the assets of the Prime Contractor;

46.2.6 any attachment, sequestration, distress or execution affects all or any substantial part of the Prime Contractor's assets and is not discharged within 21 days;

46.2.7 except in the case of a reconstruction or amalgamation on a solvent basis approved by the Authority (such approval not to be unreasonably withheld or delayed), the Prime Contractor convenes a meeting to consider a resolution (or to petition for) its winding up, or passes such a resolution; or a petition is presented for the winding up of the Prime Contractor; or an order of a competent court is made for the winding up of the Prime Contractor;

46.2.8 in relation to any jurisdiction where the Prime Contractor carries on business or to which any substantial part of its assets are subject, any event occurs which is analogous to any of the events described in Conditions 46.2.2 to 46.2.7;

46.2.9 the Prime Contractor ceases or threatens to cease all or a substantial part of its business;

46.2.10 there is a change in the management or control of the Prime Contractor which in the opinion of the Authority gives rise to a conflict of interest in relation to this Contract or may prejudice the security interests of the Authority; or

46.2.11 any event described in Conditions 46.2.2 to 46.2.10 occurs in respect of any company, which from time to time has guaranteed the obligations of the Prime Contractor in connection with the Contract.

46.3 Termination of the Contract or the Services at any Establishment shall not prejudice or affect any rights of action or remedy which have accrued or shall thereafter accrue to the Authority.

46.4 Termination of the Contract or the Services at any Establishment for any reason shall not affect any obligations on the Prime Contractor under the Contract intended to remain in force after termination, which obligations include (without limitation) those arising under Condition 32 (Insurance), and 46.5 and 46.6 of this Condition 46 (Termination).

46.5 On termination of the Contract or the Services at any Establishment for any reason, the Prime Contractor shall co-operate fully with the Authority to take such steps as the Authority may require to enable all Works and Services then current to be transferred to such other Prime Contractors as the Authority directs and the Prime Contractor shall deliver up to the Authority all drawings, reports, specifications and other documents relating to the Contract to the Authority.

46.6 If the Authority, in the exercise of his rights contained in Conditions 41 (Corrupt Gifts and Payments of Commission), 44 (Security Measures) or 46 (Termination) shall terminate the Contract or the Services at any Establishment, the following provisions shall take effect with regards to the Contract:

46.6.1 all sums of money that may then be due or accruing from the Authority to the Prime Contractor shall cease to be due or to accrue due;

46.6.2 the Authority may hire any persons in the employment of the Prime Contractor and with them and/or any other persons provided by the Authority may purchase or do anything requisite for the completion of the Services, or may employ other Prime Contractors to complete the same, and the Prime Contractor shall have no claim whatsoever in respect of such action by the Authority;

46.6.3 the Prime Contractor shall (except where termination occurs by reason of any of the circumstances described in 46.2.2 to 46.2.8), if required by the Authority, assign to the Authority without further payment, the benefit of any sub-contract for the supply of any Services or the procurement of Works which he may have made in connection with the Contract and the Authority shall pay to any such Sub-Contractor/Consultant or supplier the price (or the balance thereof remaining unpaid) which the Prime Contractor may have agreed to pay thereunder: provided that any part of the price (or balance) so paid which has been covered by any previous payment to the Prime Contractor shall be forthwith recoverable by the Authority from the Prime Contractor.

46.6.4 notwithstanding that the Authority has not required assignment in accordance with 46.6.3 of this Condition, the Authority may pay to any Sub-Contractor, consultant or supplier any amount due to him which has been covered by any previous payment to the Prime Contractor and the amount so paid shall be forthwith recoverable by the Authority from the Prime Contractor.

Step-In – Supply Chain

46.7 The Prime Contractor shall procure that in the event of the determination of the Prime Contractor's employment under the Contract as a consequence of a default by the Prime Contractor pursuant to Condition 46.2 or a situation arising under Condition 46.6 the Supply Chain will, if so required by notice in writing given by the Authority and subject to Condition 46.12, accept the instructions of the Authority or his appointee to the exclusion of the Prime Contractor in respect of the Works upon the terms and conditions of the Supply Chain Contracts. The Prime Contractor acknowledges that the Supply Chain shall be entitled to rely on a notice given to the Supply Chain by the Authority under this Condition 46.7 as conclusive evidence for the purpose of this Contract of the determination of the Prime Contractor's employment by the Authority; and further acknowledges that such acceptance of the instructions of the Authority to the exclusion of the Prime Contractor shall not constitute any breach of the Supply Chain's obligations to the Prime Contractor under the Supply Chain Contracts.

46.8 The Prime Contractor shall make it a term of his Supply Chain Contracts that his Supply Chain shall not exercise any right of determination of their employment under the Supply Chain Contracts without having first:

46.8.1 copied to the Authority any written notices required to be sent prior to there being an entitlement to give notice that such employment is to be determined; and

46.8.2 given to the Authority 10 Working Days prior written notice that they have the right under their Supply Chain Contracts to notify the Prime Contractor that their employment is determined.

46.9 The Prime Contractor shall make it a term of his Supply Chain Contracts that there is to be no

repudiation by the Supply Chain without their having first given to the Authority 10 Working Days prior written notice that they intend to so inform the Prime Contractor.

46.10 The Authority may not later than the expiry of the relevant notice period under Condition 46.8 or 46.9 require the Supply Chain by notice in writing to accept the instructions of the Authority or his appointee to the exclusion of the Prime Contractor in respect of the Works upon the terms and conditions of the Supply Chain Contracts. The Prime Contractor acknowledges that the Supply Chain shall be entitled to rely on a notice given to the Supply Chain by the Authority under this Condition that acceptance by the Supply Chain of the instruction of the Authority to the exclusion of the Prime Contractor shall not constitute any breach of the Supply Chain's obligations to the Prime Contractor under the Supply Chain Contracts. Provided that, subject to Condition 46.11 nothing shall relieve the Supply Chain of any liability that they may have to the Prime Contractor for any breach by the Supply Chain of the Supply Chain Contracts or where the Supply Chain have wrongfully served notice under the Supply Chain Contracts that they are entitled to determine their employment under the Supply Chain Contracts or have wrongfully treated the Supply Chain Contracts as having been repudiated by the Prime Contractor.

46.11 It shall be a condition of any notice given by the Authority under Condition 46.7 or 46.10 that the Authority or his appointee accepts liability for payment of the sums certified as due/properly due to the Supply Chain under the Supply Chain Contracts and for performance of the Prime Contractor's obligations thereunder including payment of any sums outstanding at the date of such notice. Upon the issue of any notice by the Authority, the Supply Chain Contracts shall continue in full force and effect as if no right of determination of their employment under the Supply Chain Contracts, nor any right of the Supply Chain to treat the Supply Chain Contracts as having been repudiated by the Prime Contractor, had arisen and the Supply Chain shall be liable to the Authority and his appointee under the Supply Chain Contracts in lieu of their liability to the Prime Contractor.

Fraud

46.12 If, in the reasonable opinion of the Authority, the Prime Contractor or his Supply Chain (or anyone employed by or acting on behalf of any of them) or any of his or their agents or shareholders commits any Fraud in relation to the Contract or any other contract with the Authority or any other public body then the Authority shall be entitled to act in accordance with Conditions 46.13 to 46.18 below.

46.13 If, in the reasonable opinion of the Authority, a Fraud is committed by the Prime Contractor or by an employee not acting independently of the Prime Contractor, then the Authority may terminate the Contract by giving 10 Working Days' notice to the Prime Contractor.

46.14 If, in the reasonable opinion of the Authority, a Fraud is committed by an employee of the Prime Contractor acting independently of the Prime Contractor, then the Authority may give notice to the Prime Contractor of termination and the Contract will terminate, unless within 30 Working Days of receipt of such notice the Prime Contractor terminates the employee's employment, and, if necessary, procures the performance of such part of the service and/or works by another.

46.15 If, in the reasonable opinion of the Authority, a Fraud is committed by the Supply Chain or by an employee within the Supply Chain not acting independently of that Supply Chain, then the Authority may give notice to the Prime Contractor of termination and the Contract will terminate, unless within 30 Working Days of receipt of such notice the Prime Contractor terminates the relevant Supply Chain Contract and procures the performance of such part of the services and/or works by another.

46.16 If, in the reasonable opinion of the Authority, a Fraud is committed by an employee within the Supply Chain acting independently of the Supply Chain, then the Authority may give notice to the Prime Contractor of termination and the Contract will terminate, unless within 30 working days of receipt of such notice the Supply Chain terminates the employee's employment and, if necessary, procures the performance of such part of the services and/or works by another.

46.17 If, in the reasonable opinion of the Authority, a Fraud is committed by any other Person not specified in Conditions 46.1 to 46.16, then the Authority may give notice to the Prime Contractor of termination and the Contract will terminate, unless within 30 Working Days of receipt of such notice, the Prime Contractor procures the termination of such Person's employment and of the appointment of their employer (where not employed by the Prime Contractor or the Supply Chain) and (if necessary) procures the performance of such part of the works and/or services by another.

46.18 Without prejudice to Condition 46.12 in the event that the Prime Contractor or his Supply Chain fail in material respects to comply with the procedures laid down in Annex G (Fraud Prevention Manual) for a period of 5 Working Days following a request by the Authority to so comply then the Authority shall be entitled to forthwith terminate the Prime Contractor's employment and in such event Conditions 46.3 to 46.5 shall apply with full force and effect to any termination for Fraud pursuant to Conditions 46.12 to 46.17 or for failure to comply with the procedures in Annex G (Fraud Prevention Manual).

Documents to be handed over on termination

46.19 In the event of any termination for whatever reason under this Condition, the Prime Contractor shall forthwith deliver to the Authority all books, records, accounts, manuals, and all other relevant documentation (including the health and safety file, whether completed in whole or in part) and where necessary provide the Authority with the non-exclusive right to continue to use all Intellectual Property Rights owned by the Prime Contractor contained therein. Furthermore, the Authority shall in accordance with Condition 29 (Vesting) have the right to take possession of all of the equipment, fuel and supplies of the Prime Contractor located at an MOD Establishment for the purposes of performing the obligations of the Prime Contractor under this Contract. The Authority may employ any other Person, firm or corporation to perform such services.

47. BREAK

47.1 In addition to his powers under any other of these Conditions the Authority shall have power:

47.1.1 to direct the Prime Contractor to cease work on any Order by giving written notice to expire at the end of 4 weeks; and

47.1.2 to determine the Contract or the Services at any Establishment under the Contract by giving written notice to the Prime Contractor to expire at the end of 12 weeks.

47.2 Notice under 47.1.1 of this Condition shall be deemed to be notice of postponement unless otherwise stated.

47.3 Upon the expiration of the periods of notice stated in 47.1.1 and 47.1.2 hereof the Order shall be abandoned or postponed as the case may be or the Contract or the Services at any Establishment under the Contract shall be determined without prejudice to the rights of the parties accrued at the date of abandonment, postponement or termination as appropriate, subject to the operation of the following provisions of this Condition.

47.4 In the event of such notice being given the Authority shall at any time before the expiration of the notice be entitled to exercise and shall as soon as may be reasonably practicable within that period exercise such of the following powers as he considers expedient:

47.4.1 to direct the Prime Contractor, where work has not been commenced, to refrain from commencing work;

47.4.2 to direct the Prime Contractor to complete in accordance with the Order all or any of the Services, or any part thereof in course of design, construction, repair, maintenance or operation at the expiration of the notice, and to hand over the same at such time or times as may be mutually agreed on or, in default of agreement at the time or times provided by the

Contract. All Works (including designs) handed over by the Prime Contractor in accordance with such directions and accepted by the Authority shall be paid for at the agreed Contract Price or where no agreement exists, at a fair and reasonable price;

47.4.3 to direct that the Prime Contractor shall as soon as may be reasonably practicable after receipt of such notice:

47.4.3.1 take such steps as will ensure that work on the design, construction repair and maintenance tasks is reduced as rapidly as possible;

47.4.3.2 as far as possible consistent with 47.4.3.1 concentrate work on the completion of tasks already in a partly finished state;

47.4.3.3 determine on the best possible terms such sub-contracts and Orders for design construction and repair and maintenance and for materials and parts as have not been completed or delivered, observing in connection with sub paragraphs 47.4.3.1 and 47.4.3.2 any direction given under 47.4.1 and 47.4.2 as far as may be possible.

47.5 In the event of such notice being given:

47.5.1 the Authority may, at its discretion take over from the Prime Contractor at a fair and reasonable price all unused and undamaged materials, bought-out parts and components, and Works in course of design or Construction, in the possession of the Prime Contractor at the expiration of the notice and properly provided by or supplied to the Prime Contractor for the performance of the Contract except such materials, bought-out parts and components as the Prime Contractor shall, with the concurrence of the Authority, elect to retain;

47.5.2 the Prime Contractor shall prepare and deliver to the Authority within an agreed period, or in default of agreement within such period as the Authority may specify, a list of all such unused and undamaged materials, bought-out parts and components and Works in the course of design or construction liable to be taken over by or previously belonging to the Authority and shall deliver such Things in accordance with the directions of the Authority who shall pay to the Prime Contractor fair and reasonable handling charges incurred in complying with such directions;

47.5.3 the Authority shall indemnify the Prime Contractor against any commitments, liabilities or expenditure (including but not limited to redundancy costs) which are reasonably and properly chargeable by the Prime Contractor in connection with the Contract to the extent to which the said commitments, liabilities or expenditure would otherwise represent an unavoidable loss by the Prime Contractor by reason of the determination or cessation of the Contract or the Services or any part thereof.

47.6 Provided that in the event of the Prime Contractor not having observed any direction given to him under 47.4 the Authority shall not under this Condition pay any sums in excess of those which the Authority would have paid had the Prime Contractor observed that direction.

47.7 If in any particular case hardship to the Prime Contractor should arise from the operation of this Condition it shall be open to the Prime Contractor to refer the circumstances to the Authority who, on being satisfied that such hardship exists, shall make such allowance if any as in his opinion is reasonable and the decision of the Authority on any matter or thing arising out of this Condition shall be final and conclusive.

47.8 The Authority shall not in any case be liable to pay under the provisions of this Condition any sum which, when taken together with any sums paid or due or becoming due to the Prime Contractor under the Contract, shall exceed the total price of the Services payable under the Contract.

47.9 The Prime Contractor shall in any sub-contract or Order the value of which is £10,000 or over made or placed by him with any one Sub-Contractor in connection with or for the purpose of the Contract take power to determine such sub-contract or Order in the event of termination of the Contract or the Services at any Establishment or the abandonment or postponement of an Order by the Authority under this Condition upon the terms of 47.1 to 47.5 inclusive of this Condition save only that:

47.9.1 the name of the Prime Contractor shall be substituted for the Authority throughout except in 47.4; and

47.9.2 the period of notice of determination shall be such as may be specified in the Contract as the appropriate period for notice to determine a sub-contract or Order under this Condition or, if no period be specified, two weeks.

47.10 If within six months from the date of postponement the Authority instructs the Prime Contractor to resume work on the Order, then any payments made shall be considered as payments on account towards the total fee payable. Claims for additional time charges necessarily incurred in resurrecting partially completed Orders will be given reasonable consideration by the Authority.

47.11 If the Authority has not instructed the Prime Contractor to resume work on an Order which has been postponed at a date six months from the date of postponement, the Order shall be deemed to be abandoned without the need of notice of abandonment from the Authority.

48. PAYMENT UNDER P2P

48.1 From such date as the Authority shall notify the Prime Contractor that the P2P system is available for use, the procedure set out in this Condition 48.1 and Conditions 48.1.1 to 48.1.5 inclusive shall apply: All applications for payment shall be submitted 4 weekly in arrears on Form AG 173 to the FM for scrutiny and approval and (except for all Services to be performed on the basis of a schedule of rates as set out in Booklet 5) must be accompanied by all relevant suppliers/Sub-Contractors' invoices (certified copies are acceptable). Once certified and signed by the FM it will be retained for audit purposes. The relevant forms and further information can be found in Annex Q.

48.1.1 Upon submission of the invoice the Authority shall within 5 Working days:

48.1.1.1 either receipt the request on the P2P system ("Payment Approval") and specify the amount receipted and the basis on which that amount was calculated; or

48.1.1.2 send to the Prime Contractor a written notice that no amount is approved in respect of the Payment Request ("Notice of Non-Approval")

48.1.1.3 Where either the amount of the Payment Approval is less than the Payment Request or a Notice of Non-Approval is issued, the Authority shall specify the reasons why he considers the Payment Approval may be withheld or abated and the amount of the withholding attributable to each reason.

48.1.2 The receipting by the Authority of your Payment Request (P2P Invoice) will enable payment to be made by the Bill Paying Branch.

48.1.3 All valid, properly completed Invoices for payment received in P2P shall be paid by the Authority in accordance with this Condition 48 by means of BACS directly into the Prime Contractors bank account (Project Bank Account) and to facilitate payment by means of the BACS system, the Prime Contractor shall provide the Bill Paying Branch in advance of the submission of valid claims details of the name and address of his bank, sort code and account number.

48.1.4 Notwithstanding any statement to the contrary on the Payment Request, the Payment Approval shall not be construed as acceptance by the Authority of the performance of the Prime Contractor's obligations nor as a waiver of his rights and remedies under the Contract or otherwise.

48.1.5 The due date for payment ("Due Date") shall be as follows:

48.1.5.1 Where the Authority has receipted your application on P2P in accordance with Condition 48.1.1 the amount receipted shall become due on the day the Bill Paying Branch receives it.

48.1.5.2 Where neither a Payment Approval nor a Notice of Non-Approval has been issued and should have been issued in accordance with Condition 48.1.1 the amount of the relevant Payment Request shall become due in 3 Working Days after the date upon which the Authority should have sent either the Payment Approval or Notice of Non-Approval in accordance with Condition 48.1.1.

48.1A Until such date as the Authority shall notify the Prime Contractor that the P2P system is available for use, the procedure set out in this Condition 48.1A and Conditions 48.1A.1 to 48.1A.3 inclusive shall apply in substitution for Conditions 48.1.1 to 48.1.5 inclusive: All applications for payment shall be submitted 4 weekly in arrears on Form AG 173/177 to the Designated Officer for scrutiny and approval and must be accompanied by all relevant suppliers/sub-contractors' original invoices (photocopied invoices are not acceptable). Once certified the DO will return the Form AG 173/177 to the contractor for onward transmission to the Bill Paying Branch. Payment will be due on the relevant date following receipt by the Designated Officer of Form AG 173/177 specifying the amount of the payment proposed to be made in respect of each application and the basis upon which that amount has been calculated.

48.1A.1 The Prime Contractor shall submit valid invoices for payment of bills properly payable under the terms and conditions of the Contract to the Bill Paying Branch designated at Annex D to Booklet 2 (Conditions of Contract). The Bill Paying Branch shall make payment to the Prime Contractor of all valid claims submitted for payment in accordance with the terms and conditions of the Contract by means of a Bankers Automated Clearing Service (BACS) system directly into the Prime Contractor's nominated bank account.

48.1A.2 To facilitate payment by means of the BACS system, the Prime Contractor shall be required to advise the Bill Paying Branch 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. The Prime Contractor shall be required to re-validate this information with the Bill Paying Branch on an annual basis.

48.1A.3 Payment shall only be made following certification by the Designated Officer of satisfactory performance on Form AG 173/177. After such certification the consolidated Form AG 173/177 shall be passed to the Defence Bill Paying Authority supported by a Form DAB 10.

48.1.6 **Project Bank Account**

48.1.6.1 On a date to be agreed by the Authority and the Prime Contractor, the Project Bank Account will be set up with a one-off deposit of £1,000 (One Thousand pounds only) being placed by the Prime Contractor.

48.1.6.2 The Project Bank Account will be opened by the Prime Contractor and held jointly with the Authority in accordance with the terms set out in Trust Deed and Bank Account Agreement.

48.1.6.3 The Project Bank Account will remain in place until the end of the Contract.

48.1.6.4 For the purposes of the Construction Industry Scheme (CIS), the Authority will be responsible for the action, discharge, completion and submission of all CIS responsibilities in relation to the Prime Contractor. The Prime Contractor will be responsible for the action, discharge, completion and submission of all CIS responsibilities for the Sub-Contractors.

48.1.6.5 At the end of the Contract, the Project Bank Account will be closed and any balance transferred to the Prime Contractor.

48.2 The Prime Contractor's applications for payment shall be submitted on the following basis:

Applies to ISPA only:

48.2.1 The Mobilisation Fees shall be paid against the agreed milestone payment schedule contained within Item 1A of Pricing Information, Booklet 5 following satisfactory completion of all deliverables in accordance with Requirements Document, Booklet 3 and the Prime Contractor's mobilisation plan.

48.2.2 Firm Price Fees detailed within Items 1 and 2A.1 to 2A.6 (inclusive) of the Pricing Information, Booklet 5 to be paid on a 4 weekly basis. In accordance with the Prime Contractor's own performance monitoring regime, where any work has not been carried out, the fee application should be abated by a corresponding amount.

48.2.3 For Ordered Works, payment will be made on the basis of the agreed Firm Price detailed in the MOD Form 1097 or MOD Form 1097V. (All orders having been priced in accordance with Item 3H of Booklet 5 or other appropriate pricing strategy agreed with the FM).

48.2.4 Costs associated with transition and demobilisation will be agreed at a later date, with an agreed price being based on the prices within Booklet 5.

Applies to BNAF only:

48.2.1 The Mobilisation Fees shall be paid against the agreed milestone payment schedule contained within Item 1A of Pricing Information, Booklet 5 following satisfactory completion of all deliverables in accordance with Requirements Document, Booklet 3 and the Contractor's mobilisation plan.

48.2.2 Firm Price Fees detailed within Items 1B and 2A to 4C (inclusive) of the Pricing Information, Booklet 5 to be paid on a 4 weekly basis. In accordance with the Prime Contractor's own performance monitoring regime, where any work has not been carried out, the fee application should be abated by a corresponding amount.

48.2.3 For Ordered Works, payment will be made on the basis of the agreed Firm Price detailed in the MOD Form 1097 or MOD Form 1097V. (All orders having been priced in accordance with Item 12H of Booklet 5 or other appropriate pricing strategy agreed with the FM).

48.2.4 Costs associated with transition and demobilisation will be agreed at a later date, with an agreed price being based on the prices within Booklet 5

48.3 Should the performance of the Prime Contractor be deemed to be unsatisfactory, the Authority reserves the right to withhold payment of all or part of the price for the relevant item as appropriate. The Authority shall not withhold payment without first notifying the Prime Contractor in writing 5 days before the payment is due of the amount to be withheld and the reasons for this. Should unsatisfactory performance of the Prime Contractor be deemed to have caused another contractor to fail to perform then the Authority reserves the right to withhold payment as appropriate. The Authority shall not withhold

payment without first notifying the Prime Contractor in writing 5 days before the payment is due of the amount to be withheld and the reason for this.

48.4 Where the Prime Contractor enters into a sub-contract with a supplier or Sub-Contractor for the purpose of performing the Contract, he shall cause a term to be included in such sub-contract which requires payment to be made to the Sub-Contractor within a specified period not exceeding 30 days from receipt of a valid claim as defined by the sub-contract requirements. In the event that the duration of the work to be carried out under such sub-contract is agreed by the Prime Contractor and his supplier or Sub-Contractor as being more than 45 days, the Prime Contractor and his supplier or Sub-Contractor may agree a timetable of one or more interim payments to be made upon satisfactory completion of previously agreed milestones.

48.5 The Authority and the Prime Contractor shall at all times take all reasonable steps to minimise and mitigate any loss for which the relevant party is entitled to bring a claim against the other party pursuant to this Contract.

48.6 The Authority may not withhold payment of any sum due under the Contract unless not later than 5 days before the final date for payment of the said sum it shall have served a notice in writing on the Prime Contractor specifying:

48.6.1 the amount proposed to be withheld and the ground for withholding payment, or;

48.6.2 if there is more than one ground, each ground and the amount attributable to it.

48.6.3 the title and Contract number of the Contract

48.7 Where the ground or grounds for withholding payment are referred to Dispute Resolution under Condition 59 and the amount or amounts withheld should be paid, in whole or in part, payment shall be made not later than:

48.7.1 7 days from the date of the decision, or;

48.7.2 the date which would have been the final date for payment, whichever is the later.

48.8 **Exemption from Duty / Turnover Tax**

48.8.1 The Prime Contractor shall avail himself of all tax and duty concessions of any type whatsoever applicable to the services supplied under the Contract and the price quoted shall be exclusive of such tax or duty. In the event of any such tax or duty being paid he shall state what amount of tax or duty is included in the price.

49. **PAYMENT AND INTEREST**

49.1 The Final Date for Payment by the Authority of an amount due will be the Relevant Day.

49.2 Where and to the extent that the debt would otherwise be a "qualifying debt" under the Late Payment of Commercial Debts (Interest) Act 1998 ("the Act"):

49.2.1 the interest provided for by this Condition is a contractual remedy and is not statutory interest. Therefore, to the extent permissible by law, the provisions of the Act relating to statutory interest shall not apply to the Contract;

49.2.2 from the day after the Relevant Day and thereafter until payment is made, simple interest at a rate calculated in accordance with Sub-Condition 49.2.3 of this Condition, may be claimed by the Prime Contractor on the value of all valid claims for payment (or unpaid parts

thereof);

49.2.3 without prejudice to Condition 49.2.1 of this Condition, the rate of interest referred to in Sub-Condition 49.2.2 of this Condition shall be the prevailing rate of statutory interest (as defined in the Act) on the Relevant Day;

49.2.4 no interest shall be payable for any period of delay attributable to the conduct of the Prime Contractor;

49.2.5 all applications for interest made pursuant to this Condition shall be notified in writing to the Authority.

49.2.6 any interest pursuant to this Condition shall not form a part of the Contract Price and, as a remedy for late payment, shall not be subject to VAT.

49.3 If the Authority corrects the amount due in a later Payment Approval, then the Authority will pay interest on the corrected amount. Interest will be calculated from the date when the incorrect amount was certified until the date when the corrected amount is included in a later Payment Approval.

50. RECOVERY OF SUMS DUE

50.1 Wherever under the Contract any sum of money shall be recoverable from or payable by the Prime Contractor the same may be deducted from any sum then due or which at any time thereafter may become due to him under the Contract or any other contract with the Authority or with any Department or Office of Her Majesty's Government.

51. BANKING AND FINANCIAL DEALINGS ACT 1971

51.1 Where any act is required to be done within a specified period after or from a specified date:

51.1.1 The period begins immediately after that date, and;

51.1.2 Where the specified period would include Christmas Day, Good Friday or a day which under the Banking and Financial Dealings Act 1971 is a Bank Holiday in England and Wales, or, as the case may be, in Scotland or in Northern Ireland, that day shall be excluded.

52. BANKRUPTCY AND INSOLVENCY

52.1. The Authority may summarily determine the Contract, without compensation to the Prime Contractor, by giving written notice of such determination to the Prime Contractor at any time after any of the following events where the Prime Contractor is an individual or a firm;

52.1.1 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

52.1.2 the court making an interim order pursuant to Section 252 of the Insolvency Act 1986; or

52.1.3 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

52.1.4 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 Prime Contractor is notified of the presentation; or

52.1.5 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

52.1.6 where the Prime 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 Prime Contractor as being unable to pay his debts if:

52.1.6.1 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

52.1.6.2 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.

52.1.7 the presentation of a petition for sequestration in relation to the Prime Contractor's estates unless it is withdrawn within 3 working days from the date on which the Prime Contractor is notified of the presentation; or

52.1.8 the court making an award of sequestration in relation to the Prime Contractor's estates. Where the Prime Contractor is a company registered in England

52.1.9 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 Prime Contractor is notified of the presentation; or

52.1.10 the court making an administration order in relation to the company; or

52.1.11 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 Prime Contractor is notified of the presentation; or

52.1.12 the company passing a resolution that the company shall be wound up; or

52.1.13 the court making an order that the company shall be wound-up; or

52.1.14 the appointment of a Receiver or manager or Administrative Receiver. Where the Prime 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 paragraphs 52.1.9 to 52.1.14 above.

52.2. 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 Prime Contractor.

53. VALUE ADDED TAX

53.1 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 Prime Contractor to the Authority.

53.2 If the Prime 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 Prime Contractor is liable to pay the tax due to HM Revenue and Customs (HMRC), the Authority shall pay to the Prime Contractor in addition to the Contract Price (or any other sum due to the Prime 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 Prime Contractor to obtain and pass to the Authority a formal ruling from HMRC.

53.3 The Prime Contractor is responsible for the determination of VAT liability. The Prime Contractor is to consult his local VAT office (and not the Commercial Officer) in cases of doubt. The Prime 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.

53.4 Where supplies of Articles and/or Services come within the scope of UK VAT, but the Prime 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.

53.5 Where Articles and/or Services are deemed to be supplied to the Authority outside the UK, the Prime 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 Prime Contractor in addition to the Contract Price (and any other sum due to the Prime Contractor under the Contract) a sum equal to the tax the Prime Contractor is liable to pay to the tax authorities of the country in question in relation to the Articles and/or Services.

53.6 For the avoidance of doubt, the Authority shall not be required to pay any sum in respect of the Prime 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.

54. PERFORMANCE AND MONITORING

54.1 The Prime Contractor shall, taking into account all requirements forming part of the Contract, issue appropriate operating and procedural instructions in writing to all staff engaged on the Contract.

54.2 The Prime Contractor shall maintain such records in respect of the Contract for a period of 6 years (12 if Prime Contractor designed) after the end date of the contract duration. The Prime Contractor shall make available such records for the use of the Authority when required, given reasonable notice. They shall not be released, published or disposed of without the prior written approval of the Authority.

54.3 The Prime Contractor shall, as required by the FM, make written submissions or oral presentations of the work done under the Contract in aid of any review of policy or of the conduct of business at the Establishments. Liaison meetings between the Authority and the Prime Contractor shall be held as required by the Authority. The Authority will make the necessary arrangements for these meetings which will be held at the offices of the FM. The Authority or the Prime Contractor may call additional meetings as and when required. A record of all meetings shall be made by the Authority and shall be provided to the Prime Contractor within 7 days of the date of the said meeting or as directed by the FM.

54.4 The Prime Contractor shall arrange for the attendance of such members of his staff and those of his Sub-Contractors or his agents who may be required by the Authority to attend as witnesses at Boards of Enquiry or similar proceedings.

54.5 The Prime Contractor shall fully co-operate and comply with any investigations and enquiries Initiated by Defence Estates, the Defence Fraud Analysis Unit, the Comptroller and Auditor General, the National Audit Office, the MOD Police or any other organisation identified by the Authority and/or any organisation acting on behalf of any of them. The Prime Contractor shall procure that his Sub-Contractors shall comply with identical Conditions to be included within the sub-contracts, extracts of which are to be provided upon request by the Authority.

54.6 The Prime Contractor shall attend Monthly progress meetings with the Authority to assess

progress of the Works. Within a minimum of 5 Working Days prior to the Monthly meeting the Prime Contractor shall provide a written report to the Authority incorporating the reports as detailed in the Requirements Document, Booklet 3, on and as agreed with the FM. The Authority shall be responsible for taking the minutes of all meetings and distributing to attendees within 7 days of the date of such meetings.

55. SUSPENSION OF PERFORMANCE

55.1 If a sum due under the Contract is not paid in full by the final date for payment and no notice to withhold payment has been served on the Prime Contractor then provided the failure to pay continues for 7 days after the Prime Contractor has given the FM written notice in accordance with Condition 55.2 of his intention to suspend the performance of his obligations under the Contract then the Prime Contractor may suspend such performance of his obligations under the Contract until such payment in full is made.

55.2 Any written notice of intention to suspend issued pursuant to Condition 55 shall specify:

- 55.2.1 the name and reference number of the Contract;
- 55.2.2 the ground or grounds upon which the Prime Contractor intends to suspend performance;
- 55.2.3 the date upon which it is intended to suspend performance;
- 55.2.4 the amount alleged to be due but not paid in full;

and should be accompanied by a copy of the application for payment, which the Prime Contractor contends, has not been paid in full.

55.3 The Prime Contractors right to suspend performance shall immediately cease upon the Authority making payment in full of the amount identified as unpaid in the notice served under Condition 55.2.

55.4 In the event the Prime Contractor suffers and/or incurs loss and/or expense by reason of his properly suspending performance of his obligations hereunder then he shall as soon as it becomes, or should reasonably have become, apparent to him he has or is likely to suffer and/or incur loss and/or expense notify the Authority in writing of the incidence and amount of such loss and/or expense and provide the Authority with all reasonable detail and substantiation necessary to permit the Authority to ascertain the extent (if any) of such loss and/or expense. Provided that the Prime Contractor has complied with the terms hereof and used all reasonable endeavours to keep such loss and/or expense to a minimum the Authority shall pay the Prime Contractor such loss and/or expense as he shall in his absolute discretion ascertain to have been so suffered and/or incurred. The Authority's ascertainment in this regard shall be final and conclusive.

56. SUB-CONTRACTS PLACED BY THE PRIME CONTRACTOR

56.1 The Prime Contractor shall not place or cause to be placed any orders with suppliers, or otherwise incur liabilities in the name of the Authority or any representative of the Authority.

56.2 Procurement procedures will be conducted in accordance with the Authority's Best Practice Guides as a minimum.

56.3 Within 8 weeks of the Contract award date and annually on a date specified by the FM the Prime Contractor shall submit to the FM a Plan showing separately for each item in the planned programme how he intends to arrange for the work to be carried out. The Plan shall include the following for work outside the Work Area Packages:

- 56.3.1 Companies/Consultants whom he intends to invite to tender;

56.3.2 For those items where he considers competition is impracticable, a case for non-competitive action;

56.3.3 Details of those tasks which he intends to carry out using his own directly employed labour;

56.3.4 Details of how he intends to provide support for unplanned essential repairs;

56.4 Subject to being satisfied that the Plan meets the criteria laid down in the Requirements Document, Booklet 3 and elsewhere in the Conditions of the Contract, the Authority will give written approval to the Plan, which must not be varied in principle without the prior approval of the Authority.

56.5 The Authority's approval of the Prime Contractor's Plans shall not in any way relieve the Prime Contractor of his responsibility for the satisfactory execution of both the planned and unplanned work to be carried out under the terms and conditions of the Contract.

56.6 The Prime Contractor shall ensure to the extent that they are applicable that the Conditions of this Contract are reflected in any sub-contracts placed by him for any part of the work under the Contract and the Prime Contractor shall not place sub-contracts with any company or firm unless that company or firm agrees to assume the same obligations corresponding to those imposed on the Prime Contractor by these Conditions. The Prime Contractor shall nevertheless remain liable for the due observance of these Conditions by his servants, agents and Sub-Contractors.

57. TRANSFER OF RESPONSIBILITY

57.1 The Prime Contractor shall provide suitably qualified staff to work with the outgoing Prime Contractor at each site during the Mobilisation period as required by the FM to ensure a smooth transition from the existing delivery organisations, the proper termination of extant contracts, the smooth and safe running of maintenance work and operating of mechanical and electrical equipment, and the continuity of records.

57.2 In the event that a different organisation is required to undertake the Contract function at the expiry or termination of the Contract, the Prime Contractor shall co-operate in the transfer under arrangements outlined within the Requirements Document, Booklet 3. If such a transfer of responsibility extends beyond the Contract period the Prime Contractor shall provide, at prices to be agreed, any such Services as may arise from the transfer.

57.3 Transfer of responsibility for buildings, equipment and all other facilities made available to the Prime Contractor shall be subject to a mutually agreed inventory between the interested parties at the time of transfer.

57.4 The transfer shall be arranged between the Authority and the Prime Contractor so as to reduce to a minimum any interruption in the work. Any special equipment purchased for use on site together with materials, which have been paid for by the Authority, shall remain the property of the Authority and shall be handed over to the incoming Prime Contractor or organisation.

57.5 The Prime Contractor shall give due regard to the Guidance Notes on Transfer of Responsibility as set out at Annex C.

58. TRANSFER AND SUB-LETTING

58.1 The Prime Contractor shall not give, bargain, sell, assign, sub-let or otherwise dispose of the Contract or any part thereof or the benefit or advantage of the Contract or any part thereof without the previous consent in writing of the Authority.

58.2 The Prime Contractor shall not be relieved from responsibility to the Authority in connection with the performance of its obligations arising under this Contract by virtue of the sub-letting of any of the Services, notwithstanding that the Authority consents to such sub-letting.

59. DISPUTE RESOLUTION PROCEDURES

59.1 In the event of any dispute arising during the performance of the Contract these will be dealt with in accordance with the Dispute Resolution Procedures detailed at Annex F.

60. CHANGE OF CONTROL OF PRIME CONTRACTOR

60.1. The Prime Contractor shall inform the Authority, as soon as practicable, in writing of any material change in control of the Prime Contractor. The Prime Contractor shall not be required to submit any advice which is unlawful or is in breach of either any pre-existing non-disclosure agreement or any regulations governing the conduct of the Prime Contractor in the UK or other jurisdictions where the Prime Contractor may be subject to legal sanction arising from issue of such advice.

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

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

60.2.2 by virtue of any powers conferred by the constitutional or corporate documents, or any other document, regulating the Prime Contractor and a change of control occurs if a person who controls the Prime Contractor ceases to do so or if another person acquires control of the Prime Contractor.

60.3. The Prime Contractor shall inform the Authority on each occurrence of a material change in control. Each advice shall be taken to be in respect of all contracts with the Authority. The advice should be submitted to:

Mergers & Acquisitions Section
Directorate of Supplier Relations
Ash 1 #3103
Ministry of Defence
Abbey Wood
Bristol BS34 8JH

60.4. Advice by the Prime Contractor of any material change of control shall not prejudice the existing rights of the Authority or the Prime Contractor under the Contract nor create or imply any rights of either the Prime Contractor or the Authority additional to the Authority's right to receive that information.

61. ACQUIRED RIGHTS DIRECTIVE

61.1 During the period of 12 months preceding the expiry of the Contract at the end of its term or such longer term as may be agreed or after the Authority has given notice to terminate the Contract the Prime Contractor shall provide the Authority with such information relating to its employees who are engaged in providing services under this Contract as the Authority may request. This information shall include but not be limited to the items listed in Conditions 61.2 and 61.3 below.

61.2 Summary information as follows:

61.2.1 The total number of staff employed who are engaged in providing services under the Contract

61.2.2 The total payroll costs of such staff

61.2.3 The total redundancy liability of such staff;

61.3 Such information detailing which are permanent and which are agency staff, and within these two categories which are employed full-time and which are employed part-time.

In respect of each individual member of staff:

61.3.1 Age

61.3.2 Salary (including pension and NI contributions)

61.3.3 Length of Service

61.3.4 Hours of work

61.3.5 Holiday entitlement

61.3.6 Overtime hours and rates

61.3.7 Any other factors affecting redundancy entitlement

61.3.8 Any outstanding claims arising from their employment

61.3.9 Details of current loans and allowances etc; for PPI, LTDD etc

61.3.10 Full details of qualifications and experience

61.3.11 And the general terms and conditions applicable to each of these staff including:

61.3.12 Probationary periods

61.3.13 Retirement Age

61.3.14 Periods of Notice

61.3.15 Current pay agreements

61.3.16 Working hours

61.3.17 Annual leave entitlement

61.3.18 Sick leave

61.3.19 Maternity and special leave

61.3.20 Terms of mobility

61.3.21 Any loan or leasing schemes

61.3.22 Occupational welfare

61.3.23 Any facility time agreements

61.3.24 Any additional employment benefits

61.3.25 Relevant collective agreements

61.3.26 Redundancy liability

61.3.27 Details of the Principal Civil Service Pension Scheme (PCSPS) and other public sector pensions schemes where applicable.

61.4 The Prime Contractor shall permit the Authority to use this information for such purposes as it shall deem appropriate (which shall include but not be limited to the provision of such information to third parties invited to tender by the Authority for any services which are substantially the same as the services provided under this Contract) and shall enable and assist the Authority and such other persons as the Authority may determine to communicate with and meet those employees and their trade union or other employee representatives as, when and where the Authority may determine.

61.5 The Prime Contractor shall fully indemnify the Authority against any claim made against the Authority at any time by any party in respect of any claims, losses, costs, expenses, demands and liabilities arising from the provision of, or failure to provide, information under Condition 61.1 to 61.3.

61.6 During the period between the submission of the above information and the expiry date of the Contract, the Prime Contractor shall advise the Authority in writing within 7 days if they alter the terms of employment, transfer or dismiss any of the employees engaged in providing services under the Contract.

61.7 Once the information referred to at Condition 61.1 to 61.3 has been passed to the Authority, the Prime Contractor shall not, and shall procure that any third party shall not:

61.7.1 Materially amend the rates of remuneration or hours to be worked by any person employed, assigned or engaged in providing the services under this Contract, including holidays, or;

61.7.2 Replace any of the individuals providing services under this Contract, or deploy any person other than those already providing services under the Contract to perform the services under this Contract, or materially increase the number of persons performing the services under the Contract;

Without the prior written permission of the Authority, such agreement not to be unreasonably withheld or delayed.

61.8 Where:

61.8.1 The Prime Contractor shall cease (for whatever reason), and whether directly or indirectly, to provide any service under this Contract, and

61.8.2 Any contract of any person thereupon has effect as a result of the provision of ARD as if originally made between such person (a "Transferred Employee") and the Authority and/or any other person to whom the provision of the service is transferred;

The Prime Contractor shall indemnify and keep indemnified the Authority (for itself and for any future service provider) against any claim or claims (and all costs and expenses thereof) by any Transferred Employee or any appropriate representative (as defined in ARD in relation to any Transferred Employee) against it or any future service provider arising out of or in connection with any act or omission of the Prime Contractor and/or third party on or prior to the relevant transfer date.

61.9 Post Transfer Reporting.

61.9.1 The Prime Contractor shall provide the Designated Officer with the following

information on a monthly basis:

61.9.2 Proposed, agreed or imposed changes to terms and conditions of service in respect of employees transferred to the Prime Contractor under ARD;

61.9.3 Disputes relating to ARD compliance which are regarded as unresolved by a recognised Trade Union;

61.9.4 Any court action or tribunal proceedings relating to ARD compliance;

61.9.5 Completed court action or tribunal proceedings relating to ARD compliance;

61.9.6 "Out of court" settlements relating to ARD compliance.

Such reports shall also include information relating to staff transferred under ARD to Sub-Contractors as a result of this Contract.

61.10 The information referred to in Condition 61.9 may also be used in considering the Prime Contractor's bid at re-let, or in considering the Prime Contractor's bid(s) for other contracts let by the Authority.

61.11 During the period of three months preceding the expiry of the term specified in this Agreement or at any other time as directed by the Authority or after the Authority has given notice to terminate the Contract, the Prime Contractor shall fully and accurately disclose to the Authority such information relating to his employees and relating to all employees of any third party who are employed, assigned or engaged in providing the services under this Contract as the Authority may request and shall permit the Authority to use the information for informing any prospective employer of the Prime Contractor's employees.

61.12 The information referred to in Condition 61.11 shall include, inter alia:

Personal Details

61.12.1 Name (surname, forename, title and initials)

61.12.2 Date of birth

61.12.3 Home address

61.12.4 Job Title

61.12.5 Work location

61.12.6 National Insurance Number

61.12.7 Conditioned hours of work

Pay/Performance Appraisal

61.12.8 Annual salary and rates of pay band/grade

61.12.9 Shifts, unsociable hours or other premium rates of pay

61.12.10 Overtime history for preceding 12 month period

61.12.11 Allowances and bonuses for preceding 12 month period

- 61.12.12 Bank/building society account details for payroll purposes
- 61.12.13 Outstanding loan/advances on salary or debts
- 61.12.14 National Insurance Contribution Rate
- 61.12.15 Cumulative pay for tax and pension purposes
- 61.12.16 Any other voluntary deductions from pay
- 61.12.17 Cumulative tax paid
- 61.12.18 Sickness and absence records for the immediately preceding two year period
- 61.12.19 A copy of the last Performance Appraisal Report and performance and promotion markings for the preceding three years

Pensions

- 61.12.20 For pension purposes, the notional reckonable service date
- 61.12.21 Pensionable pay history for 3 years to date of transfer
- 61.12.22 Percentage of any pay currently contributed under additional voluntary contribution arrangements
- 61.12.23 Percentage of pay currently contributed under any added years arrangements

Leave

- 61.12.24 Annual holiday entitlements and accrued holiday entitlement
- 61.12.25 Annual leave reckonable service date
- 61.12.26 Those currently on maternity leave or other long term leave of absence.

61.13 In addition to the information detailed at Condition 61.11, in the same circumstances and at the same time as specified therein, the Prime Contractor shall also disclose the following information in respect of each individual, subject to the agreement of the individual member of staff concerned (the purpose of such disclosure being to assist any prospective employer to understand more fully the circumstances affecting each individual's employment):

- 61.13.1 Existing training or sponsorship commitments
- 61.13.2 Details of any active disciplinary/inefficiency or grievance proceedings
- 61.13.3 Details of any legal proceedings in action between employees and MOD.

61.14 The Prime Contractor agrees to indemnify and keep the Authority indemnified fully in respect of any claims, losses, costs, expenses, demands and liabilities arising from the provision of information or its failure to provide information under 61.11 and 61.12.

62. QUALITY ASSURANCE

62.1 The Prime Contractor shall ensure that all work carried out under the Contract is performed by

suitably qualified persons and that good quality materials, which meet the relevant British Standard or equivalent Specifications, where such exist, are used unless otherwise agreed by the FM. The Prime Contractor shall provide a quality plan to the Authority for the approval of the FM within two months of the commencement of the Mobilisation period.

62.2 The execution of the work shall be to the satisfaction of the FM or his authorised representative.

62.3 The Prime Contractor shall ensure that all Things for incorporation in the Works are of the respective kinds described in the specification or drawings (where applicable). If requested to do so the Prime Contractor shall demonstrate to the FM that all such Things are fit and suitable for the purpose. The FM or his nominated representative may reject things for incorporation, which he or they regard as unfit or unsuitable for their purpose.

62.4 Where a specification has described a Thing or requirement by reference to a proprietary product or process or its equivalent the Prime Contractor shall give reasonable notice to the FM of the Prime Contractor's selection of a Thing, product or process equivalent to the named Thing, product or process, and the FM shall give a decision in accordance with Condition 62.3.

62.5 The FM shall have the power at any time to require tests to be carried out on any thing for incorporation either on the Site or at any factory or workshop or other place where any such thing is being constructed or manufactured or at any place where it is lying or from which it is being obtained or at a Test House or Laboratory nominated by or acceptable to the Authority. The Authority may require documentary evidence to be provided that the tests have been carried out and the results of those tests. The costs of the tests will be borne by the Authority unless the item tested is deemed to have failed the test in which case the costs will be recovered in full from the Prime Contractor.

62.6 The FM may arrange for an independent expert to test whether any Thing for incorporation is fit or suitable for use in the Works. The cost incurred by the Authority in arranging for an expert to carry out any tests shall be borne by the Prime Contractor if the test result discloses that the Thing tested is substantially not in accordance with the provisions of the Contract. The Prime Contractor shall also bear the cost of any further tests reasonably required to monitor the quality following negative test results, even where the further tests are satisfactory. The results of all tests carried out under this Condition shall be disclosed in full to the Prime Contractor.

62.7 In respect of Conditions 62.3, 62.4 and 62.5 the decision of the Authority shall be final and conclusive. In respect of Condition 62.5 hereof the report of the independent expert as to the fitness or suitability of any Thing required to be provided under the Contract shall be final and conclusive.

62.8 The Prime Contractor shall, at his own cost, replace, rectify or reconstruct:

62.8.1 the Works, or any part thereof which do not comply with the Contract or are not to the satisfaction of the FM, and

62.8.2 any Things for incorporation which do not comply with the Contract or which have been rejected by the FM.

62.9 **Construction (Design and Management) Regulations 2007 (CDM)**

62.9.1 The Prime Contractor shall bear full responsibility for compliance with Construction, (Design and Management) Regulations 2007 ("the Regulations")

62.9.2 The FM shall be the CDM Co-ordinator in most instances in accordance with the regulations and will notify the Health and Safety Executive upon his appointment by the Authority as CDM Co-ordinator pursuant to Condition 62.9.3.

62.9.3 The Prime Contractor shall perform all the functions and duties of the Principal Prime

Contractor as defined in the Regulations.

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

62.9.5 The provisions of Conditions 62.9.1 to 62.9.4 shall apply only where applicable to the scope of the relevant Order.

63. DELIVERABLE QUALITY PLAN

63.1. The Prime Contractor shall submit the Deliverable Quality Plan to the Authority in accordance with the Contract.

63.2. When agreed by the Authority, the Deliverable Quality Plan shall be incorporated into the Contract. Notwithstanding that the Deliverable Quality Plan will have been seen and agreed by the Authority, the Prime Contractor shall be solely responsible for the accuracy, suitability and applicability of the Deliverable Quality Plan.

64. SITE CONTROL

64.1 The Prime Contractor, his employees and Sub-Contractors shall be confined to the area(s) on the Site advised by the Designated Officer.

64.2 The Prime Contractor shall obtain the approval of the Designated Officer for the siting of all spoil heaps, temporary roads, rail and sleeper tracks, paths, sheds and any other structures.

64.3 The Prime Contractor shall ensure that no steps, ladders or other plant shall be left accessible for unauthorised persons to enter the site and/or the buildings thereon.

64.4 The Prime Contractor shall take all reasonable precautions during the progress of the Works to prevent any damage to adjoining property or public or private roadways and to prevent materials, plant, rubbish and debris from collecting thereon.

64.5 The Prime Contractor shall regulate the character of his transport and so operate it as to ensure that no damage beyond fair wear and tear is occasioned thereby and shall comply with the requirements of the Designated Officer as to the routes to be traversed and limitations on weights, speeds and classes of vehicles.

64.6 If the Prime Contractor wishes to erect scaffolding on or to make use of any adjoining property for any purpose, he shall obtain permission from the owners and meet all charges in connection therewith. He shall clear away on completion of his work or when directed and shall make good any damage to their satisfaction. Except as provided in the Conditions of Contract, the Prime Contractor shall be held responsible for any damage resulting from the Works and shall make good any such damage at his own expense.

64.7 Works to be carried out in occupied premises shall proceed with the agreement of, and so as to cause the minimum of inconvenience and nuisance to, the occupiers.

64.8 Subject to availability and reasonable demand the Prime Contractor can hook up to mains electricity, water and drainage where available, free of charge.

64.9 Continuity of electricity and water supplies is not guaranteed and no liability will be accepted by the Authority for shutdown or restrictions due to any cause whatsoever.

64.10 The Prime Contractor shall ensure that site services are used with due regard for the need for the efficient use and conservation of supplies and the Authority shall not bear the costs of any such supplies which arise through the negligence of the Prime Contractor, his servants or Sub-Contractors. The Prime Contractor shall observe any instructions issued by the Designated Officer or his authorised representative in this connection.

64.11 The Prime Contractor shall indemnify the Authority against all claims for road damage caused by his operated, or those operated by his Sub-Contractors, vehicles, equipment, plant and machinery and shall take all reasonable steps to prevent damage by extraordinary traffic to highways, roads and bridges. In order to reduce the possibilities of damage he shall so far as is reasonably practical select appropriate routes, choose and use suitable vehicles and restrict and distribute the loads on any vehicle.

64.12 "Extraordinary traffic" for the purpose of this Condition means extraordinary traffic to which Section 59 of the Highways Act 1980, or any statutory modification or re-enactment thereof for the time being in force applies.

64.13 Material and objects of any kind obtained from any excavations shall remain the property of the Authority.

64.14 The Prime Contractor shall be responsible, at his own expense, for providing security escorts (in accordance with current escort worker ratio) to Third Country Nationals (TCNs), Locally Recruited Workers (LRW) and other personnel not in possession of a valid 'unescorted' security pass employed either as DEL or as Sub-Contractor/supplier.

65. PROVISION OF TOOLS AND EQUIPMENT

65.1 The Prime Contractor will provide all tooling and equipment (excluding Specialist Tooling & Equipment) required to undertake the requirements of the contract as advised and agreed with the FM. In this respect "Specialist Tooling and Equipment" is considered to be bespoke tooling and equipment for particular items of plant etc.

65.2 Prior to taking on full responsibility for the requirement the successful Prime Contractor will be required to undertake a review of Authority held Specialist Tooling and Equipment and identify any further requirements. Any requests for Specialist Tooling & Equipment must be submitted to the FM who will decide whether these fall into the category of "Specialist Tooling and Equipment". The FM will raise a MOD Form 1097/1 where appropriate. The cost of any Specialist Tooling & Equipment shall be recovered from the Authority in accordance with Condition 48 (Payment Under P2P). These Specialist Tooling & Equipment will be subject to Condition 19 (Issued Property) and the Prime Contractor shall provide Quarterly Reports to the FM indicating the Specialist Tooling & Equipment held, their location and their serviceability.

65.3 The security, upkeep and calibration of all Authority issued Specialist Tooling & Equipment shall be the responsibility of the Prime Contractor. All issued Specialist Tooling and Equipment should be annotated on an asset register.

66. VEHICLES, PLANT AND MECHANICAL HANDLING EQUIPMENT (MHE)

66.1 For the purposes of Condition 66.1;

66.1.1 The Authority shall provide to the Prime Contractor free of charge solely for the purposes of the Contract or the contracted tasks, as appropriate, vehicles, plant and equipment as detailed in Booklet 2, Annex N;

Applies to ISPA only:

66.1.2a The Prime Contractor shall be responsible for servicing and maintaining vehicles, plant and equipment as specified in Annex N on commencement of the Contract in an

operational condition at all times, and any additional equipment of these types provided throughout the term of the Contract. The labour, tools, materials, spares and consumables necessary for servicing and maintaining such equipment in an operational condition shall be included within the Tender Price. Consumables, in respect of this Condition, shall include (but not be limited to) oils, lubricants, cleaning materials, filters, hoses, gaskets, drive belts, spark/glow plugs, wiper blades, tyres, light bulbs and clusters, fuses, brake discs/pads/shoes.

Applies to BNAF only:

66.1.2b The Authority shall provide to the Contractor free of charge solely for the purposes of the Contract or the contracted tasks, as appropriate, such replacement parts and spares for allotted vehicles, plant and equipment as specified in Annex N, subject to appropriate accounting

66.1.3 Where Ministry of Defence owned vehicles are allotted to the Prime Contractor for his sole use on MOD sites and establishments or public roads, the Prime Contractor shall ensure that he has adequate insurance provision to cover for third party risks, including death or bodily injury or damage to property, as well as the appropriate statutory insurance to cover personal death or injury benefit to the Prime Contractor's own personnel.

66.1.4 The Prime Contractor shall agree with the Authority, as soon as practicable, an inventory detailing the condition of the vehicles, plant and equipment and loan items which are allocated to the Prime Contractor. The Prime Contractor shall account for all issues of Government property in accordance with Condition 19 (Issued Property).

66.1.5 Except as specified elsewhere in the Contract or in any of the contracted tasks, as appropriate, and excepting fair wear and tear or damage not caused by the action or default of the Prime Contractor, his Sub-Contractors and suppliers of any tier, or agents, the Prime Contractor shall hand back, on completion or determination of the Contract or contracted task concerned, the allotted vehicles, plant and equipment, and any other loan items to the Authority in the same condition, or accept financial responsibility for the cost of making good any dilapidations or deficiencies.

66.2 Where there is a requirement over and above Condition 66.1, the Prime Contractor shall provide core plant and MHE as necessary to fulfil the requirements of the Contract. Where Sub-Contractors are used they shall be responsible for supplying their own plant. Where an item of plant is required for use by the Prime Contractors labour force to undertake work, the following course of action shall be taken:

66.2.1 Approach the Authority to borrow plant. There shall be no charge back to the Authority if such plant is provided.

66.2.2 Where plant is unavailable, the Prime Contractor shall endeavour to hire the necessary plant and pass on the cost to the Authority. Where specialist plant operators are required, the cost of this shall be deemed to be part of the above hire cost, and thus shall be chargeable to the Authority.

66.2.3 The Prime Contractor shall not purchase any plant (other than small frequently used items) without the prior approval of the Designated Officer.

66.2.4 The Prime Contractor shall submit copies of invoices to the Designated Officer in support of such claims in accordance with Condition 48 (Payment Under P2P).

66.3 License Requirements:-

66.3.1 All persons wishing to drive in Afghanistan must hold a valid UK driving licence.

67. FUEL

67.1 All diesel and petrol fuel required for the Prime Contractor's plant and vehicles used in connection with the Contract and travelling to and from the sites in the Contract will be provided free of charge by the Authority.

67.2 All fuel for personal/recreational purposes or used for purposes unconnected with the Contract is to be paid for by the Prime Contractor.

67.3 The Prime Contractor is to provide the Designated Officer details of all vehicles to be used for drawing off fuel and produce travel dockets for all vehicles detailing, as a minimum:

67.3.1 Vehicle Registration Number.

67.3.2 Driver Details (name etc.)

67.3.3 Destination.

67.3.4 Mileage

67.3.5 Amount of fuel drawn.

68. SHIPPING AND TRANSPORT OF MATERIEL

68.1 Except as directed otherwise by the Authority, the Prime Contractor shall be responsible for all of the following at its own cost: all road haulage and shipping to Theatre of materiel and plant; transportation of materiel and plant by road including transportation to point of embarkation of military transport; transportation of materiel and plant by military transport; arrangement for transportation of materiel, and plant by military transport through the relevant military procedures.

68.2 The Prime Contractor shall be responsible for ensuring that all requirements for packing of materiel and maximum weights are adhered to for the use of military transportation and are understood by himself and his Sub-Contractors.

69. TELEPHONES

69.1 The Authority shall provide to the Prime Contractor access to the military telephone system. Request for access to military telephone installations must be made through the Designated Officer.

69.2 The Prime Contractor shall arrange for, and provide the installation of Host Nation telephone systems at all sites as agreed by the Designated Officer, the cost of installation and other charges shall be borne by the Prime Contractor.

69.3 An emergency system of communication, to be approved by the Designated Officer, is to be established by the Prime Contractor for personnel travelling within Theatre. This is to aid contact in the case of an emergency and to alert management in the event of personnel being stranded.

70. FLYING OPERATIONS

70.1 The Prime Contractor, his servants, agents, suppliers and Sub-Contractors and any other persons under his control shall comply with the requirements of Air Traffic Control regarding the movement of personnel, the movement and parking of vehicles and positioning of anything, which may be an obstruction.

70.2 The Prime Contractor shall provide approved danger markings and obstruction lights as required.

70.3 The Prime Contractor shall stop work and remove any obstructions caused by his works as instructed by the Authority or in emergency, by Air Traffic Control, to enable flying or military operations.

71. SUPPLY CHAIN MANAGEMENT OBLIGATIONS

71.1 The Prime Contractor warrants to the Authority that at all times a Supply Chain Management process shall remain in place throughout this Contract.

71.2 On the execution of the Contract and prior to the commencement of any Works, the Prime Contractor will forthwith provide to the Authority:

71.2.1 a list of all suppliers to be engaged in the performance and execution of the Works;

71.2.2 details of the best practice procedure pursuant to that each and every Sub-Contractor and/or supplier has agreed to comply with;

71.2.3 confirmation and/or evidence, if available, that the terms of Condition 39.12 (Fraud) have been incorporated into the Sub-Contractors and that the Sub-Contractors have been notified of the detailed anti-fraud measures and recommendations set out in Annex G (Fraud Prevention Manual) and such additional measures as may be set out in the Prime Contractor's anti-fraud measures.

71.3 Periodically the Authority may request the Prime Contractor to provide forthwith the following information:

71.3.1 details of any sub-contract and/or warranty between the Prime Contractor and any Sub-Contractor and/or supplier;

71.3.2 details of payments made by the Prime Contractor to any Sub-Contractor and/or supplier;

71.3.3 a list of all work that any Sub-Contractor or supplier will undertake including details of any processes that the Prime Contractor and/or Sub-Contractors and/or suppliers are able to develop to reduce any/or extinguish any unnecessary costs/or meet Whole Life Costs;

71.3.4 details of any training/education programme being undertaken by the Prime Contractor and/or his Sub-Contractors or suppliers to ensure that the Sub-Contractors management process is being implemented;

71.3.5 details of incentives provided by the Prime Contractor to his Sub-Contractors in order that they work together as a team to the benefit of the Authority.

71.4 In the event of a breach of any of these provisions by the Prime Contractor and/or his Supply Chain, the Authority may request the Prime Contractor where appropriate to remove a Sub-Contractor and/or supplier from the Supply Chain. The Prime Contractor agrees to indemnify and save harmless the Authority against any claims, proceedings, damages, or any loss whatsoever arising out of or in connection with such removal.

72. STATUTORY OBLIGATIONS

72.1 The Prime Contractor warrants that he shall comply and shall ensure that his Supply Chain comply with the Statutory Requirements throughout the Contract.

73. DISPOSAL OF WASTE

73.1 The Prime Contractor in entering into this Contract warrants to the Authority that he is an "authorised person" within the meaning of the Environmental Protection Act 1990 ("the Act") and warrants that he has complied with Sections 33 and 34 of the Act.

73.2 In the case of hazardous waste, disposal by the Prime Contractor shall comply in all respects with the Chemicals (Hazard Information and Packaging) (CHIP) Regulations. The Prime Contractor shall provide relevant details in the Safety Data Sheets in accordance with the CHIP Regulations during the Contract Period.

73.3 In the case of contaminated soil, the Prime Contractor shall comply in all respects with the requirements of the Environmental Protection Act 1990 as amended.

73.4 The Prime Contractor shall be entitled to use materials recovered from the Establishment (other than those to be recovered for the Authority) for temporary works.

74. BUILDING REGULATIONS

74.1 The Prime Contractor and his Supply Chain shall at all times during the Contract Period comply with all the standards and requirements of the Building Regulations currently in force and any subsequent enactments or amendments in force at the time of commencement of any works to be carried out, save that those parts of the Building Regulations that provide for procedural compliance, enforcement and relaxation of the standards and requirements of the Building Regulations shall not apply under this Contract.

74.2 The Prime Contractor shall appoint an independent adviser hereinafter referred to as a Building Control Adviser. The appointment of any such Person shall be approved in advance by the Authority and the Prime Contractor shall provide full details to the Authority of the Building Control Adviser's qualifications, experience and background. Without prejudice to the Authority's approval of the Building Control Adviser, in so appointing the Building Control Adviser, the Prime Contractor warrants that the Building Control Adviser selected:

74.2.1 has no role in or conflict of interest in the carrying out of the design (or any part thereof) which is subject to the Building Regulations;

74.2.2 has no role in or conflict of interest in the execution of any works carried out (or any part thereof) which are subject to the Building Regulations;

74.2.3 has appropriate qualifications, experience and background to carry out the duties of a Building Control Adviser;

74.2.4 will carry out his duties in accordance with Condition 74.3 and in accordance with such approved guidance documentation as issued by the relevant Competent Authority from time to time exercising the skill care and diligence to be expected of a professional and competent building control adviser experienced in carrying out such services and the role of an Approved Inspector or equivalent as defined by the Building Regulations (Approved Inspectors) Regulations on projects of similar size scope and complexity to the project;

74.2.5 has entered into a sub-contract or Supply Chain Contract with the Prime Contractor on appropriate terms, extracts of which shall be provided to the Authority upon request.

74.3 Every Building Control Adviser shall carry out as a minimum requirement the duties and functions as set out in the Technical Bulletin 0126.

74.4 Every Building Control Adviser shall carry out such additional inspections, as he deems

necessary in order to perform his duties and determine compliance with this Condition.

74.5 All certifications made by a Building Control Adviser as to compliance by the Prime Contractor with the Building Regulations during the design, construction and completion stages of the Contract shall be certified using the specified forms set out in Technical Bulletin 01/26 – The Method of Operation of the MOD Building Control Compliance System.

74.6 Without prejudice to the Prime Contractor's obligations under this Condition and the remainder of the Contract, the Prime Contractor shall procure a warranty from the Building Control Adviser at the request of the Authority confirming that the Building Control Adviser owes a duty of care to the Authority.

74.7 In the event that the Crown exemption in relation to compliance with substantive requirements of the Building Regulations is removed by subsequent legislation the Prime Contractor and a Building Control Adviser shall ensure that all practicable steps are taken to assist the Authority in complying with the substantive requirements of the Building Regulations and all such other requirements as may be appropriate at all times during the Contract.

74.8 Any proposed departure or deviation from the substantive requirements or other prescriptive requirements of the Building Regulations by the Prime Contractor or his Building Control Adviser shall forthwith be notified in writing to the Authority. The Authority shall then refer the matter to DE Building Control Manager for determination which shall be notified within 15 Working Days before any such departure or deviation is undertaken. Any determination which permits a deviation from the requirements of the Building Regulations will be a waiver solely for the purposes of the relevant requirement and will be without prejudice to the obligations of the Prime Contractor to comply with his statutory and other obligations under the Contract which remain in full force and effect.

74.9 The Authority may at any time and in his absolute discretion notify the Prime Contractor in writing of his intention to carry out a verification check to monitor and audit the Prime Contractor's compliance with the systems in place pursuant to this Condition acting through the Verifier.

74.10 Upon such request pursuant to Condition 74.9, the Prime Contractor shall arrange for his Building Control Adviser or such other independent specialist adviser as may be appointed within his Supply Chain to complete and submit Form BSCSV1 to the Verifier which identifies the relevant legislation and information required for verification of the project.

74.11 The Prime Contractor, if so requested by the Verifier, shall submit all relevant drawings and calculations to enable the Verifier to check that the systems are being operated pursuant to this Condition by the Prime Contractor and the Building Control Adviser to a satisfactory standard. If there is found to be a failure in maintaining such systems or in compliance with the Building Regulations, the Prime Contractor shall immediately take all such steps to put in place such systems and carry out such changes and/or remedial works to work carried out as part of the Core Services as are necessary to ensure compliance.

74.12 For the avoidance of doubt the Verifier is not required to achieve the same level of design checks or inspections as are required of the Prime Contractor and his Building Control Adviser in accordance with this Condition.

74.13 In the event of the Prime Contractor failing at any time to comply with the Building Regulations under this Condition he shall keep the Authority indemnified against all penalties and liabilities of every kind. Notwithstanding the Prime Contractor's appointment of the Building Control Adviser and the inspections and certifications of the Building Control Adviser, the Prime Contractor shall remain wholly responsible for compliance with the Building Regulations and for all acts and omissions of the Building Control Adviser.

74.14 Any dispute which may arise in connection with compliance by the Prime Contractor, his Supply

Chain and /or the Authority with the Building Regulations and the procedures and standards pursuant to them or with any other term under this Condition shall be a matter for the Dispute Resolution Procedures detailed at Annex F.

75. AGENCY

75.1 Save as otherwise provided in this Contract the Prime Contractor shall not be or be deemed to be an agent of the Authority and the Prime Contractor shall not hold himself out as having authority or power to bind the Authority in any way. This Contract shall not create a partnership between the Authority and the Prime Contractor within the meaning of the Partnership Act 1890 or any landlord and tenant relationship other than where specifically contemplated by the terms of this Contract.

76. ENTIRE AGREEMENT

76.1 Each of the Parties acknowledges that:

76.1.1 it does not enter into this Contract on the basis of and does not rely, and has not relied, upon any statement or representation (whether negligent or innocent) or warranty or other provision (in any case whether oral, written, express or implied) made or agreed to by any Person (whether a party to this Contract or not) except those expressly repeated or referred to in this Contract;

76.1.2 this Condition 76.1 shall not apply to any statement, representation or warranty made fraudulently, or to any provision of this Contract which was induced by Fraud, for which the remedies available shall be all those available under the Law.

77. WAIVER

77.1 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.

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

78. SEVERABILITY

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

78.1.1 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

78.1.2 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.

79. RIGHTS OF THIRD PARTIES

79.1 Except as provided in Para 79.2 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.

79.2 Where, and only where, either by a term in this Contract or by another term which specifically refers to this Condition, the Contract expressly states that a third party shall be entitled to enforce a term of the Contract:

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

79.2.2 the Prime 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

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

79.2.3.1 that provides for the submission of disputes under the Contract to the Dispute Procedure;

79.2.3.2 that stipulates the law and jurisdiction that will govern the Contract (such as Condition 2 (Law)).

80. DE-COUPLING CLAUSE - SUB-CONTRACTING WITH THE CROWN

80.1 If the Prime Contractor shall enter into any other contract with the Crown relating in any way to the subject matter of the Contract, then, no breach by the Crown of that other contract nor any other act or omission nor any written or oral statement nor any representation whatsoever of or by the Crown its servants or agents or other Prime Contractors relating to or connected with any other contracts as aforesaid shall, regardless of any negligence on its part or their part:

80.1.1 give the Prime Contractor any right under the Contract to an extension of time or additional payment or damages or any other relief or remedy whatsoever against the Authority; or

80.1.2 affect, modify, reduce or extinguish either the obligations of the Prime Contractor or the rights or remedies of the Authority (including without limitation the right to liquidated damages under the Contract); or

80.1.3 be taken to amend, add to, delete or waive any term or condition of the Contract.

81. SUSTAINABLE PROCUREMENT

81.1 The Prime Contractor should be aware that MOD, through The Market Transformation Programme (MTP), has compiled a list of Minimum Procurement Specifications for publicly procured Products and Services, known as the 'Quick Wins'. The products on this list have been identified as having a lower environmental impact than equivalent products and therefore determine levels of minimum procurement standards.

81.2 The Authority is committed to applying these minimum environmental standards in procurement. Further details are provided in JSP 418, Volume I, Chapter 17, paragraph 162. Both the Authority and Prime Contractors procuring items on their behalf are required to consider environmental standards and to use this list wherever practicable.

81.3 The list covers a wide range of products, commonly purchased by Government Departments such as

81.3.1 Office supplies; ICT, paper

81.3.2 Other equipment; cars, TVs, white goods

81.3.3 Larger equipment; motors, lighting systems

81.3.4 Consumables; tissue paper, light bulbs, paints

81.4 The list identifies minimum standards for purchasing. Specification levels are pitched above the minimum currently in the market whilst still enabling sufficient choice for competitive tendering and where the cost does not carry a significant price premium.

81.5 All staff involved in the specification or procurement of all goods and services identified on this list should ensure that the requirements specifications meet or exceed the minimum specifications as detailed on the MTP 'Quick Wins' list (which is available on the internet by going to www.mtprog.com/Procurement.aspx).

82. SURPLUS MATERIEL

82.1 In the event that the Authority demonstrates that it has paid for Materiel which has been included in the Pricing Provisions but are not subsequently used or incorporated in the Works, the Authority shall be entitled to reduce the Pricing Provisions or in the event that monies are subsequently owing to the Authority to recover such amount as is proportionate to the unused or surplus Materiel as a debt.

82.2 On completion of the Contract or earlier if appropriate, the Prime Contractor shall prepare:

82.2.1 a list of those items of the Materiel referred to above, which are considered to be serviceable or repairable. The list shall record the condition of each item, its actual cost or estimated value and, in the case of repairable items, the estimated price of repair; and

82.2.2 a list of those items of the Materiel which are considered to be unserviceable and which cannot be economically repaired or are otherwise considered to be scrap.

82.3 The lists referred to in Condition 82.2.1 above shall be countersigned by the Designated Officer and shall be sent to the Commercial Branch.

82.4 Within three months of the date of receipt of the lists, the Commercial Branch shall issue disposal instructions to the Prime Contractor. Such disposal instructions shall require that the items of Materiel are either:

82.4.1 transferred to other subsisting contracts; or

82.4.2 subject to contract, retained by the Prime Contractor for use in the performance of future contracts placed with the Prime Contractor; or

82.4.3 subject to contract, repaired by the Prime Contractor; or

82.4.4 sold by the Prime Contractor, acting on behalf of the Authority, for the best price reasonably obtainable. Materiel designated in accordance with Condition 82.2.2 shall be dismantled and disposed of in such a manner as to preclude the possibility of resale in its existing form.

82.5 The proceeds of the sale of items of Materiel sold pursuant to Condition 82.4.4 shall be credited to the Authority in accordance with arrangements made between the Prime Contractor and the Commercial Branch.

82.6 A list of the items sold by the Prime Contractor shall be sent to the Commercial Branch specified in the Contract together with a statement of the proceeds of sale.

83. NOT USED

84. WAR RISK INDEMNITY

84.1 For the purposes of Defcon 661/661a (detailed at Annex L) and this Indemnity Condition, "the Region" shall mean Op Herrick (Afghanistan) and shall include any other area or event directly related to "the Region" and the situation presently existing therein where the terms of a War Risk Exclusion clause of any relevant insurance policy would apply.

84.1.1 The Prime Contractor shall provide evidence on a quarterly basis that, any War Risk Exclusion to their insurance policy is still applicable, and that they are regularly sourcing the market to investigate the availability of insurance in "the Region". The Prime Contractor must consult with the Authority prior to obtaining any additional insurance in order to determine that it represent best value for money.

84.2 Notwithstanding any other provisions of the Contract, but subject to the provisions of this Condition and 84.3 to 84.7 of this Condition, the Authority shall, unless otherwise agreed, hold harmless and indemnify the Prime Contractor against:

84.2.1 all liability in respect of claims and proceedings (including reasonable settlements thereof) made or brought against the Prime Contractor by employees of the Prime Contractor, their dependants, executors or administrators, in respect of death, injury, sickness, capture, or detention of the Prime Contractor's employees, or loss of or damage to employee's property, and against all costs and expenses reasonably incurred in respect of such claims and proceedings;

84.2.2 all liability in respect of claims and proceedings (including reasonable settlements thereof) made or brought against the Prime Contractor by third parties (other than by his employees) arising from the acts or omissions of the employees of the Prime Contractor;

84.2.3 any loss of property of the Prime Contractor, and the loss of use of such property, including any payment made in respect of the necessary hire of suitable property required for performing the Contract or other activity dependent on such property pending the return, replacement and/or repair of such property, but excluding loss of profit;

84.2.4 any reasonable payment made to any employee or his dependants, executors or administrators ordinarily payable in respect of absence from work as a result of injury, sickness, capture or detention or other reasonable allowance or compensation or gratuity where such payment was necessarily incurred by the Prime Contractor for the purpose of enabling him to perform the Contract and the payment was not otherwise payable as of right or as a matter of discretion under any statutory provision or by reason of length of employment with the Prime Contractor;

84.2.5 any reasonable payment made in respect of the hire or employment of suitable staff to replace employees absent from work as a result of injury, sickness, capture or detention, when such replacement staff are necessary in performing the Contract or other activity dependent on the availability of the absent employees, pending their return to work;

84.2.6 any payment made, where the Authority has not otherwise made provision (e.g. treatment or transportation provided without charge by the Authority), in respect of:

84.2.6.1 the reasonable costs of treatment of any employee properly prescribed by a qualified medical practitioner; or

84.2.6.2 reasonable medical repatriation costs; and

84.2.6.3 reasonable funeral and associated transport costs where the Prime Contractor has necessarily incurred a commitment to make such payment for the purpose of enabling him to perform the Contract, and the payment was not otherwise payable as of right or as a matter of discretion under the pre-existing terms of the contract of employment of that employee, and that employee's condition would not have arisen by virtue of his employment at his normal place of work;

84.2.7 any loss of, or damage to, or loss of use of property of the Authority made available to the Prime Contractor for the purpose of performing the Contract including any payment made in respect of the hire of suitable property necessary for performing the Contract or other activity Dependent on such property pending the return, replacement and/or repair of such property but excluding loss of profit;

84.2.8 any additional payments reasonably incurred to maintain the current insurance cover identified at 84.1 of this Condition;

84.2.9 to the extent that the matters giving rise to any such claim, proceedings, costs, expenses, payments, loss or damage as defined in 84.1 to 84.8 of this Condition flow directly from both the presence or requirement for the presence, for the purpose of work under the Contract of any employees or property of the Prime Contractor in the region (including presence on board HM ships or aircraft carrying out warlike operations in or over that area) and from hostilities or warlike operations in the Region, notwithstanding their cessation.

84.3 No indemnity is given by the Authority to the Prime Contractor in respect of:

84.3.1 claims, proceedings, costs, expense, payments, loss or damage for which the Prime Contractor has current insurance cover during the currency of the Contract; or

84.3.2 any risks not covered by the insurance at 84.1 of this Condition but for which cover can be made available at a cost acceptable to the Authority. The Authority shall accept the report of a competent broker for the Prime Contractor as evidence of the availability and cost of such cover.

84.4 If insurance cover held by the Prime Contractor on the date of the Contract is subsequently reduced or cancelled or ceases to apply through no fault and without the agreement, express or implied, of the Prime Contractor then, except as excluded elsewhere in this Condition, and subject to the provisions thereof, the Authority shall be liable to indemnify the Prime Contractor against risks previously covered by insurance, subject to the contractor complying with 84.7.

84.5 The Authority shall not be liable for any claim, proceeding, cost, expense, payment, loss or damage which results from;

84.5.1 Wilful misconduct, lack of good faith or negligence on the part of the Prime Contractor, his agents or Sub-Contractors:

84.5.2 The wilful disregard of instructions properly given to employees of the Prime Contractor by the Authority (who pay for the purposes of this Condition shall include members of HM Armed Forces and members of any other Armed Forces with whom the Authority is acting in concert in the Region).

84.6 The Prime Contractor may include in any sub-contract under the Contract the same provisions as those in this Condition with the substitution where necessary to give effect to the Condition of "the Prime Contractor" for the "Authority" and "the Sub-Contractor" for "the Prime Contractor" whereby the Prime Contractor shall indemnify the Sub-Contractor against the risks provided herein. If such a sub-contract provides the same rights and duties etc., as are established between the Authority and the

Prime Contractor by this Condition, the Authority shall indemnify the Prime Contractor against the Prime Contractor's liability to Sub-Contractors under such sub-contract provisions.

84.7 It is a pre-condition to any liability of the Authority under this indemnity that the Prime Contractor shall:

84.7.1 as soon as reasonably practicable notify the Authority of any occurrence, claim, or proceedings that may be expected to give rise to liability of the Authority under this Condition;

84.7.2 further evidence or proof of any claim, proceeding, cost, expense, loss or damage in the manner and form reasonably requested by the Authority; and,

84.7.3 immediately furnish to the Authority copies of all pertinent papers received by the Prime Contractor.

84.8 The Authority shall make available to any employee, his dependants, executors or administrators, and to the Prime Contractor a copy of the relevant findings of any Military Board of Inquiry into any matter which give rise to a liability on the Authority under this Condition.

85. MATERIALS AND STORES

85.1 Where Sub-Contractors are used they shall normally be responsible for providing all materials used on the works. Exceptionally materiel may be issued by the Prime Contractor to the Sub-Contractor to progress the execution of the works. Formal records shall be maintained to identify all such transactions.

85.2 Materiel may similarly be provided to MOD units upon formal approval of the Designated Officer.

85.3 The cost of all materials supplied by the Prime Contractor shall be charged to the Authority in accordance with Conditions 10 (Price) and 48 (Payment Under P2P).

85.4 All requests for payment shall be supported by appropriate documentation.

86. FREEDOM OF INFORMATION AND TRANSPARENCY

86.1 Notwithstanding any other term of this Contract, including Condition 43 of Booklet 2 where applicable, the Prime Contractor gives its consent to the Authority to publish the content of this Contract in its entirety, including from time to time agreed changes to the Contract, and details of any payments made by the Authority to the Prime Contractor under the Contract ("the Transparency Information") to the general public. The Prime Contractor shall assist and cooperate with the Authority to enable the Authority to publish the Transparency Information.

86.2 Before publishing the Transparency Information to the general public in accordance with Condition 86.1 above, the Authority shall notify the Prime Contractor of its intention to publish and may redact any information that would be exempt from disclosure if it was the subject of a request for information under the Freedom of Information Act 2000 ("the Act") or the Environmental Information Regulations 2004 ("the Regulations").

86.3 The Authority shall consult with the Prime Contractor before redacting any information from the Transparency Information in accordance with Condition 86.2 above. The Prime 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.

87. EXPORT COMPLIANCE

87.1 To the extent that the Prime Contractor is required to import any equipment or component parts thereof in connection with the work, where practicable the Authority shall provide reasonable assistance (e.g. letters of representation etc.) to the Prime Contractor in obtaining any foreign export licences, including any U.S. technical assistance agreements. The Authority acknowledges that the Prime Contractor is obliged to comply with all applicable U.S. export control and sanctions laws and regulations.

88. LIABILITY

[Redacted]

[Redacted]

[Redacted]

[Redacted]

RESPONSE TIMES

1. The response times and associated activities tabulated below are applicable to the classification and prioritisation of Emergency Call-out, Response Maintenance and Remedial Maintenance tasks under this Contract:

| Works Service Classification | Response Times and Response Activity Combined – ISP |
|---|---|
| Emergency (Critical assets & essential power) | Investigate (and restore power where compliant with B19.1, Critical Assets) within 15 minutes for identified critical assets (see Annex N) and 45 minutes for all other facilities and make safe as soon as possible. Restore or provide temporary alternative facilities/services as soon as possible utilising out of hours working as necessary. The ISP must provide evidence that mobilisation in response of an emergency requirement has taken place within 15 minutes of notification. |
| Very Urgent | Investigate as soon as possible within normal working hours. Restore or provide temporary alternative facilities/services within 24 hours of task being raised. Where a task is raised and attended to during normal working hours this should be completed where possible even if this required continuing working out of normal working hours (in exceptional circumstances where the task has been raised out of normal working hours, priority can be elevated to Emergency call out on the authorisation of the FM and agreement of the ISP Contract Manager). |
| Urgent | Investigate as soon as possible within normal working hours. Restore or provide temporary alternative facilities/services within 7 days (in exceptional circumstances where the task has been raised out of normal working hours, priority can be elevated to Emergency call out on the authorisation of the FM and agreement of the ISP Contract Manager). |
| Routine | Reinstate facilities/services within 21 days. |

2. Examples of the various Works Service classifications are provided at Annex M to Booklet 3

Offer of Variation

Part 1

1.1* In the course of carrying out the works detailed in Statement of Requirement Serial No. we have found that the further works detailed below, which do not form part of that Statement of Requirement, are essential to enable the works detailed in that Statement of Requirement to be completed:

1.2* As the FM I require the further works detailed below, which do not form part of Statement of Requirement Serial No....., are essential to enable the works detailed in that Statement of Requirement to be completed:

*Delete as appropriate

Signed NameFM/Designated Officer Date.....

| |
|--|
| <p><u>Variation to Statement of Requirement</u></p> |
|--|

Part 2

2.1 I **OFFER** to undertake the work described in Part 1 in accordance with the terms of the above mentioned contract at the price of not more than £Ex Value Added Tax /£..... Inc Value Added Tax and to complete it by *:

a.* The Completion Date agreed in Statement of Requirement Serial No:date:

b.*(Date). My reasons for proposing a different Completion Date are contained in the accompanying letter dated reference.....

*** Delete as appropriate**

This Offer changes the price of the original Offer to a price of not more than £Ex Value Added Tax/
£..... Inc Value Added Tax

2.2 This offer is based on an instruction to proceed being given by..... (date)

Signed NameOn behalf ofDate.....

Part 3

3.1*On behalf of the Secretary of State for Defence I **ACCEPT** your offer at Part 2.1 above and instruct you to proceed accordingly

3.2 * Your offer at Part 2.1 above is **REJECTED**. The reasons for rejection are detailed in the accompanying letter

dated..... reference

*** Delete as appropriate**

Signed NameFM/Designated Officer Date.....

Guidance Notes for the Completion of MOD Form 1097/1V Offer of Variation

Serial No

Refer to the number generated for the original MOD Form 1097/1. Each Variation must have a unique Reference Number, e.g. original Serial Number plus V1, V2 etc

Part 1

Part 1.1 is the mechanism for dealing with a Variation to the Statement of Requirement identified by the Contractor during carrying out the works.

Part 1.2 is the mechanism for dealing with a Variation to the Statement of Requirement identified by the FM once the works have commenced

Note:

If the FM seeks to vary the Statement of Requirement prior to the Contractor making an Offer then the "original " MOD Form 1097/1 should be cancelled and the Contractor invited to make a fresh Offer based on the revised Statement of Requirement.

If the FM is already in receipt of an Offer from the Contractor but has not given the Instruction to Proceed, the Contractor should make a fresh Offer based on the revised MOD Form 1097/1 Statement of Requirement, but cross referred to the original MOD Form 1097/1

Part 2

Part 2 constitutes the Offer by the Contractor to undertake the additional work within the price and Completion Date provided. **The form reflects prices both VAT inclusive and exclusive prices, as some works are exempt/zero rated.**

Part 3

Parts 3.1 and 3.2 is the FM Acceptance/Rejection of the Offer at Part 4.2. Acceptance by the FM of the Offer constitutes a binding contract.

Note:

Part 4 (MOD Form 1097/1)

For physical completion of works the original MOD Form 1097/1 to which MOD Form 1097/1V refers must be completed.

GUIDANCE NOTES ON TRANSFER OF RESPONSIBILITY

The Following notes are standard guidance for transfer of responsibility from an incumbent to incoming Contractor, and as such should only be used as an outline model for transfer from the current Contractual arrangements to a Single Contractor.

1. When a new Contractor is appointed it will be necessary to organise an orderly transfer of duties and responsibilities from the outgoing Contractors and the MOD in-house operation to the incoming Contractor. Such transfers cannot for operational reasons take place instantaneously and must therefore involve a period of Transition during the Contractor's Mobilisation period. The primary purpose of this Transition period is to ensure that the essential and continuous pattern of maintenance effort on an Establishment is not interrupted.

2. Although there will be no direct Contractual relationship between the outgoing and the incoming Contractor, their individual Contracts with the Authority will place them under an obligation to co-operate fully with each other, the FM and his representatives during any handover period. The guidelines at Paragraph 3 below outline the main activities involved but their timing and the details of what is to be done at any particular Establishment must be resolved between the main parties, i.e. FM and Contractors on site. The Mobilisation period will allow time for the:

2.1 Incoming Contractor to recruit any extra industrial or non-industrial staff he needs to operate the Contract, Mobilise his Organisation, move into suitable accommodation and establish a working relationship with the FM and his team.

2.2 The Authority's approval for access of the incoming Contractor's staff, and any sub-Contractors he appoints, to be obtained.

2.3 Incoming Contractor to place any Term and other Sub-Contracts and to purchase or lease any extra vehicle or plant which he requires to operate his Contract.

2.4 Incoming Contractor to arrange that his proposed Competent Persons are fully qualified and certificated, also that any other specialist staff required by the Contract are trained.

2.5 Incoming Contractor's staff to become acquainted with the routine and layout of the Establishment and the documentation available for, or used in, support of their work.

2.6 Incoming Contractor to establish, and agree with the FM, internal procedures for the control of his staff, the work for which they are responsible and for the preparation and submission of reports to the FM as required by his Contract.

2.7 Outgoing Contractor to complete any on-going work and to terminate any existing Contracts or leasing agreements he has, without cancellation charges falling to the Authority.

2.8 Outgoing Contractor(s) to re-deploy or terminate the employment of his

existing staff, without redundancy payments falling to the Authority.

3. The transfer of responsibility and handover activity is expected to follow the guidelines indicated below:

3.1 The whole period, from the date when the Contract is placed with the incoming Contractor to the time he assumes full and sole control of maintenance management at an Establishment, i.e. Day 1 of Single Running (Vesting Day). Normally the outgoing Contractor must remain on site for as long as he is responsible for managing the completion of on-going work. Any of this work which is still outstanding at the end of the Mobilisation Period shall be completed by the outgoing Contractor to the satisfaction of the FM. Only very exceptionally should work already under construction be continued by changing the parties to existing Contracts and such a course of action will have to be approved in writing by the Authority. During any period the outgoing Contractors and incoming Contractor are working on site simultaneously it will be the responsibility of the FM to ensure that no confusion between the individual responsibilities of the outgoing Contractors and incoming Contractor occurs.

3.2 The outgoing Contractors will be required to terminate any extant sub-Contractors as agreed at the meeting detailed in subparagraph 3.4 below or on completion of any on-going work whichever is the later. If for any reason such terminations cannot be achieved at zero cost to the Authority, he is to advise the FM immediately so that suitable alternative arrangements can be agreed.

3.3 The outgoing Contractors will not be offered any work estimated to have a construction duration of longer than their remaining period under the Contract to him, unless it can be accommodated at minimal extra cost to the Authority and he has the express permission of the FM in writing to so allocate the work.

3.4 The FM will chair a meeting with the senior representatives of the outgoing and incoming Contractor within 4 weeks of the new Contract being let. The purpose of the meeting will be to draw up the programme, which will cover the whole of the Mobilisation period, for the transfer of duties and responsibilities. Arrangements for the escorting of any essential members of the incoming Contractor's staff who are awaiting approval for access and the timing of the move of the incoming Contractor's staff into any accommodation provided by the Authority are also to be agreed at this time.

3.5 During the Mobilisation period the incoming Contractor will man up the Establishments to the agreed staffing levels as proposed and accepted in his tender and as approval for access is received for his personnel. For planning purposes the incoming Contractor is to allow a minimum period of two calendar months from the date of notification of the personal particulars of his proposed staff to the FM for this approval for access to be received or for notification of non- acceptability. The Authority will make every endeavour to ensure that approval for access of the incoming staff takes contractor any individual approval taking longer than the planning time he has allowed.

3.6 The incoming Contractor is to let any Term, etc Contracts he needs to operate his Contract as soon as possible after he is appointed. His aim should be to have these Contracts in place and fully operational upon Day 1 of Single Running. This will need timely action by the incoming Contractor if approvals for

access are to be obtained.

3.7 The incoming Contractor must ensure that during the Mobilisation period any Authorised or Competent persons needed by statute regulation or the Contract are trained and qualified to take up their duties and that his system for issuing permits-to-work, permits-to-test, etc is operative.

3.8 The incoming Contractor must be in a position to undertake all new work and unforeseen maintenance with effect from Day 1 of Single Running.

3.9 During the Mobilisation period the FM is to render the incoming Contractor every assistance with setting up adequate internal procedures to service their needs and to allow his staff to become acquainted, including access to any necessary training, with the range of their duties and the environs and routine of the Establishment.

ADDRESSES AND OTHER INFORMATION

| | |
|--|---|
| <p>1. Commercial Branch:</p> <p>[REDACTED]</p> | <p>2. The Designated Officer for the purposes of this Contract shall be:</p> <p>[REDACTED]</p> |
| <p>3. The Certifying Officer for the purposes of this Contract shall be:</p> <p>[REDACTED]</p> | |
| <p>4. Bill Forms AG173 and DAB 10 are available from:</p> <p>Ministry of Defence, Forms & Pubns Commodity Management Po Box 2, Building C16, C Site Lower Amcott Bicester, OX25 1LP</p> <p>Fax: 01869 256824 e-mail: formsandpubs@gcis.mod.uk By post – a self addressed label should be sent with each application</p> | |
| <p>5. Claims for Payment and Bill Paying Branch:</p> <p>All claims for payment shall be submitted on AG Form 173/177, in arrears, to the FM (See Box 3 above) for certification. Following certification the AG Form 173/177 shall be returned to the Contractor. The AG Form 173/177 shall be submitted to the Bill Payment Branch, detailed below, under cover of Form DAB 10 in accordance with their Billing and Payment procedure.</p> <p>Ministry of Defence DBS Finance Walker House, Exchange Flags Liverpool, L2 3YL</p> <p>Tel: 0151 237 6538 Fax: 0151 242 2197 Website is www.mod.uk/DBSfinance</p> | |
| <p>6. For the purposes of this Contract, the Quality Assurance Authority (QAA) shall be:</p> <p>To be notified</p> | |
| <p>7. For official Use:</p> <p>Resource Account Code(s) (RACs) [REDACTED] Capital Works: Unit Identity No (UIN) [REDACTED] VAT: Issue of Government Property: Yes Contractors Telephone No:</p> | |

SPECIALIST, TOOLING AND TEST EQUIPMENT

1. Introduction

1.1 The Contractor shall provide all tools, patterns, moulds, dies, manufacturing gauges and test equipment, together with any associated fixtures, fittings and software necessary for the manufacture of the Articles or for the performance of any other work in accordance with the Contract Schedule of Requirements, unless supplied by the Authority under the terms of Condition 19 (Issued Property) to Booklet 2 (Conditions Of Contract). The cost of jigs, tools etc. will not be accepted by the Authority as a direct charge to the Contract, except as hereinafter provided.

1.2 The Contractor may make a written application to the Authority that certain tools, patterns, moulds, dies, manufacturing gauges and test equipment are special to the requirements of the Contract and that their provision should be met as a direct charge to the Contract. If the Authority accepts the application it shall do so in writing and such tools, patterns, moulds, dies, manufacturing gauges and test equipment shall be referred to as Specialist Tools and Equipment for the purposes of this Condition. The Contractor shall not seek approval for procurement of such jigs, tools etc. where these are available under other contracts he already holds from the Authority.

2. Pricing

2.1 Unless specified otherwise in the Contract, the Contract Price may include an appropriate amount to enable the Contractor to recover his expenditure on Special Jigs, Tools, Etc, including the cost of maintenance and calibration. The Contractor shall not claim assistance from other Government funds (e.g. Regional Development Grants or selective financial assistance) towards the cost of any Specialist Tools etc.

3. Passing of Property

3.1 Except where otherwise specified in the Contract the Specialist Tools and Equipment Etc. shall become the property of the Authority:

- a. where Condition 29 (Vesting) to Booklet 2 (Conditions Of Contract) forms part of the Contract, in accordance with that Condition as if they were Articles;
- b. where the Authority authorises the Contractor to utilise the Special Jigs, Tools Etc. for the production of articles for a third party in advance of their being used for the production of Articles under the Contract, upon delivery of the first article so produced for the third party;
- c. in all other cases upon acceptance of the first Article delivered under the Contract or upon Contract completion, whichever is the earlier.
- d. Where the Authority accepts the item(s) as a direct charge to the Contract.

Where property in the Specialist Tools and Equipment etc. passes to the Authority they shall be treated thereafter as Issued Property for the purposes of Condition 19 (Issued Property) to Booklet 2 (Conditions of Contract).

4. Acceptance

4.1 Acceptance shall occur at the time the first Articles produced with the Specialist Tools and Equipment etc. are accepted in accordance with of Condition 36 (Acceptance) to Booklet 2 (Conditions of Contract) or at such other time as shall be stated in the Contract.

5. Modifications

5.1 Notwithstanding the passing of property to the Authority pursuant to Condition 3.1, the Contractor may be free to modify the Specialist Tools and Equipment as necessary in order to produce the Articles or to perform the Contract work.

6. Availability

6.1 Once property in the Special Tools and Equipment etc. has passed to the Authority in accordance with Condition 3.1, the Contractor shall, if required, deliver the Specialist Tools and Equipment etc. to such individual, company, factory, or Government Establishment as may be named by the Authority. The Contractor shall not be entitled to any further payment for delivering the Specialist Tools and Equipment other than for the recovery of packing and carriage costs reasonably incurred. This Condition shall not, however, entitle the Authority to require the Contractor to dispose of the Specialist Tools and Equipment to the prejudice of contracts held by the Contractor with the Authority or with another customer, provided the Authority's approval for such use has been given. Where the Contractor holds no contracts for such articles, but having received the Authority's approval, has made a firm written offer to a third party to supply such articles, the Authority shall not be entitled to dispose of the Specialist Tools and Equipment until such time as the Contractor's offer has expired.

7. Disposal

7.1 As soon as the Specialist Tools and Equipment cease to be required by the Contractor to meet the Authority's requirements, herein he shall report accordingly to the Authority. The Authority will instruct the Contractor as to their disposal. The Authority's disposal instructions shall be given within 3 months or such other period as may be stated in the Contract, from receipt of the Contractor's report. Should the Authority fail to issue disposal instructions within this period, a fair and reasonable amount will be agreed for storage and, as instructed by the Authority, maintenance and calibration of the Specialist Tools and Equipment etc, this sum to be a direct charge against the Contract or allocated as an indirect charge in accordance with the company QMAC.

8. Use for other than the purposes of the Authority

8.1 The Contractor shall not use the Specialist Tools and Equipment for any purposes other than those of the Authority without first obtaining the written approval of the Authority and in accordance with the terms, including payment,

for such other use as stated in a commercial exploitation, or other, agreement between the Contractor and the Authority. In sub-contracts, which include the provisions of this Condition, the Contractor shall require that such written approval be obtained direct from the Authority.

DISPUTE RESOLUTION PROCEDURE

1. The Authority and the Contractor will follow the following procedures to resolve any dispute or disagreement arising in the performance of the contract.

2. **STEP 1**

2.1 Any dispute or disagreement arising should be resolved by discussion and agreement between the FM and the Contract Manager. Either party may give written notice of a dispute or disagreement to the other. These should either be resolved within 48 hours of receipt of written notification or be passed to the FM for further review. See step 2.

3. **STEP 2**

3.1 The FM and the ISP(A) Contract Manager shall each prepare a submission on 1 x A4 page outlining their case for consideration by the FM. The FM will consult further as he considers appropriate and will give a written decision to each party within 7 calendar days.

4. **STEP 3**

4.1 If either party to the dispute refuses to accept the FM's decision then the FM will forward a copy of all correspondence relating to the dispute or disagreement to the CO of the UK Wks Gp RE (A)/DIO Commercial and the Contractor's Managing Director for consideration and discussion. They will aim to agree a resolution within 14 calendar days of receipt. Failure to reach a decision will result in the formal Adjudication Procedures detailed in step 4 being followed.

5. **STEP 4 - ADJUDICATION PROCEDURES**

5.1 If a dispute or difference arises under the Contract either party may be given written notice ("Notice of Adjudication") by the other requiring the dispute to be referred to an Adjudicator under the procedure, and in accordance with, the rules prescribed in Construction Industry Council Model Adjudication Procedure current at the date of the Contract. In the event of any conflict between that adjudication procedure and the provisions of the Contract, the Contract Provisions shall prevail.

5.2 The Notice of Adjudication shall include a full statement of the issue or issues which it is desired to refer to adjudication together with the redress sought and the factual and legal basis upon which any claim is founded.

5.3 The Notice of Adjudication shall not be deemed served unless, in the case of service on the Authority, it is sent by pre-paid first class post to the Authority and the Designated Officer (DO) or, in the case of service on the Contractor, it is sent by pre-paid first class post to the Contractor, at the relevant addresses referred to in the Contract, and the Notice of Adjudication shall for all purposes be deemed served 7 days after posting.

5.4 The Adjudicator shall be nominated by the person selected by the Authority from the following list, such selection alternatively to be made by the Contractor if

the Authority shall fail to select within 1 day after service of Notification of Adjudication:

| <u>Body</u> | <u>Appointer</u> |
|---|---------------------------|
| Royal Institute of British Architects (RIBA) | President |
| Construction Federation | Construction Federation |
| Construction Industry Council (CIC) | Chief Executive |
| Institution of Electrical Engineers (IEE) | President or delegation |
| Institution of Civil Engineers (ICE) | ICE Official |
| Official Referees Solicitors Association (ORSA) | Chairman |
| Royal Institution of Chartered Surveyors (RICS) | President |
| Centre for Dispute Resolution | Director of CEDR Services |
| Academy of Construction Adjudicators (ACA) | Chairman |
| The Chartered Institute of Building | President |
| The Chartered Institute of Arbitrators | CIA 'Official' |
| Institute of Chemical Engineers | IChE 'Official' |
| Official Referees Bar Association | ORBA Panel |

5.5 The Adjudicator shall reach a decision within 28 days of referral or such longer period as may agreed by the parties after the dispute has been referred. The Adjudicator may extend the period of 28 days by up to 14 days with the consent of the party by whom the dispute was referred.

5.6 The Adjudicator shall act impartially and may take the initiative in ascertaining the facts and the law.

5.7 The Adjudicator shall reach his decision in accordance with the facts, law and the parties rights and obligations under the Contract. The Adjudicator may open up review and revise any certificate, decision, direction, instruction, notice, payment, opinion, requirement or valuation made in connection with the Contract save where the same is expressed by the Contract to be final and/or binding and/or conclusive. The Adjudicator may in any decision direct the payment of such simple (but not compound) interest from such dates and such rates as he consider appropriate.

5.8 The Adjudicator shall give written reasons for his decision.

5.9 The Adjudicator shall determine who shall bear the costs and expenses incurred in the adjudication. The liability for costs and expenses will be determined by the Adjudicator in his absolute discretion having due regard to the principle that the successful party should receive payment of its costs and expenses.

5.10 The parties shall be jointly and severally liable for the Adjudicator's fees and expenses, including those of any legal or technical adviser appointed by the Adjudicator. The Adjudicator shall have the discretion to make decisions as to which party shall pay those fees and expenses, such discretion again to be exercised with due regard to the principle in Special Condition 5.9 above. If no such directions are made the parties shall bear such fees and expenses in equal shares.

5.11 The Adjudicator and any employee or agent of the Adjudicator shall not be liable for anything done or omitted in the discharge or purported discharge of his functions as an adjudicator unless the act or omissions is in bad faith.

5.12 Notwithstanding any referral to adjudication the parties will continue to perform the Contract before, during and after such adjudication in accordance with the terms of the Contract and any adjudicator's decision.

5.13 Where a dispute or difference has been referred to an Adjudicator the decision of the Adjudicator shall be binding on the parties until the dispute is finally determined by agreement or arbitration. No party shall be precluded from raising any right of set off, counterclaim or abatement in connection with any enforcement of an Adjudicator's decision.

FRAUD PREVENTION MANUAL/BOOKLET

To be circulated to all personnel

1. The Contractor and his Supply Chain shall comply with the following minimum requirements, which are deemed to form part of this Contract. Upon the Contractor entering into this Contract and the Supply Chain entering into the Supply Chain Contracts, as appropriate, this Schedule is to be distributed to all personnel prior to commencement of any Contract Works being carried out.
2. Any failure by the Contractor and/or his Supply Chain to observe these minimum requirements may give rise to a termination under this Contract and/or the Supply Chain Contracts as the case may be.
3. The Contractor shall also comply and procure the compliance of his Supply Chain with such additional measures and procedures as he has proposed in the Contractor's Fraud Proposals.

General

4. The Contractor shall carry out an internal audit on a period not greater than 6 monthly basis in respect of the Contract. Where the Contractor or his parent is a PLC the audit committee of the Contractor or PLC Company shall manage and be responsible for such audit. Where the Contractor is a joint venture company, or a non-PLC, that company or joint venture company shall set up an audit committee to manage and be responsible for such audit. The audit committee of the Contractor shall also:
 - a. Report to the Authority in respect of the standards achieved in the audit;
 - b. Notify the Authority of any fraud identified in any internal or external audit; and
 - c. Make recommendations to the Authority as to measures which should be taken to improve on fraud prevention and forward an action plan to show recommendations are put in place and ensure these are acted upon.

Gifts Rewards and Inducements

5. It will be a term of the Supply Chain Contract that the Supply Chain will not offer, give or agree to give to the Contractor or to any employee or agent of the Contractor or anyone acting on his behalf or on behalf of his or their employees, any gift or consideration as an inducement or reward for doing or not doing any act in relation to the obtaining or execution of the Supply Chain Contract or for showing or not showing favour or disfavour to any person in relation to the Supply Chain Contract or any other Contract with the Contractor . The Supply Chain Contract should provide for termination of the Supply Chain Contract on the occurrence of any such event or, where the offence has been committed by an employee acting

independently of the member of the Supply Chain, the Supply Chain Contract may be continued if the relevant employee's employment is terminated.

Construction and Maintenance Work

6. The Contractor shall permit and shall procure that the Supply Chain permits regular inspections of the Contract Works, including inspections of those parts of the Contract Works being carried out off site and/or materials being manufactured off-site. In order to facilitate such inspections, the Contractor and his Supply Chain shall fully co-ordinate and co-operate with the Authority by answering any queries raised and allowing a more detailed inspection, if required, without obstruction provided there is no risk to health and safety or danger to persons and property. The Contractor and Supply Chain shall be responsible for implementing internal control mechanisms to detect and deter fraud and sharp practice activity. There shall be an element of risk based control approach to identify potential fraud and poor VFM areas. The Contractor shall ensure and provide evidence when requested that all imposed quality standards and compliance with regulatory standards are met.

7. If required, the Contractor and his Supply Chain shall forthwith produce for inspection original documentation for any Contract Works being carried out by them.

8. The Contractor and his Supply Chain shall, where appropriate, obtain and provide to the Authority written confirmation from occupiers that the works (or relevant parts thereof in relation to Sectional Completions), have been completed.

9. The Supply Chain shall, wherever possible, be paid by reference to Milestone or Interim Payments.

10. The Contractor and his Supply Chain shall maintain asset and equipment registers, which shall be open to inspection by the Authority at regular intervals during the course of the works and/or services.

Change

11. The following provisions are to be complied with in conjunction with the Change Conditions under the Main and Supplementary Contracts and Supply Chain Contracts which shall continue to have full force and effect.

12. Whether a Change is requested by the Authority or the Contractor himself or by the Contractor on behalf of his Supply Chain; the party requesting such change shall provide detailed and accurate statements particularising the work required for each proposed item of work ordered or the service required as appropriate.

13. Prior to any approval or authorisation of a Change, there may be an inspection of the existing site conditions, which are proposed to be altered, rectified or replaced by the Change. Such inspections will be attended by the Contractor, any relevant member of the Supply Chain and the Authority shall be notified and invited to attend. No Change shall be carried out without written authorisation.

14. Where the Contractor intends to market test and invite competitive tenders in respect of any Change in accordance with the conditions of the Main and Supplementary Contracts;

- a. Any tenderer who is selected to carry out the change in place of or in addition to the Supply Chain should be able to demonstrate a collaborative working relationship with the Contractor and an understanding of what integrated supply chain management involves.
 - b. Where a proposed sub-contractor has been previously engaged by a Contractor, the Contractor should be satisfied that there are demonstrably good reasons for awarding the Supply Chain Contract to that sub-contractor, such as evidence of good past performance.
 - c. The tender documentation is to be heavily safeguarded at all times by those persons responsible for it. This may involve it being locked away with access only being available when separate keyholders together unlock the container with the tender documents.
 - d. Tenders should be reviewed by boards or panels of the Contractor consisting of more than one individual and should include individuals with no direct connection with any of the tendering companies to reduce the risk of unfair assessments or alterations of tender bids submitted for evaluation.
15. The Contractor and his Supply Chain shall keep original records of the results of any Contract Works undertaken in carrying out an approved Change which shall be produced for inspection and review by the Authority upon request.
16. The Contractor shall put in place a monitoring system for his managers and supervisors to check works orders raised in order to confirm the validity thereof. These checks shall be carried out at regular intervals and no less than a weekly basis. If appropriate, meetings shall also be held and minuted to discuss any such Changes. The Supply Chain shall co-ordinate and co-operate with the Contractor in respect of this clause 16.
17. The Contractor and his Supply Chain shall carry out appropriate checks with occupiers to ensure that Contract Works ordered pursuant to a Change have been completed to a satisfactory standard. Occupier approval is to be obtained in writing and is to be signed and dated. Such records shall be admissible only as evidence in support of completion certificates or statements.
18. Site visits and random spot checks by supervisors are to be carried out during the Contract Works. The FM shall also be entitled to carry out such site visits and random spot checks at his discretion. The Contractor and his Supply Chain shall take all practicable steps to assist these supervisors and managers and the FM by making areas accessible for inspection where work is being undertaken or where services are being carried out, answering queries and providing other appropriate evidence of work and/or services carried out pursuant to the Change.
19. All documents provided by the Contractor and his Supply Chain in support of Contract Works carried out shall be original and authentic, duly signed and authorised by the appropriate representatives.
20. Follow up checks to confirm that payments made are valid and relate to the correct Change in issue shall also be made by the Authority at its discretion. The Contractor and his Supply Chain shall make every effort to assist the Authority without delay during the follow up checking process.

Invoicing and Payment

21. The following provisions are to be complied with in conjunction with the payment conditions under the Contract, which shall continue to have full force and effect.
22. The Contractor shall ensure that the responsibility and procedures to be adopted for authorising Works and/or Services are separated from the responsibility and procedures in relation to the authorisation of payment for such Works and/or Services.
23. The Contractor shall put in place a reconciliation system designed to match and compare invoices to avoid any duplication of work being claimed either intentionally or inadvertently during the payment process. This system shall also confirm proof of delivery of the work and/or service as appropriate.
24. The Contractor shall review and check the invoices submitted to him by his Supply Chain for accuracy and validity prior to such invoices being processed for payment by the Contractor in accordance with the payment procedures pursuant to the Conditions of the Main and Supplementary Contracts.
25. The Authority shall also carry out identical reviews and checks for accuracy and validity of Supply Chain invoices prior to such claimed amounts being included within the Payment Approval pursuant to the Conditions of the Main and Supplementary Contracts. A checklist is to be produced in order to assist the parties in carrying out the said reviews and checks of such invoices.
26. The Contractor shall ensure that all applications for payment submitted to the Authority are duly signed by an authorised officer of the Contractor, who shall be a different person from the individual who authorised the work. Each application for payment is also to contain a "statement of truth" as to the validity and accuracy of the actual costs for the said application for payment.
27. Any verification of documentation is to be of original documentation. Copy documents are not to be submitted in place of originals unless such copies have been checked against the original, are marked as "certified copies" and duly signed and dated accordingly.
28. The Contractor and The Authority shall be entitled to inspect all original invoices submitted by the Contractor and the Supply Chain at any time jointly by agreement, such agreement not to be unreasonably withheld or delayed and the said invoices shall be placed in a locked container at a location to be agreed by the parties or if no such agreement can be reached, at a location selected by FM. Access to the original invoices is to be restricted to those individual representatives expressly permitted to inspect the invoices in accordance with this clause 28.
29. Without prejudice to clause 28 above, the Contractor and his Supply Chain shall permit inspection of the aforementioned original documents and invoices by any fraud investigation body identified by the Authority, including but not limited to the Controller and Auditor General, the National Audit Office, the Defence Fraud Units and by any specified personnel and any independent consultant so notified to the Contractor.

30. All invoices submitted for review and checks by the Contractor and his Supply Chain shall be supported by relevant original documentation such as valid, authorised timesheets, daily diary records, CVIs, instructions, purchase orders, delivery slips and any other appropriate documentation for actual costs in respect of applications for payment.

31. The FM shall be entitled to require evidence of compliance with these payment measures by the Contractor as part of the Payment Request.

32. The Contractor and his Supply Chain shall make available for inspection and checks by the Authority a percentage of sample orders. The Contractor and his Supply Chain shall be advised as to the level of checking prior to the commencement of the Contract.

33. The Contractor and his Supply Chain shall, where appropriate, make comparisons with similar invoices for similar work carried out on other similar projects or benchmark against recognised schedule of rates in advance of bidding for such work to ensure insofar as possible that competitive rates are submitted and evaluated.

IT

34. The Contractor is encouraged to use an electronic communications system to improve communications with the Supply Chain and with the Authority in connection with the Works and/or Services. The following provisions shall apply where the Contractor and his Supply Chain have in place at any time an electronic communications and/or approvals system hereinafter referred to as a Central Database System.

35. Access to the Central Database System will be controlled by a Systems Administrator who shall be a single individual from an independent third party organisation [chosen by the Authority/agreed between the Contractor and Authority] with experience in carrying out this function. Authority to access the Central Database System will only be provided through authorisation of the Systems Administrator. The Systems Administrator will keep a record of users and will act only on authorisation to permit user access from previously identified individuals within the Contractor, the Supply Chain and the Authority. Procedures should also be in place for Systems Administrators to check authorisation instructions for new users with a second person at the relevant organisation.

36. The Systems Administrator shall be regulated and monitored by [to be Detailed] by random spot checks and audit procedures as and when required. The [to be Detailed] shall be entitled to remove a Systems Administrator or notify the parties in the event of dissatisfactory performance findings during the Contract.

Note: "Areas annotated "To be Detailed" will be populated prior to Contract Award based upon the successful Tenderers response to the Fraud Requirements of Response as amended and agreed with the Authority.

37. The Contractor and his Supply Chain shall be required to monitor and check information available to them on the Central Database System at regular daily intervals. Upon a party opening the electronic database and accessing specific data

therein, it shall be deemed to have read and received such specific data. Other users shall be notified accordingly through the Central Database System.

Central Database System

38. The Central Database System shall be capable of printing out reports and carrying out a full audit trail.

39. Where the Central Database System uses the Internet:

- a. The Central Database System address will not be available on the Worldwide Web.
- b. Encryption will not be less than 128 bit. Encryption will extend to PC/server encryption for each session.

40. The Contractor and his Supply Chain and any third party organisation which supplies and operates the Central Database System (“the Systems Operator”) shall take all practicable steps to ensure that the Central Database System is protected and secure by implementing all of the following minimum security measures and confirming in writing to the Authority that such measures are in place upon entering into their contracts:

- a. Requiring users to immediately change and personalise the allocated user name and password;
- b. Requiring users to change personal passwords regularly;
- c. Requiring irregular or rare users to re-register as users with expiry limits for non-use;
- d. Limiting access permissions to parties depending upon their role and level of involvement in order to avoid users accessing sensitive or non-relevant information and data by way of controlled indexes.
- e. Setting up controls to monitor users’ activities such as whether data is being read, amended, deleted, copied etc;
- f. Setting up secure data centres which are to be physically secure so that servers may be safely housed.
- g. Setting up measures to protect the security of PCs and laptops outside office hours.

41. The following additional measures are highly recommended and the Contractor and his Supply Chain shall use their best endeavours to ensure that the Central Database System meets these controls prior to entering into their respective contracts. The Contractor must notify the Authority before entering into the Contract if the Central Database System it proposes to use will fail to meet any of the following measures and the Authority shall have discretion not to permit the use of the Central Database System should it fail to do so:

- a. Implementing a Positive Client Identification System which denies access to

users attempting to access information from different computers and denies access and/or shuts down upon detection of unusual user activity. This system shall also be capable of informing Central Database System users and/or the Systems Administrator and/or the Systems Operator of such security breaches;

b. Implementing a Sheep Dip File to check for viruses prior to any uploading to the main server;

c. Implementing a Fire Walls Protection System which is designed to track unsuccessful access attempts;

d. Commissioning an independent company to test the integrity of the Central Database System and to report on its effectiveness in advance of its implementation and widespread use.

42. On request the Systems Administrator shall permit the Authority and the National Audit Office access to all files within the Central Database System relating to the Contract.

43. The Contractor shall put in place a Disaster Recovery Strategy in respect of the Central Database System before entering into the Contract and notify the Authority of that Strategy and of the measures which the Contractor shall adopt to ensure the availability and integrity of information contained in and generated by the Central Database System in these circumstances.

44. If the Contractor intends to use any system of electronic trading for financial approvals and financial transactions he shall inform the Authority and provide details to the Authority of the procedures which shall be in place for ensuring the integrity of the System. The Contractor and his Supply Chain shall only be entitled to proceed with such electronic trading if the Authority is satisfied that sufficient measures will be in place to ensure the integrity of the System.

45. Any failure by the Contractor to comply with clauses 40 to 44 shall entitle a termination under the Contract pursuant to the Conditions of the Main and Supplementary Contracts if not rectified in accordance with that clause. This provision is to be mirrored in the Supply Chain Contracts.

46. Any failure by the Contractor and his Supply Chain to comply with clause 45 above may result in the Authority making appropriate adjustments to the MTPC Pricing Provisions to take into account the increased risk of potential fraud.

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.
2. Subject to Clauses 5, 6 and 7 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:
 - (1) that the Information was or has become published or publicly available for use otherwise than in breach of any provision of the Contract or any other agreement between the parties;
 - (2) that the Information was already known to it (without restrictions on disclosure or use) prior to it receiving it under or in connection with the Contract;

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

(4) from its records that the same information was derived independently of that received under or in connection with the Contract;

provided the relationship to any other Information is not revealed.

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 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.

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

GUIDELINE FOR INDUSTRY NO 7

PROPOSED REVISED ENTRY FOR DEFCON 531

DEFCON 531 - Disclosure of Information (replaces SC 31 of GC/STORES/1)

Purpose of DEFCON 531 - The condition provides a contractual commitment to protect information, regardless of whether the information has the necessary quality of confidence under the Common Law, and establishes limitations on use, copying and disclosure.

Application - Include in all contracts.

Special Notes

1. This condition introduces some important changes from SC 31. It includes a definition of "Information".
2. **Subject to the exceptions in clauses 5, 6 and 7, clause 2 introduces a mutual obligation on the contractor and MOD to treat in confidence all information disclosed in connection with or under the contract. The condition itself does not establish the necessary quality of confidence in information. Rather, it invokes the common law of confidence in information that does have the necessary quality of confidence.**
3. In addition to the requirement in clauses 2 and 3 for the contractor to safeguard information provided by MOD, clause 4 requires him to ensure that his employees are aware of his arrangements for so doing before they receive information.
4. Clause 5 lists the circumstances where the restrictions on use, copying and disclosure do not apply.
5. Clause 6 provides that neither party will be in breach of the condition where it can show that the disclosure of any information was made only to the extent necessary to comply with a statutory, judicial or parliamentary obligation. The disclosing party is required to ask the recipient of the information to respect its confidentiality.
6. **Clause 7 addresses the effect on Information, as defined in clause 1, of the Freedom of Information Act 2000 ("the Act") and the Environmental Information Regulations 2004 ("the Regulations"). The Act and the Regulations provide a statutory right of access to information held by or on behalf of public authorities such as MOD, and they make no distinction as to who originated the information. There are exemptions and exceptions in the Act and the Regulations that will protect from disclosure confidential or commercially sensitive information and information that is sensitive for reasons of national security, defence or international relations. It has been agreed that where the MOD is compelled to disclose the contractor's information under the Act or the Regulations then the MOD will not be in breach of the condition. Disclosure in these circumstances would occur only when the information no longer had the necessary quality of confidence and when no other exemption under the Act or the Regulations applied.**
7. **Clause 7 has been introduced as information released under the Act or the Regulations is effectively in the public domain and cannot be subject to any restrictions on further disclosure, i.e. the recipient cannot be asked to respect its confidentiality. It differs from clause 6 in that under clause 6 the information is still subject to the confidentiality obligation established**

in clause 2, whereas under clause 7 the information does not have the necessary quality of confidence to prevent disclosure and is not subject to one of the other exemptions or exceptions. MOD will not be in breach of the contract if the information is properly released under the Act or the Regulations.

8. As a result of the short timescale for a response to be made to an applicant under the Act or the Regulations, MOD may have little time to consult with the contractor but it undertakes to do so where time permits if it is considering the disclosure of information. Nevertheless, MOD always undertakes to provide prior notification to the contractor where it has decided to release the information. Clause 7 contains an acknowledgement that, under the Act and the Regulations, MOD has the responsibility for making any decision on disclosure of the information, despite any representations made by the contractor during any consultation. Nothing in clause 7 affects the contractor's rights at law. In particular, clause 7 does not undermine the contractor's ability to obtain a protective order or other remedy to prevent disclosure, if the contractor considers that it is an appropriate course of action to take.

MOD/INDUSTRY COMMERCIAL POLICY GROUP

GUIDELINE NUMBER 5

DEFENCE ACQUISITION

THE COMMERCIAL FRAMEWORK

CODES OF BEST PRACTICE

Introduction

1. The Codes of Practice covered by this Guideline are intended to demonstrate a commitment by the Ministry of Defence (MoD) and its suppliers to the establishment of mutually satisfactory relationships, based upon openness and trust, to enable mutual benefits in the acquisition of goods and services by the MoD. The Codes do not seek to deal directly with the performance of those goods and services, or to specify contractual terms for their supply. Rather they establish principles for the conduct of defence acquisition business throughout the supply chain. The objectives are to enable improvements in quality, efficiency, timeliness and supply chain relationships in the defence acquisition business.
2. The three Codes attached cover the following areas:
 - a. The relationship between the MoD and its suppliers (see below).
 - b. The involvement of the MoD in the selection of sub-contractors by the Contractor (see below); and
 - c. The relationship between defence contractors and their suppliers (see below)
3. The three Codes are the product of the MoD/Industry Commercial Policy Group (CPG), which will promote and consider, periodically, their review for continued relevance of their content. If you have comments on those aspects, questions, or information on experience in using the Codes, all these would be welcome and should be directed to the Defence Commercial Policy Group (DCPG) within the MoD, and to the defence trade associations in industry.
4. The three Codes are intended to be implemented coherently with other Codes of Practice which are relevant to defence acquisition and the contacts above would be happy to deal with any questions of interpretation that might arise.

CPG
September

2001

**MOD/INDUSTRY COMMERCIAL POLICY GROUP
CODE OF PRACTICE**

MOD AND ITS SUPPLIERS

In this Code the phrase “Ministry of Defence” and/or “MOD” embraces the acquisition community throughout the Ministry of Defence. The word “Suppliers” means the MOD’s supply base, which includes all existing or potential suppliers at all levels of the supply chain.

Objective

1. The objective of this Code is to encourage a positive and co-operative approach by all stakeholders involved in setting the terms for the supply of goods and services to the MOD. Many will already be involved in teamworking under the arrangements for Integrated Project Teams (IPTs), but this code advocates a team approach in all cases, to use best practice to achieve shared goals, whilst recognising and respecting each other’s interests, by the avoidance of confrontation and the adoption of reciprocal behaviour.

Common Principles

2. MOD and its Suppliers will maintain the highest levels of honesty, integrity, impartiality and objectivity. They will strive to perform their obligations efficiently and to the highest professional standards, treating each other fairly, and with courtesy.

3. The MOD and its Suppliers recognise that mutually satisfactory relationships based upon openness and trust between each other are fundamental to successful outcomes throughout the supply chain. Irrespective of whether relationships are short-term or long-term (since that will depend in part on the nature of the procurement concerned), the MOD and its Suppliers are committed to working together to improve the climate of defence contracting, through the adoption of the behaviours described in this Code.

4. Where appropriate, the MOD and its Suppliers will negotiate longer-term partnering-style commercial relationships, combining competition and co-operation in an optimum way. The MOD and its Suppliers recognise that creating the right relationship, and managing it well, requires skill, judgement and experience.

5. To facilitate culture change and the sustainment of best practices the MOD and its Suppliers will encourage their staff to learn from each other’s and wider experience. This should include promotion of joint training, interchange and other associated staff development initiatives.

Complementary Behaviours

- The MOD and its Suppliers will constantly develop the most effective customer/supplier relationship in the following ways:-

The MOD Shall:

1. Strive to deliver value for money from the Defence Budget by managing its acquisition processes efficiently, while understanding the needs of Suppliers to be profitable and give shareholder value.
2. Behave as an intelligent customer with well informed and objective capability requirements and assumptions which will be made readily available to Suppliers at the earliest opportunity within the acquisition cycle.
3. Make available to Suppliers as much information as is practicable and responsible, to allow Suppliers to facilitate long-term planning.
4. Work continuously with Suppliers to establish realistic budgets to balance performance, cost and time parameters to achieve affordable, definitive capability requirements and conduct tendering on this basis.
5. Where practical, encourage the long-term availability of military capability by promoting arrangements that can lead to a continuous support relationship with the Supplier and his supply chain.
6. Protect commercially sensitive information and intellectual property in any pre/or post-tender discussions with Suppliers.

Suppliers shall:

1. Strive to deliver value to the MOD, and to improve competitiveness in line with internationally recognised benchmarks of best practice, whilst understanding the constraints that public accountability places on MOD.
2. Inform the MOD fully and frankly, and at the earliest opportunity, of the industrial and commercial realism of its requirements and assumptions.
3. Make known his skill base, capabilities, strategies and alliances to enable MOD to form an adequate assessment of the supplier's capability to satisfy MOD's forward needs.
4. Assist MOD in devising realistic budgets for acquisition programmes, highlighting options to trade among timescales, quality, operational effectiveness and/or cost.
5. Demonstrate commitment to supply of long-term industrial capability by presenting MOD with a range of support options including the methodologies for their measurement.
6. Protect the confidentiality of information provided by MOD, regardless of the identity of the originator.

7. When seeking tenders:

- Always take account of the resources needed to respond to it and sustain the subsequent evaluation process.
- Fully state the data requirements needed from tenderers to negotiate a contract and, where necessary, indicate whether they are mandatory or merely desirable.
- Make available the criteria and weightings to be used in tender evaluation and notify the outcome promptly.
- In the competitive environment, fully, frankly and fairly debrief tenderers to facilitate continuous improvement.
- Award an effective contract to the winning bidder as soon as is practical on the basis of the offer made, modified as necessary by any post tender negotiations.

8. In establishing and monitoring performance under the contract:

- Use incentivisation techniques that promote balanced risk and gain sharing.
- Set out clear and objective contract criteria for assessing compliant performance, whether for payments, acceptance, or both.
- Conduct contract oversight activities that are reasonable and proportionate to the Supplier's performance of his obligations.
- Work with individual suppliers to overcome any programme problems in good faith without disturbing effective performance, and encourage an open, co-operative and non-adversarial environment in which legal recourse is the option of last resort.
- Seek to avoid placing disruption, delay and other additional cost burdens on the Supplier.

7. When responding to invitations to tender:

- Do so wholeheartedly within his capability and resources.
- Always identify all non-compliances and the reasons for them.
- Participate in debriefing opportunities fully and frankly to improve future performance.
- Provide feedback on MOD's conduct of the competitive process.
- Promptly accept a contract from MOD that reflects what has been offered in the contractor's most recently submitted bid as modified by any post tender negotiations.

8. During the performance of the contract:

- Adopt internal and supply chain management procedures that encourage innovation, cost reduction and continuous improvement to create gain sharing opportunities.
- When certifying performance provide the necessary evidence of compliance called for in the contract.
- Support and facilitate reasonable MOD contract oversight activities.
- Inform MOD fully and frankly, and at the earliest possible time, of any programme problems and work with MOD and other suppliers to resolve them in good faith, and with fidelity to the programme.
- Seek to mitigate disruption, delays and additional costs by whomsoever caused.

9. Undertake, and discuss with suppliers, effective risk identification and reduction at all stages of the acquisition process. Allocate risks to the supplier that are well-defined and that can be economically managed or controlled in the private sector.

10. Maintain a record of supplier past performance for review with him; encourage an approach where lessons are learned from experience.

9. Implement effective risk identification and reduction processes at all stages of the acquisition process, and throughout the supply chain. Help MOD form an accurate view about risk allocation applicable to a contract and to trade off risks as effectively as possible.

10. Provide MOD with feedback on its comparative performance as a customer and encourage an approach where lessons are learned from experience.

CPG
September 2001

**MOD/INDUSTRY COMMERCIAL POLICY GROUP
CODE OF PRACTICE**

SUB-CONTRACTOR SELECTION BY CONTRACTOR IN MOD ACQUISITIONS

Introduction

1. Competition remains the preferred means of supplier selection by the Ministry of Defence for defence requirements. MoD also wishes to see the greatest application of competition by its Contractor for sub-contract activities, while recognising that a contractor's longer-term strategic relationships with suppliers may also provide demonstrable value for money in the supply chain.
2. As a result of the consolidation in the defence industry, MoD's suppliers are faced with less sourcing opportunities where often the choice may be limited either to one of their own business units or to an unaffiliated company for the supply of sub-systems or components. As a result of the potential for bias in sourcing decisions, additional MoD insight may be necessary to ensure fairness for the supply chain and best value for MoD.
3. This Note addresses the circumstances where conflicts of interest may arise where a ISPs business unit, operated as an separate profit centre (an "in-house" capability), may be competing with unaffiliated companies for work arising under an MoD contract.

Principles

4. MoD expects its suppliers to adopt and implement good practice in supply chain management and will have regard to the extent to which a company can demonstrate the implementation of relevant Codes of Practice such as SCRIA or Defence Contractors' Relationships with Suppliers. MoD may also have regard to compliance with any relevant undertakings given by Defence Contractors.
Competitive Acquisitions by MoD
5. Evaluation by MoD of competitive tenders from companies will consider the approach undertaken or proposed for the selection of the supply chain (including, where appropriate, make-or-buy plans), where this is determined by MoD to be a material matter in assessing value for money and fairness in the competition. The invitation to tender issued by MoD will establish the relevant evaluation criteria and information requirements.

Non-Competitive Acquisitions by MoD

6. In order to achieve value for money in the pricing of non-competitive contracts, MoD will wish to see the greatest application of competition in the selection of suppliers by the Contractor. The Contractor will be expected to provide opportunities on an even handed basis for suppliers (both in-house and external) to participate in competitions and to promote, conduct, evaluate and select suppliers in a fair and unbiased manner, avoiding conflicts of interest. MoD will normally require a Contractor to describe the means by which it proposes to select or has selected its proposed suppliers as part of the tendering and pricing process.
7. MoD recognises the potential conflict between its policy of seeking the widest possible application of competition at the sub-contract level and the tendency in industry to form and maintain teaming arrangements or longer term strategic arrangements between the Contractor and suppliers. Where these arrangements exist and are offered as a reason for not applying competition for packages of work further down the supply chain, the MoD will expect the Contractor to:

- a. demonstrate this position in clear value for money terms, and
- b. demonstrate that it has established procedures to give due regard, where practicable, to any reasonable representations made by prospective suppliers for inclusion in a competition.

Development of Supply Chain Relationships

8. With the increasing consolidation in the defence industry, fewer suppliers will be contracting directly with MoD. Increasingly suppliers will find themselves part of a supply chain of the Contractor. MoD will expect suppliers to promote their capabilities at the appropriate levels in the supply chain and for buyers to provide opportunities for qualified and competent suppliers to participate in competitions where appropriate, so that potential suppliers are not locked out of the acquisition process. Buyers should consider identifying significant sub-contract opportunities above £ 250,000 as soon as practicable, in accordance with the Code of Practice on Defence Contractors' Relationships with Suppliers, by publication in MoD Contracts Bulletin or by other appropriate means. As electronic means for publicising sub-contract opportunities on a more global basis become more accessible it is expected that opportunities at a lower value threshold will be publicised.

Exceptional Circumstances

9. In exceptional circumstances, for example where MoD wishes to sustain a diversified defence industrial base to ensure competition for the future in the UK, MoD may require contractors to establish a sub-contract competition for specified capabilities and for contractors to provide MoD with sufficient insight into the procedures for those competitions for MoD to be satisfied that a fair competition will be conducted. In these circumstances MoD may require contractors to advertise in the MoD Contracts Bulletin those sub-contract opportunities that exceed the above financial threshold .

Bias and Conflict of Interests

10. MoD may anticipate the need to take positive steps to avoid the possibility of bias or conflict of interest by introducing in an Invitation to Tender specific procedures for the conduct of competitions by the Contractor. The extent of these procedures and of MoD's oversight or involvement of them will be reasonable and proportionate to the real risk of bias or conflict of interest.

11. There may also be circumstances where suppliers have reasonable grounds for believing their commercial interests may be jeopardised by the possibility of bias or conflict of interest in the conduct of a competition by the Contractor, despite the application of best practice techniques to be applied in the conduct of the competition. Prior to the start of a competition, these suppliers may make representations in the first instance to the Contractor concerned about any changes that they consider are necessary to the competition procedures or finally to the MoD organisation responsible for the acquisition. MoD will consider any representations and will discuss and agree with the Contractor what steps (if any) are necessary to avoid any bias or conflict of interest arising.

12. Where the supplier can demonstrate to the MoD that there are reasonable grounds for believing that risks exist that the Contractor cannot avoid or mitigate sufficiently, then MoD will take a reasonable and proportionate active role in the bid evaluation process to the extent necessary to satisfy a fair competitive process. This active role may involve the MoD taking control of and keeping confidential to itself, the pricing sections of competitive tenders until the final assessment of all other elements of the tenders have been completed, or implementing such other controls that will in the MOD's reasonable opinion secure a fair competitive process. Notwithstanding any involvement of MoD in the bid evaluation process

the Contractor shall remain responsible for the selection of suppliers.

CPG
September 2001

**MOD/INDUSTRY COMMERCIAL POLICY GROUP
CODE OF PRACTICE**

DEFENCE CONTRACTORS' RELATIONSHIPS WITH SUPPLIERS

In this Code, "Defence Contractors" means those companies who provide goods and services for military use. It includes all those companies at any tier in the supply chain.

Objective

1. The objective of this Code is to improve the quality, effectiveness and efficiency of the supply chain relationships in the defence industry through good practice to ensure fair competition, to eliminate duplication and waste and to increase the satisfaction of both the customer and the industry with the processes and the outcomes of defence procurement.

General

2. It is the aim of Defence Contractors to achieve continuing improvements in efficiency, based on whole-life costs and quality, and to enhance the competitiveness of suppliers, through the development of professional procurement systems and practices. Where appropriate the use of effective team-working will encourage a more open relationship with suppliers, identifying common goals and opportunities for improvements. These outcomes will support the delivery of projects within the performance, time and cost parameters agreed with customers.

Principles

3. Within this aim Defence Contractors, for their part, undertake in all dealings with suppliers and potential suppliers:

- a. to maintain the highest standards of honesty, integrity, impartiality and objectivity;
- b. to be fair, efficient, firm and courteous;
- c. to strive for the highest professional standards in the award of contracts, usually by means of competition, so as to maximise efficiency, while conforming to strategic partnering objectives and undertakings;
- d. to make available as much information as is practicable and responsible on future procurement plans to facilitate business decisions;
- e. to enter into early consultation on draft specifications, statements of requirement, special terms of trading and/or contract conditions before new procurements to encourage innovation and, by team-working, identify, evaluate and implement effective trade-offs between operational and reliable performance, delivery and through-life costs;
- f. to provide clear specifications of requirements which encourage innovation and refer where appropriate to relevant technical and other standards;
- g. to make available sufficient time and information for suppliers to respond to the

bidding process appropriate for the work, and to define and publicise amongst its supplier community contact points for the handling of enquiries and complaints;

h. to manage the bidding process so as to avoid/minimise the burdens on suppliers, while preserving genuine competition and avoiding discrimination;

i. to provide opportunities on an even handed basis for suppliers (both in-house and external) to participate in competitions or market tests, but in the interests of both customer and suppliers limiting numbers to ensure optimum economy, whilst honouring (and testing, where appropriate) preferred supplier status and strategic alliances;

j. to make available the criteria for the evaluation of bids, to evaluate bids objectively and to notify the outcome promptly;

k. to avoid improper business practices;

l. to protect commercially-sensitive information in suppliers' pre-contract discussions, unsolicited proposals and formal tenders and respect and protect their intellectual property;

m. to use sensible risk sharing arrangements which avoid the need for unnecessary pricing contingencies, whilst using incentivisation techniques to encourage innovation and improve performance;

n. to notify all tenderers on the same day of the outcome of a competition and, within the bounds of commercial confidentiality, to debrief winners and losers on request on the outcome of the bidding process and the reasons for not being selected to bid or losing a bid (having regard to the applicable evaluation criteria), so as to facilitate better performance on future occasions;

o. having regard to the contractual requirements, where agreement has been reached with MoD that the Contractor should price non-competitive sub-contracts directly, to agree prices for those sub-contracts based, where appropriate and in consultation with MoD, on the Government Profit Formula and costing and pricing conventions applicable to such sub-contracts, supported by suitable undertakings on the adequacy of the information provided by suppliers;

p. to strive for the highest professional standards in the management of contracts;

q. to pay promptly for work done in accordance with contracts made;

r. to assess supplier performance in an objective and open manner and apply those assessments coherently in the process of supplier selection and tender evaluation;

s. to establish an effective system of handling complaints and disputes from suppliers with the mutual objective of resolving differences by negotiation at the lowest level of delegation appropriate to the nature of the issue and its effect on the parties, or otherwise escalating the matter within each party's management structure, before resorting to arbitration or other forms of Alternative Dispute Resolution; and

t. to respond promptly, courteously and efficiently to suggestions, enquiries and complaints, seeking an open exchange of information on all technical and commercial issues based on mutual trust.

Application

4. All methods of acquisition implementation should be carried out in the same spirit of good practice. Whatever procurement method is chosen there is a need for clarity and certainty.

5. Defence Contractors will need to objectively assess the efficiency of in-house, preferred supplier or strategic partner capability by competing or market testing the work, on an arms-length basis, from time to time in accordance with the principles of this Code or by the use of benchmarking. Defence Contractors will ensure that, where competitions include subsidiaries or associated companies of the Defence Contractor as well as other companies, no bias in favour of the Defence Contractor's subsidiaries or associated companies will be given. In particular, all tenderers are to be informed at the earliest time of the inclusion of a prospective in-house tenderer in the tender field.

6. Defence Contractors will establish policies and procedures to give effect to these principles and they will assess their conformance on a regular basis. By agreement the customer will be given access to these policies and procedures and any relevant assessments. Individual plans may be drawn up for each contract as appropriate to the size and nature of the work.

7. Defence Contractors will look to their suppliers, at every tier, in return, to observe similar principles, standards of integrity, professionalism, co-operation, courtesy, competence and efficiency.

General

8. In many cases Defence Contractors will be inviting tenders, or seeking commitments from partners, at a stage when they themselves are not yet – and may never be – appointed for the work. In these circumstances the time available for tendering, and the information that can be provided to tenderers, is often not in the direct control of the Defence Contractor. All the principles in the Code are dependent on those constraints to which the Defence Contractor seeking tenders is himself subject. Where a Defence Contractor is given insufficient time or information by the customer for the tendering process the Defence Contractor will attempt, where practicable, to mitigate the effects on the supply chain.

9. In circumstances where the award of work to an in-house capability or to a preferred supplier (without having first undertaken a competition in each case) might be regarded as anti-competitive or an abuse of market position, other codes or regulations may apply as well.

10. This Code does not replace, and should be implemented coherently with, other codes and standards such as the SBAC's Supply Chain Relationships in Action and the standards required by ISO 9000.

11. Procurement, both in the bidding and in respect of any contract which may be entered into, involves rights and obligations which are enforceable in law. This Code is not intended to create further rights and obligations: it is a statement of good practice.

CPG

September 2001

BOOKLET 2 - ANNEX J

TUPE/ INFORMATION TO BE PROVIDED TO FUTURE BIDDERS

1. During the period of 18 months preceding the expiry of the Contract at the end of its term or such longer term as may be agreed or after the Authority has given notice to terminate the Contract the Contractor shall provide the Authority with such information relating to its employees who are engaged in providing services under this Contract as the Authority may request. This information shall include but not be limited to the items listed in paragraphs 2 and 3 below.
2. Summary information as follows:
 - 2.1 The total number of staff employed who are engaged in providing services under the Contract
 - 2.2 The total payroll costs of such staff
 - 2.3 The total redundancy liability of such staff;
3. Such information detailing which are permanent and which are Agency staff, and within these two categories which are employed full-time and which are employed part-time.

In respect of each individual member of staff:

- 3.1 Age
- 3.2 Salary (including pension and NI contributions)
- 3.3 Length of Service
- 3.4 Hours of work
- 3.5 Holiday entitlement
- 3.6 Overtime hours and rates
- 3.7 Any other factors affecting redundancy entitlement
- 3.8 Any outstanding claims arising from their employment
- 3.9 Details of current loans and allowances etc; for PPI, LTDD etc
- 3.10 Full details of qualifications and experience
- 3.11 And the general terms and conditions applicable to each of these staff including:
 - 3.11.1 Probationary periods
 - 3.11.2 Retirement Age
 - 3.11.3 Periods of Notice
 - 3.11.4 Current pay agreements
 - 3.11.5 Working hours

- 3.11.6 Annual leave entitlement
- 3.11.7 Sick leave
- 3.11.8 Maternity and special leave
- 3.11.9 Terms of mobility
- 3.11.10 Any loan or leasing schemes
- 3.11.11 Occupational welfare
- 3.11.12 Any facility time agreements
- 3.11.13 Any additional employment benefits
- 3.11.14 Relevant collective agreements
- 3.11.15 Redundancy liability
- 3.11.16 Details of the Principal Civil Service Pension Scheme (PCSPS) and other public sector pensions schemes where applicable.

4. The Contractor shall permit the Authority to use this information for such purposes as it shall deem appropriate (which shall include but not be limited to the provision of such information to third parties invited to tender by the Authority for any services which are substantially the same as the services provided under this Contract) and shall enable and assist the Authority and such other persons as the Authority may determine to communicate with and meet those employees and their trade union or other employee representatives as, when and where the Authority may determine.

5. The Contractor shall fully indemnify the Authority against any claim made against the Authority at any time by any party in respect of any claims, losses, costs, expenses, demands and liabilities arising from the provision of, or failure to provide, information under paragraphs 1 to 3.

6. During the period between the submission of the above information and the expiry date of the Contract, the Contractor shall advise the Authority in writing within 7 days if they alter the terms of employment, transfer or dismiss any of the employees engaged in providing services under the Contract.

7. Once the information referred to at Paragraphs 1 to 3 has been passed to the Authority, the Contractor shall not, and shall procure that any third party shall not:

7.1 Materially amend the rates of remuneration or hours to be worked by any person employed, assigned or engaged in providing the services under this Contract, including holidays, or;

7.2 Replace any of the individuals providing services under this Contract, or deploy any person other than those already providing services under the Contract to perform the services under this Contract, or materially increase the number of persons performing the services under the Contract;

Without the prior written permission of the Authority, such agreement not to be unreasonably withheld or delayed.

8. Where:

8.1 The Contractor shall cease (for whatever reason), and whether directly or indirectly, to provide any service under this Contract, and

8.2 Any contract of any person thereupon has effect as a result of the provision of TUPE as if originally made between such person (a "Transferred Employee") and the Authority and/or any other person to whom the provision of the service is transferred;

The Contractor shall indemnify and keep indemnified the Authority (for itself and for any future service provider) against any claim or claims (and all costs and expenses thereof) by any Transferred Employee or any appropriate representative (as defined in ARD/TUPE in relation to any Transferred Employee) against it or any future service provider arising out of or in connection with any act or omission of the Contractor and/or third party on or prior to the relevant transfer date.

9. Post Transfer Reporting

9.1 The Contractor shall provide the Authority with the following information on a monthly basis;

9.2 Proposed, agreed or imposed changes to terms and conditions of service in respect of employees transferred to the Contractor under TUPE;

9.3 Disputes relating to TUPE compliance which are regarded as unresolved by a recognised Trade Union;

9.4 Any court action or tribunal proceedings relating to TUPE compliance;

9.5 Completed court action or tribunal proceedings relating to TUPE compliance;

9.6 "Out of court" settlements relating to TUPE compliance.

Such reports shall also include information relating to staff transferred under TUPE to sub contractors as a result of this Contract.

10. The information referred to in Paragraph 9 may also be used in considering the Contractor's bid at re-let, or in considering the Contractor's bid(s) for other contracts let by the Authority.

11. During the period of three months preceding the expiry of the term specified in this Agreement or at any other time as directed by the Authority or after the Authority has given notice to terminate the Contract, the Contractor shall fully and accurately disclose to the Authority such information relating to his employees and relating to all employees of any third party who are employed, assigned or engaged in providing the services under this Contract as the Authority may request and shall permit the Authority to use the information for informing any prospective employer of the Contractor's employees.

12. The information referred to in Paragraph 11 shall include, inter alia:

Personal Details

- 12.1 Name (surname, forename, title and initials)
- 12.2 Date of birth
- 12.3 Home address
- 12.4 Job Title
- 12.5 Work location
- 12.6 National Insurance Number
- 12.7 Conditioned hours of work

Pay/Performance Appraisal

- 12.8 Annual salary and rates of pay band/grade
- 12.9 Shifts, unsociable hours or other premium rates of pay
- 12.10 Overtime history for preceding 12 month period
- 12.11 Allowances & bonuses for preceding 12 month period
- 12.12 Bank/Building Society account details for payroll purposes
- 12.13 Outstanding loan/advances on salary or debts
- 12.14 National Insurance Contribution Rate
- 12.15 Cumulative pay for tax and pension purposes
- 12.16 Any other voluntary deductions from pay
- 12.17 Cumulative tax paid
- 12.18 Sickness and absence records for the immediately preceding two year period
- 12.19 A copy of the last Performance Appraisal Report and performance and promotion markings for the preceding three years

Pensions

- 12.20 For pension purposes, the notional reckonable service date
- 12.21 Pensionable pay history for 3 years to date of transfer
- 12.22 Percentage of any pay currently contributed under additional voluntary contribution arrangements
- 12.23 Percentage of pay currently contributed under any added years arrangements

Leave

12.24 Annual holiday entitlements and accrued holiday entitlement

12.25 Annual leave reckonable service date

12.25 Those currently on maternity leave or other long term leave of absence.

Other information

13. In addition to the information detailed at Paragraph 11, in the same circumstances and at the same time as specified therein, the Contractor shall also disclose the following information in respect of each individual, subject to the agreement of the individual member of staff concerned (the purpose of such disclosure being to assist any prospective employer to understand more fully the circumstances affecting each individual's employment):

13.1 Existing training or sponsorship commitments

13.2 Details of any active disciplinary/inefficiency or grievance proceedings

13.3 Details of any legal proceedings in action between employees and MOD.

14. The Contractor agrees to indemnify and keep the Authority indemnified fully in respect of any claims, losses, costs, expenses, demands and liabilities arising from the provision of information or its failure to provide information under Paragraphs 11 and 12.

TRUST DEED & BANK ACCOUNT AGREEMENT

To be confirmed.

WAR RISK INDEMNITY – ALTERNATIVE VERSION

1. In this condition:
 - a. the expression "War Risks" means risks in respect of which the Contractor's policy of insurance contains an exclusion or limitation upon claims applicable by reason of a War Risk Exclusion Clause;
 - b. the expression "War Risk Exclusion Clause" means a provision in the Contractor's policy of insurance excluding or limiting claims by the Contractor by reference to activities that include war, invasion, acts of foreign enemies, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection, martial law, military or usurped power and attempts at usurpation of power or activities of a similar nature
 - c. the expression "Subcontractor" means a subcontractor at any level of subcontracting.
2. Notwithstanding any other provisions of the Contract, but subject to the provisions of this Condition, the Authority shall hold harmless and indemnify the Contractor in respect of the liabilities, losses, payments and damage described in sub-clauses a) to h) inclusive of this Clause, where and to the extent that such liabilities, losses, payments or damage are directly attributable to a War Risk and the involvement or requirement for the involvement, for the purpose of work under the Contract of any employees or property of the Contractor in circumstances to which the War Risk Exclusion Clause applies:
 - a. all liability in respect of claims and proceedings (including reasonable settlements thereof) made or brought against the Contractor by employees of the Contractor, their dependants, executors or administrators, in respect of death, injury, sickness, capture or detention of the Contractor's employees, or loss of or damage to employee's property, and against all costs and expenses reasonably incurred in respect of such claims and proceedings;
 - b. all liability in respect of claims and proceedings (including reasonable settlements thereof) made or brought against the Contractor by third parties (other than the Contractor's employees) arising from the acts or omissions of the Contractor's employees;
 - c. any loss of or damage to property of the Contractor, and the loss of use of such property, including any payment made in respect of the necessary hire of suitable property required for performing the contract or other activity dependent on such property pending the return, replacement or repair of such property, but excluding loss of profit;
 - d. any reasonable payment made to any employee or his dependants, executors or administrators ordinarily payable in respect of absence from work as a result of injury, sickness, capture or detention, or other reasonable allowance or compensation or gratuity where such payment was necessarily incurred by the Contractor for the purpose of enabling him to perform the Contract and the payment was not otherwise payable as of right or as a matter of discretion under any statutory provision or by reason of length of employment with the Contractor;
 - e. any reasonable payment made in respect of the hire or employment of suitable staff to replace employees absent from work as a result of injury, sickness, capture or detention,

when such replacement staff are necessary for performing the Contract or other activity dependent on the availability of the absent employees, pending their return to work;

f. any payment made, where the Authority has not otherwise made provision (e.g. treatment or transportation provided without charge by the Authority), in respect of:

(1) the reasonable costs of treatment of any employee properly prescribed by a qualified medical practitioner; or

(2) reasonable medical repatriation costs; and

(3) reasonable funeral and associated transportation costs;

Where the Contractor has necessarily incurred a commitment to make such payment for the purpose of enabling him to perform the Contract, and the payment was not otherwise payable as of right or a matter of discretion under the pre-existing terms of the contract of employment of that employee, and that employee's condition would not have arisen by virtue of his employment at his normal place of work;

g. any loss of, or damage to, or loss of use of property of the Authority made available to the Contractor for the purpose of performing the Contract including any payment made in respect of the hire of suitable property necessary for performing the Contract or other activity dependent on such property pending the return, replacement and/or repair of such property but excluding loss of profit;

h. any additional payments reasonably incurred to maintain the insurance cover referred to in sub-clause 3 a) below and expressly required by reason of performance of the Contract.

3. The Authority shall not indemnify the Contractor in respect of any claim, proceedings, cost, expense, payment, loss or damage which arises from:

a. any risks in respect of which the Contractor is insured ;

b. any risks which, although uninsured, the Contractor could reasonably have been expected to have been able to insure;

c. malicious acts, acts of sabotage, strikes, riots, civil commotion or labour disturbances other than where such activities occur in support of or as a direct result of activities described in sub-clause 1 b) above;

d. performance of the Contract within the Territories listed at Schedule 1 to this Condition;

e. wilful misconduct, lack of good faith, or negligence on the part of the Contractor, his officers, servants or agents;

f. the wilful disregard of instructions properly given to employees (including but not limited to officers, servants or agents) of the Contractor by the Authority (who for the purposes of this Condition shall include members of HM Armed Forces and members of any other Armed Forces with whom the Authority is acting in concert);

g. activities undertaken by the Contractor, his officers, servants or agents for purposes other than performance of the Contract except where those activities are in compliance with

instructions properly given to employees of the Contractor by the Authority (who for the purposes of this Condition shall include members of HM Armed Forces and members of any other Armed Forces with whom the Authority is acting in concert);

h. use of any property of the Contractor, his officers, servants or agents for purposes other than performance of the Contract except where such use is in compliance with instructions properly given to employees of the Contractor by the Authority (who for the purposes of this Condition shall include members of HM Armed Forces and members of any other Armed Forces with whom the Authority is acting in concert);

i. activities undertaken by the Contractor, his officers, servants or agents which contravene any code of conduct or similar guidance issued by the Authority for the purposes of defining the Authority's reasonable expectations of the conduct of the Contractor, his officers, servants or agents in the theatre of operations; or

j. payments of any nature whatsoever to pension funds or schemes operated by or on behalf of the Contractor or any Subcontractor, or any fund or scheme relating to an individual officer, servant or agent of the Contractor, including but not limited to lump sum death benefit, pension payment, compensation payment or redundancy payment.

4. The Authority shall not indemnify the Contractor in respect of any claims, proceedings, costs, expense, payments, loss or damage for which the Contractor has made provision, other than for insurance cover, in the Contract Price (either as a direct charge, indirect charge or contingency).

5. Where the Contractor and the Contractor's insurer under the Contractor's policy of insurance in respect of property or third part liability are connected persons, the Authority shall not indemnify the Contractor under this Condition save and to the extent that the Contractor can demonstrate to the Authority's satisfaction that any endorsement, restriction, limitation or excess or cancellation made in relation to such policy that has the effect of limiting or excluding liability for any risk indemnified under this Condition is in accordance with decisions ordinarily and usually made in the relevant insurance market. Any question whether the Contractor and its insurer are connected persons shall be determined in accordance with the provisions for determining such question that are set out in section 839 of the Income and Corporation Taxes Act 1988.

6. Subject to any Subcontractor of the Contractor observing and performing the terms of Clause 7, such Subcontractor shall be entitled to the benefit of and to enforce this Condition as if he were the Contractor.

7. It is a pre-condition to any liability of the Authority under this indemnity that the Contractor shall:

a. as soon as reasonably practicable notify the Authority of any occurrence, claim or proceedings that may be expected to give rise to liability of the Authority under this Condition;

b. provide evidence or proof of any claim, proceeding, cost, expense, loss or damage in the manner and form reasonably requested by the Authority; and

c. promptly furnish to the Authority copies of all pertinent papers received by the Contractor and which may reasonably be required by the Authority.

8. The Authority shall make available to the Contractor a copy of the relevant findings of any military Board of Inquiry into any matter which gives rise to a liability on the Authority under this Condition.

Schedule 1 to DEFCON 661A

The European Union

Norway

USA

Canada

Australia

New Zealand

Other States which are full members of NATO

CONTRACTORS ON DEPLOYED OPERATIONS

Condition to be included in relevant subcontracts

DEFINITIONS AND INTERPRETATION

1. In this Condition the following words and expressions shall have the meanings set respectively against them:-
 - a. "Agreement" means this subcontract;
 - b. "Arms" means any weapon, which, for the avoidance of doubt, excludes anything to be used for the purpose of performing the Contract;
 - c. "Authority" means the Secretary of State for Defence of the United Kingdom of Great Britain and Northern Ireland;
 - d. "Authority to Deploy" means the formal grant to the Contractor of the Authority's written authority to Deploy;
 - e. "CONDO" means Contractors on Deployed Operations, being contractors providing Articles and/or Services outside the United Kingdom within a JOA as part of the civilian component supporting UK armed forces;
 - f. "Contract" means Contract No *[insert MOD Contract No]* between the Authority and the Contractor;
 - g. "Contractor" means *[insert name of prime contractor]*;
 - h. "Deploy" means any act of bringing the Contractor under the administration and control of the Authority either within a Government Establishment or the JOA which, for the avoidance of doubt, includes the Second Party and the Second Party's Employees and "Deployed" shall be construed accordingly;
 - i. "Deployment" means the period during any act of preparing, moving and initial setting up of personnel and equipment to enable the delivery of Services within a location identified in CONDO Form 1 issued in accordance with the Authority's Def Stan 05-129, their presence within that location and their subsequent recovery or redeployment;
 - j. "First Party" means *[insert name of purchaser]*;
 - k. "Government Establishment" means all Government sites including Headquarters Buildings, Her Majesty's Ships or Vessels, Service Stations or any other location which may be designated by the Authority from time to time;
 - l. "JOA" means a Joint Operations Area, being an area of land, sea and airspace in which the operational commander plans and conducts military operations or exercises to accomplish a specific mission;

m. "Local Military Commander" means the senior military person within a specific geographical area who is responsible for discipline, security and administration of that area and who for the purposes of this Condition shall be a representative of the Authority;

n. "LRWs" means Locally Recruited Workers, being workers who are engaged by the Second Party or a Subcontractor and who normally reside in the country or countries in which the contracted Services are being performed;

o. "Second Party" means *[insert name of supplier]*;

p. "Second Party's Employees" means those employees of the Second Party, being UK and third country nationals, but excluding LRWs, who are Deployed in connection with the performance of the Contract.

q. "Subcontract" means any subcontract entered into by the Second Party which requires the presence of a subcontractor at any level of contracting and his employees in a JOA designated by the Authority for CONDO purposes;

r. "Subcontractor" means a subcontractor with a Subcontract;

s. "Subcontractor's Employees" means those employees of any Subcontractor, being UK and third country nationals, but excluding LRWs, who are Deployed in connection with the performance of the Contract.

2. In this Condition the term "procure" shall be interpreted as requiring the Second Party to take whatever steps are necessary to cause the occurrence of the event or outcome concerned, provided that the Second Party shall remain responsible to the First Party to the full extent of his obligation in relation to that event or outcome if that event or occurrence does not occur.

SUBCONTRACTS

3. If the Second Party enters into any Subcontract, the Second Party shall incorporate into any such Subcontract the terms set out in this Condition.

4. The Authority may enforce against the Second Party any provision conferring a benefit on the Authority contained in Clauses 1 – 30 of this Condition and neither the First Party nor the Second Party shall be entitled to exclude such right of the Authority.

5. Subject always to the Second Party complying with the terms of Clauses 1 – 30 of this Condition, the Second Party may enforce against the Authority any provision of DEFCON 697 of the Contract conferring a benefit upon Subcontractors and neither the Authority nor the First Party shall be entitled to exclude such right of the Second Party.

AUTHORITY TO DEPLOY

6. The Second Party shall not and shall procure that the Second Party's Employees, his Subcontractors and the Subcontractors' Employees do not move into

or within the JOA in connection with the performance of the Contract, this Agreement or any Subcontract until the Contractor has:

- a. received the Authority's Authority to Deploy in CONDO Form 1, issued as provided in the Authority's Def Stan 05-129;
- b. provided the Authority with CONDO Form 2, completed as provided in the Authority's Def Stan 05-129;
- c. confirmed that the Second Party's Employees and the Subcontractors' Employees have completed the CONDO related training identified by and to the standards set by the Authority;
- d. received confirmation that the Second Party's Employees and the Subcontractors' Employees have been security cleared to the levels required by the Authority, and

the Contractor has notified the First Party and the First Party has notified the Second Party that he may move into or within the JOA in connection with the performance of this Agreement.

THE AUTHORITY'S RIGHT TO WITHHOLD, WITHDRAW AND REMOVE

7. The Authority may at any time and from time to time for any operational reason which the Authority in its absolute discretion shall determine:
 - a. withhold or withdraw Authority to Deploy;
 - b. move or require the removal of the Second Party or a Subcontractor from his current location to a location acceptable to the Authority;
 - c. move or require the removal of any of the Second Party's Employees, his Subcontractors' Employees or LRWs from their current location to a location acceptable to the Authority. The Second Party shall, as soon as reasonably practicable, move or remove any Second Party's Employee, Subcontractors' Employee or LRW whom the Authority requires to be moved or removed.
8. The Authority shall not be obliged to give reasons for taking any action in accordance with Clause 7 but may, in its sole discretion, indicate its reasons for so doing.
9. Notwithstanding the provisions of Clause 8, in the event that the Second Party is involved in any employment claim or dispute arising in connection with any action taken by the Authority under Clause 7, the Authority shall, where reasonably practicable, provide to the First Party or the Second Party as appropriate any relevant information that the Second Party may reasonably request for the purpose of addressing any such claim or dispute, except any such information the provision of which would be contrary to the interests of national security, in breach of a confidentiality or contractual obligation of the Authority, contrary to a statutory requirement or Government policy or as otherwise reasonably specified by the Authority.

THE FIRST PARTY'S OBLIGATIONS

10. If the Authority provides to the Contractor an operational specific medical warning notice providing information, supplementing that provided by the Foreign and Commonwealth Office, on medical issues specific to the JOA the First Party shall provide any such information that he receives to the Second Party.

THE SECOND PARTY'S OBLIGATIONS

Personnel

11. The Second Party shall ensure that the Second Party's Employees, and shall procure that his Subcontractor's Employees, are medically fit and dentally fit to Deploy and to undertake the tasks to which they are assigned including, taking into account any notices issues under Clause 10, being appropriately immunised.

12. The Second Party shall provide to the First Party sufficient information in respect of the Second Party's Employees and his Subcontractor's Employees to enable the First Party to properly complete a CONDO Form 2 (as provided in the Authority's Def Stan 05-129 Annex B) no later than 72 hours prior to the Second Party being Deployed.

13. The Second Party shall provide to the First Party sufficient information in respect of the Second Party's Employees and his Subcontractor's Employees to enable the First Party to properly complete a CONDO Form 3 (as provided in the Authority's Def Stan 05-129 Annex C) in each month once the Second Party has Deployed and shall keep an accurate record of the details provided to the First Party.

14. If the Second Party becomes aware that any of the Second Party's Employees, his Subcontractor's Employees or LRWs has died, suffered a serious accident, suffered injury, become a prisoner of war or been taken hostage, the Second Party shall ensure that the next of kin of the Second Party's Employee or LRW concerned and the Authority, and procure that the next of kin of his Subcontractor's Employee or LRW concerned, are informed as quickly as possible.

Conduct

15. The Second Party shall require the Second Party's Employees, his Subcontractors' Employees and LRWs to act in a responsible manner and shall require the Second Party's Employees, his Subcontractors' Employees and LRWs to make themselves aware of and comply with the Local Military Commander's orders, instructions, regulations and procedures.

16. The Second Party shall, so far as he is able and based on the information available to him:

- a. inform the Second Party's Employees and procure that his Subcontractors inform the Subcontractor's Employees, prior to them being deployed, of their status whilst they are Deployed;
- b. inform the Second Party's LRWs and procure that the Subcontractor informs the Subcontractor's LRWs of their status whilst they are on duty;
- c. provide updates in relation to their respective status as appropriate.

17. The Second Party shall ensure that the Second Party's Employees, and shall procure that his Subcontractors' Employees and LRWs are aware that they may at any time be subject to a search of their person, property or vehicles and require their co-operation in relation to any such search.

18. The Second Party shall require the Second Party's Employees and his Subcontractor's Employees to report to the Authority's nominated JOA entry and exit points respectively on arrival and departure from the JOA and during the Deployment to any reporting point within the JOA nominated by the Authority.

19. The Second Party shall ensure that the Second Party's Employees, and shall procure that his Subcontractors' Employees and LRWs report to the Authority's nominated briefing centre as specified by the Authority for operational briefings as required by the Authority.

20. If the Authority, in its absolute discretion, restricts the movement, within the JOA, of the Second Party, the Second Party's Employees, his Subcontractors, the Subcontractors' Employees and LRWs, the Second Party shall inform the Second Party's Employees, his Subcontractors, the Subcontractors' Employees and LRWs as soon as practicable and require the Second Party's Employees, his Subcontractors, the Subcontractors' Employees and LRWs to comply with any such restriction.

21. The Second Party shall ensure that the Second Party's Employees and shall procure that his Subcontractors' Employees whilst they are Deployed and LRWs whilst they are on duty do not carry Arms.

Clothing, Equipment and Transport

22. The Second Party shall, during the Deployment, ensure that the Second Party's Employees and shall procure that the Subcontractor's Employees and LRWs have appropriate equipment and clothing for the climate and the tasks which the Second Party is contracted to undertake.

23. The Second Party shall ensure that the Second Party's Employees, and shall procure that his Subcontractors' Employees and LRWs do not wear clothing, including company livery, which detracts from their civilian status. The Second Party and his Subcontractors shall avoid the use of vehicles, equipment and property that could be confused with military vehicles, equipment and property, other than those issued to the Contractor by the Authority for the purposes of the Contract and made available to the Second Party or as otherwise directed by the Local Military Commander.

Health and Safety

24. The Second Party shall ensure that the Second Party's Employees, and shall procure that his Subcontractors, the Subcontractors' Employees and LRWs, as far as reasonably practicable, undertake all work in a manner comparable with the requirements of the UK's health, safety and environmental legislation, or in accordance with the equivalent requirements of the host nation where these are more stringent.

ID Cards

25. The Second Party shall ensure that all information, including that specified in the Authority's Def Stan 05-129, required for the issue of identity cards to those of the Second Party's Employees and the Subcontractor's Employees who are authorised to Deploy is provided to the First Party in accordance with the processes set out in the Authority's Def Stan 05-129.

26. The Second Party shall ensure that all information, including that specified in the Authority's Def Stan 05-129, required for the issue of day security passes to the Second Party's and the Subcontractor's LRWs is provided to the First Party in accordance with the processes set out in the Authority's Def Stan 05-129.

27. The Second Party shall be responsible for the safe-keeping of all identity cards and security passes issued to the Second Party's Employees, his Subcontractors' Employees and LRWs and shall require the Second Party's Employees, and shall procure his Subcontractors' Employees and LRWs to wear those identity cards and security passes as instructed by the Local Military Commander. The Second Party shall inform the Second Party's Employees, his Subcontractors' Employees and LRWs that any misuse, modification or misappropriation of their identity cards or security passes may result in action being taken by the Authority under Clause 7.

Training

28. The Second Party shall ensure that the Second Party's Employees and shall procure that the Subcontractor's Employees and LRWs are provided with the appropriate level of CONDO related training as identified by the Authority.

29. If the Authority offers CONDO related training and this is accepted by the Contractor, the Second Party shall make the Second Party's Employees and Subcontractor's Employees available for such training at the time and place specified by the Authority.

Public Relations

30. The Second Party shall not make any press statement or undertake any publicity, advertising or marketing campaigns, including for recruitment, specifically referring to the Contract, this Agreement or any Subcontract without the prior written consent of the Authority as notified by the First Party."

BOOKLET 2 ANNEX N

VEHICLES, PLANT AND EQUIPMENT PROVIDED BY THE AUTHORITY

Detailed at Appendix 1 to Annex D to Booklet 4

Price Fixing

DEFCON 643
Edition 07/04

1. Fair and reasonable prices shall be paid to the Contractor in respect of the Articles and Services, such prices to be fixed as soon as practicable by agreement between the Authority and the Contractor.

2. In the event of delay in fixing prices fair and reasonable provisional prices shall be fixed by the Authority, and the Authority reserves the right to alter from time to time the provisional prices so fixed. The Authority shall pay to the Contractor the amount by which any sum payable on the basis of the prices finally fixed exceeds any sum paid on the basis of the provisional prices and the Contractor shall pay to the Authority the amount by which any sum paid on the basis of provisional prices exceeds the sum payable on the basis of prices finally fixed. In the event of any alteration of the provisional prices similar provisions for payment and repayment shall apply.

3. For the purpose of fixing prices the Contractor shall (subject to Clause 4 below) at all times before prices have been finally fixed:

a) maintain a record of such particulars of the costs of production of the Articles or performance of the Services (including, for example, details of times taken and of wage rates paid) as may be available from his normal accounting procedures and of such further particulars of those costs as the Authority may from time to time reasonably require (including particulars of the costs of production or performance of such substantial parts of any of the Articles or Services as the Authority may specify in any such requirement) as being necessary for the purpose of determining such costs with reasonable accuracy:

provided that a requirement under this sub-Clause shall not apply so as to impose any obligation on the Contractor to maintain a record of any such further particulars as aforesaid in respect of any costs of production of the Articles or performance of the Services incurred before the date on which that requirement is made; and

b) when requested by the Authority, furnish a summary of any of the costs mentioned in sub-Clause 3.a) above in such form and detail as the Authority may reasonably require;

c) afford such facilities as the Authority may reasonably require for its representatives to visit the Contractor's premises and examine;

i. any or all of the processes involved in the manufacture of the Articles or performance of the Services in order to estimate the costs; and

ii. the records maintained under sub-Clause a) above;

d) maintain and on request furnish such particulars of his plans for the manufacture of the Articles or performance of the Services as the Authority may reasonably require. Such particulars shall on request by the Authority be confirmed or brought up to date in any respect which might significantly affect the costs of production of the Articles or performance of the Services; and

e) maintain and on request furnish such particulars as the Authority may reasonably require in order that it may be satisfied that the prices paid by the Contractor to subcontractors and suppliers are fair and reasonable.

4. Where, at any time after the Contract has been made, the Contractor quotes to the Authority a firm price for any of the Articles or Services, then Clause 3 above (except sub-Clause 3.c)i.) shall cease to apply in relation to those Articles or Services (but not in relation to any other of the Articles or Services) after the expiration of such period as shall be specified in the Contract for the purposes of this Clause, commencing with the date on which the quotation is made:

Provided that where the Authority is of the opinion that it is necessary that the said Clause 3 should continue to apply for the purpose of reaching agreement on fair and reasonable prices for the Articles or Services in question, and gives notice to the Contractor in writing that the said period should accordingly be extended, then the said Clause 3 shall continue to apply in relation to those Articles for such further period as may be specified in the notice or in any subsequent notice so given.

Notwithstanding the provisions of DEFCON 526 a written notice under the proviso to this Clause shall not be effective unless it is signed on behalf of the Authority by one of its officers not below the level of Director Commercial.

5. If, in connection with or for the purposes of the Contract, at any time before prices for the Articles or Services have been finally fixed, any subcontract, the price of which exceeds £100,000 (or such greater amount as agreed between the parties and specified in the Contract), is placed by the Contractor with a subcontractor (including a subsidiary company or firm) otherwise than by acceptance of the lowest acceptable competitive tender, then except in so far as the Authority otherwise agrees in writing, the Contractor shall:

a)

i. include, in any such subcontract which is not a fixed price subcontract, the provisions set out in Part I of the Appendix to this Condition and, in any such subcontract which is a fixed price subcontract, the provisions set out in Part II of that Appendix; or

ii. at his discretion and provided the Authority does not direct to the contrary, include Clause 3.a), b) and c) and Clause 5 of DEFCON 127 (where 'Contractor' is replaced by 'subcontractor') in subcontracts not exceeding £100,000 (or such other amount as agreed between the parties and specified in the Contract); and

b) take all reasonable steps to secure the due observance by the subcontractor of his obligations under the said provisions.

In this Clause, the expression 'fixed price subcontract' means a subcontract in which the prices are fixed at the time the subcontract is made, including those which contain provision for variation of any prices so fixed by reason only of changes in wage rates or prices of materials.

6. Except in so far as it is necessary for proper compliance with DEFCONs 650, 650A, 651 or 651A, or with the requirements of any person duly acting in the capacity of an arbitrator under any provision of the Contract, the Authority shall not disclose to any

person outside Her Majesty's Government in the United Kingdom
any information obtained by it in consequence of the application of
any of the provisions of this Condition.

Appendix To DEFCON 643

Part I

Provisions To Be Included In Subcontracts, Including Those With A Subsidiary Company Or Firm, Which Are Not Fixed Price Subcontracts

(see Clause 5 of DEFCON 643)

1. Fair and reasonable prices shall be paid to the subcontractor in respect of the articles to be supplied or services to be performed under this subcontract, such prices to be fixed as soon as practicable by agreement between the Contractor and the subcontractor.
2. In the event of delay in fixing prices fair and reasonable provisional prices shall be fixed by the Contractor and the Contractor reserves the right to alter from time to time the provisional prices so fixed. The Contractor shall pay to the subcontractor the amount by which any sum payable on the basis of the prices finally fixed exceeds any sum paid on the basis of the provisional prices and the subcontractor shall pay to the Contractor the amount by which any sum paid on the basis of provisional prices exceeds the sum payable on the basis of prices finally fixed. In the event of any alteration of the provisional prices similar provisions for payment and repayment shall apply.
3. The subcontractor shall, at all times before prices for the articles to be supplied or services to be performed under this subcontract have been finally fixed:
 - a) maintain a record of such particulars of the costs of production of the said articles or performance of the services (including, for example, details of times taken and of wage rates paid) as may be available from his normal accounting procedures and of such further particulars of those costs as the Authority (that it is to say, the Secretary of State for Defence), may from time to time reasonably require (including particulars of the costs of production of such substantial parts of any of the said articles or performance of the services as the Authority may specify in any such requirement) as

being necessary for the purpose of determining such costs with reasonable accuracy:

provided that a requirement under this sub-Clause shall not apply so as to impose any obligation on the subcontractor to maintain a record of any such further particulars as aforesaid in respect of any costs of production of the Articles or performance of the Services incurred before the date on which that requirement is made;

b) when requested by the Authority, furnish to the Authority a summary of any of the costs mentioned in sub-Clause 3.a) above in such form and detail as the Authority may reasonably require;

c) afford such facilities as the Authority may reasonably require for its representatives to visit the subcontractor's premises and examine;

i. any or all of the processes involved in the manufacture of the said articles or performance of the services in order to estimate the costs of their production or performance; and

ii. the records maintained under sub-Clause a) above; and

d) maintain and on request furnish to the Authority such particulars of his plans for the manufacture of the said articles or performance of the said services as the Authority may reasonably require. Such particulars shall on request by the Authority be confirmed or brought up to date in any respect which might significantly affect the costs of production of the said articles.

4. For the purpose of estimating the cost of production of the Articles to be supplied or the Services to be performed under the main contract, the subcontractor shall, at all times before prices for those Articles or Services have been finally fixed (whether before or after the prices for the articles to be supplied or the services to be performed under this subcontract have been finally fixed), afford such facilities as the Authority may reasonably require for its representatives to visit the subcontractor's premises and examine any or all of the processes involved in, and the plans for, the manufacture of the last-mentioned articles or performance of the last-mentioned services.

In this Clause, the expression 'the main contract' means the Contract between the Authority and the Contractor in connection with which, or for the purposes of which, this subcontract has been made.'

Part II

Provisions To Be Included In Subcontracts Which Are Fixed Price Subcontracts Including Those With A Subsidiary Company Or Firm

(See Clause 5 of DEFCON 643)

'For the purpose of estimating the costs of production of the Articles to be supplied or the Services to be performed under the main contract, the subcontractor shall, at all times before prices for those Articles or Services have been finally fixed, afford such facilities as the Authority (that is to say, the Secretary of State for Defence) may reasonably require for its representatives to visit the subcontractor's premises and examine any or all of the processes involved in, and the plans for, the manufacture of the articles to be supplied or the performance of the services under this subcontract.

In this Clause, the expression 'the main contract' means the Contract between the Authority and the Contractor in connection with which, or for the purposes of which, this subcontract has been made.'

CURRENT PRIME CONTRACTOR PERSONNEL INFORMATION

Not Used.

PURCHASE TO PAYMENT

The Contractor shall submit all Payment Requests (P2P Invoice) to the Authority, using a properly prepared message structure and format for an invoice in accordance with the arrangements set out in Deform 30 Agreement.

Upon submission of the invoice, the Authority shall within 5 Working Days:

- either receipt the request on the P2P system ("Payment Approval") and specify the amount received and the basis on which that amount was calculated; or
- send to the Prime Contractor a written Notice that no amount is approved in respect of the Payment Request ("Notice of Non-Approval")
- here either the amount of the Payment Approval is less than the Payment Request or a Notice of Non-Approval is issued, the Authority shall specify the reasons why he considers the Payment Approval may be withheld or abated and the amount of the withholding attributable to each reason.

The receipting by the Authority of your Payment Request (P2P Invoice) will enable payment to be made by the Bill Paying Branch.

All valid, properly completed Invoices for payment received in P2P shall be paid by the Authority in accordance with Condition 48 by means of the BACS directly into the Prime Contractors bank account and to facilitate payment by means of the BACS system, the Prime Contractor shall provide the Bill Paying Branch in advance of the submission of valid claims details of the name and address of his bank, sort code and account number.

Notwithstanding any statement to the contrary on the Payment Request, the Payment Approval shall not be construed as acceptance by the Authority of the performance of the Prime Contractor's obligations nor as a waiver of his rights and remedies either under the Contract or otherwise.

The due date for payment ("Due Date") shall be as follows:

- Where the Authority has receipted your application for payment on P2P in accordance with Condition 48.1.5 the amount receipted shall become due on the day the Bill Paying Branch receives it.
- Where neither a Payment Approval nor a Notice of Non-Approval has been issued and should have been so issued in accordance with Condition 48.1.1 the amount of the relevant Payment Request shall become due 3 Working Days after the date upon which the Authority should have sent either the Payment Approval or Notice of Non-Approval in accordance with Condition 48.1.1.

UNIQUE IDENTIFIERS

For P2P purchase orders, the Contract or an order issued under the Contract will reference Unique Order Identifiers (UOIs). The application of UOIs is at the line item level. The Contractor must quote the applicable unique identifier in any communication concerning a line item.

Confirmation of receipt of deliveries by Unique Identifiers shall not be construed as an acceptance of the Articles for the purposes of Condition 48 or any other term of the Contract relating to acceptance by the Authority.

THE ELECTRONIC TRANSACTIONS AGREEMENT

Between

[COMPANY]

and

SECRETARY OF STATE FOR DEFENCE

**Ministry of Defence
Electronic Transactions Agreement**

THIS AGREEMENT comprises The General Clauses for electronic transactions.

The terms of this Agreement shall govern the conduct and methods of operation between the parties in relation to the electronic exchange of data for the purposes of or associated with the supply of Articles and/or Services pursuant to those contracts which reference it. Except as otherwise provided in the appended terms, the terms do not apply to the substance of the data transfer. This Agreement shall have the date of and be effective from the date of the last signature hereunder.

AGREED

For and on behalf of
[COMPANY]

Signature

Name

Position

Date

For and on behalf of
Secretary of State for Defence

Signature

Name

Position

Date

Whose registered office is at:

Agreement reference number

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1. Definitions

- a. In this Agreement, in addition to the definitions in DEFCON 501:
- i. **"Acknowledgement of Receipt"** means the procedure by which, on receipt of a Message, the logical presentation or form are checked, and a corresponding acknowledgement or rejection is sent by the receiver;
 - ii. **"Adopted Protocol"** means the method(s) for the Interchange of Messages between the respective Parties and an intermediary appointed pursuant to Clause 8 for the presentation and structuring of the transmission of Messages as defined in Annex A;
 - iii. **"Associated Data"** means that data which accompanies a Message but may not be in the Adopted Protocol; such data may include header information, protective markings, designations, Electronic Signatures, date and time of transmission and of receipt;
 - iv. **"Data"** means all Messages and Associated Data transmitted, received or stored in a digital form;
 - v. **"Data File"** means a single record or collection of data records that are logically related to each other, and are handled as a unit;
 - vi. **"Data Log"** means a complete record of all Data Interchanged representing the Messages and their Associated Data between the parties;
 - vii. **"Defence Electronic Commerce Service" or "DECS"** mean the service provided by the party under contract to the Authority to manage the electronic receipt, transmission and translation of messages exchanged between the Authority and its suppliers;
 - viii. **"Electronic Signature"** means anything in electronic or digital form incorporated into or otherwise logically associated with an electronic communication for the purpose of establishing the authenticity of the communication or its integrity, or both;
 - ix. **"Expunge"** means the removal of the information contained in a Message document such that the content of the Message is removed from the system in a manner which precludes its retrieval (but with no obligation in respect of the record of its receipt);
 - x. **"Functional Acknowledgement"** means an acknowledgement Message by the receiving party's computer software application which automatically confirms the receipt of a Message at the moment of receipt;

xi. "Interchange" means the electronic exchange of Data between the Parties using the Adopted Protocol;

xii. "Message" means Data structured in accordance with the Adopted Protocol and transmitted electronically between the parties including where the context admits any part of such Data.

2. Scope

- a.** The Messages to be exchanged under this Agreement are detailed in the Message Implementation Guidelines referred to in Annex A, which also includes guidance on how these should be profiled.
- b.** This Agreement shall apply to all Messages passed between the parties using the Adopted Protocol. The parties agree that all such Messages shall be transmitted in accordance with the provisions of this Agreement.
- c.** The parties may agree additional or alternative terms to reflect additional or different requirements which they may have for the Interchange of Messages, which terms shall form part of this Agreement.

3. Security of Data

- a.** Each of the parties shall:
 - i.** ensure as far as reasonably practicable, that Data is properly stored, is not accessible to unauthorised persons, is not altered, lost or destroyed and is capable of being retrieved only by properly authorised persons;
 - ii.** subject to the provisions of Sub-Clause 8.a. ensure that, in addition to any security, proprietary and other information disclosure provision contained in the Contract, Messages and Associated Data are maintained in confidence, are not disclosed or transmitted to any unauthorised person and are not used for any purpose other than that communicated by the sending party or permitted by the Contract; and
 - iii.** protect further transmission to the same degree as the originally transmitted Message and Associated Data when further transmissions of Messages and Associated Data are permitted by the Contract or expressly authorised by the sending party.
- b.** The sending party shall ensure that Messages are marked in accordance with the requirements of the Contract. If a further transmission is made pursuant to Sub-Clause 3. a. iii. the sender shall ensure that such markings are repeated in the further transmission.
- c.** The parties may apply special protection to Messages by encryption or by other agreed means, and may apply designations to the Messages for protective Interchange, handling and storage procedures. Unless the parties otherwise agree, the party receiving a Message so protected or designated shall use at least the same level of protection and protective procedures for

any further transmission of the Message and its Associated Data for all responses to the Message and for all other communications by Interchange or otherwise to any other person relating to the Message.

d. If either party becomes aware of a security breach or breach of confidence in relation to any Message or in relation to its procedures or systems (including, without limitation, unauthorised access to their systems for generation, authentication, authorisation, processing, transmission, storage, protection and file management of Messages) then it shall immediately inform the other party of such breach. On being informed or becoming aware of a breach the party concerned shall:

- i.** immediately investigate the cause, effect and extent of such breach;
- ii.** report the results of the investigation to the other party; and
- iii.** use all reasonable endeavours to rectify the cause of such breach.

e. Each party shall ensure that the contents of Messages that are sent or received are not inconsistent with the law, the application of which could restrict the content of a Message or limit its use, and shall take all necessary measures to inform without delay the other party if such an inconsistency arises.

4. Authenticity of Messages

a. Each Message shall identify the sending party and receiving party and its authenticity shall be verified by the means specified in the Adopted Protocol.

b. The parties agree not to contest the authenticity, admissibility or enforceability of Messages under the provisions of any applicable law relating to whether certain agreements be in writing and signed by the party to be bound thereby. Messages, when printed from electronic files and records established and maintained in the normal course of business will be admissible as between the parties to the same extent and under the same conditions as other business records originated and maintained in documentary form.

5. Integrity of Messages

a. The sending party shall ensure as far as is reasonably practicable that all Messages are complete, accurate and secure against being altered in the course of transmission and, subject to Sub-Clauses 5.b. 5.d. and 15, shall be liable for the direct consequences of any failure to perform his obligations under this Sub-Clause 5.a.

b. Each party will accord all Messages the same status as would be applicable to a document or to information sent other than by electronic means, unless a Message can be shown to have been corrupted as a result of technical failure on the part of a machine, system or transmission line involved in the process of Interchange.

c. Upon either party becoming aware that a Message has been corrupted or if any Message is identified as incorrect then that party shall inform the other and the sending party shall re-transmit the Message as soon as practicable with a clear indication that it is a corrected Message. Any liability of the sending party which would otherwise accrue from its failure to comply with the provisions of this Sub-Clause 5.c. shall not accrue if Sub-Clause 5.d. applies.

d. Notwithstanding Sub-Clauses 5.a. and 5.c. the sending party shall not be liable for the consequences of a corrupted or incorrect transmission or any failure to re-transmit if the error is or should in all the circumstances be reasonably obvious to the receiving party. In such event the receiving party shall immediately notify the sending party thereof.

e. If the receiving party has reason to believe that a Message is not intended for him he shall notify the sending party and if so requested by the sending party shall, so far as is reasonably possible, Expunge from his system the information contained in such Message.

6. Acknowledgement of Receipt of Messages

a. Except where the Interchange of Messages takes place solely within DECS, immediately upon receipt of a Message at its receipt computer, the receiving party's receipt computer shall automatically transmit a Functional Acknowledgement in return and additionally the sender may request an Acknowledgement of Receipt.

b. An Acknowledgement of Receipt is required unless stipulated in the Contract to the contrary.

c. Where an Acknowledgement of Receipt is required, the receiver of the Message to be acknowledged shall ensure that the acknowledgement or a rejection is sent within the time limit specified in the Contract or in Annex A to this Agreement if applicable or, if no limit is specified, within a reasonable period of time.

d. Where an Acknowledgement of Receipt is required, if the sender does not receive the Acknowledgement of Receipt or rejection within the time limit applicable, or, if no time limit is specified, within a reasonable time, the sender may, upon giving notice to the receiver, treat the message as having no force or effect.

e. Acknowledgement in accordance with this clause shall not be deemed to constitute acceptance of any offer contained in any Message. Acceptance of an offer contained in any Message which is intended to create a legally binding obligation shall be in accordance with the provisions of the Contract.

f. A Message shall be understood to have been received from the sender:

i. if transmitted between 09.00 and 17.00 hours on a business day (recipient's time) on receipt by the sender of a Functional Acknowledgement; or

ii. if transmitted at any other time, at 09.00 on the first business day (recipient's time) on receipt by the sender of a Functional Acknowledgement; or

iii. if the Interchange of Messages takes place solely within DECS, at the moment a Message is completed by pressing the submit button if transmitted between 09.00 and 17.00 hours on a business day (recipient's time) or if transmitted at any other time, at 09.00 on the first business day (recipient's time).

7. Storage of Data

- a. Each party shall maintain a Data Log or shall cause an intermediary to maintain a Data Log recording all Messages and Associated Data as sent and received without modification.
- b. The Data Logs may be maintained as Data Files on computer or by other suitable means provided that a copy of the Data can be readily retrieved and presented in human readable form. Procedures to enable a secure means of archiving Data Logs shall be detailed in the Contract or agreed between the parties.
- c. Each party shall be responsible for making such arrangements as may be necessary for the Data contained in its Data Log to be prepared as a correct record of the Messages and Associated Data as sent or received by that party. In the event that a party has destroyed its Data Log, the other party shall have no obligation to furnish it with any information recorded in its Data Log.
- d. Each party shall ensure that:
 - i. it has appointed an identifiable person responsible for the operation and management of that party's data processing system concerned with the interchange of Messages; and
 - ii. the person responsible for the data processing system concerned with the Interchange of Messages, or such other person as may be agreed by the parties or required by law, shall certify that the Data Log and any reproduction made from it is correct and complete.

8. Intermediaries

- a. Subject to Clause 15 if either party uses the services of an intermediary to transmit, log, store or process Messages, that party shall be responsible for any acts, failures or omissions by that intermediary in its provision of the said services as though they were his own acts, failures or omissions. The Authority shall be liable as between the Authority and the Contractor for any acts, failures or omissions of DECS in its provision of the services of an intermediary as though they were the acts, failures or omissions of the Authority.
- b. Any party using an intermediary shall ensure that it is a contractual responsibility of the intermediary that no change in the substantive data content of the Messages to be transmitted is made and that such Messages are not disclosed to any unauthorised person.

9. Term and Termination

- a. This Agreement shall take effect as of the date of last signature and shall remain in full force and effect until terminated by either party upon giving one month's notice to the other. Any termination of this Agreement shall not affect contracts that call it up by reference prior to that termination.
- b. Notwithstanding termination for any reason, Clauses 3, 7 and 8 shall survive termination of this Agreement.
- c. Termination of this Agreement shall not affect any action required to complete or implement Messages which are sent prior to such termination.

10. Interruption of Service

- a. The parties acknowledge that service may be interrupted at times during the course of this Agreement. In such circumstances, the parties shall immediately consult each other on the use of alternative forms of communication to be used, including facsimile, telephone or paper. Any alternative forms of communication shall not be controlled by this Agreement.
- b. Applicable only in the absence of a relevant clause in the Contract:
 - i. Subject to Sub-Clause 10. a., a party shall not be deemed to be in breach of this Agreement by reason of any delay in performance, or non-performance, of any of its obligations hereunder to the extent that such delay or non-performance is due to any interruption of service or incident of Force Majeure as described in Sub-Clause 10.b.iii. below, of which he has notified the other party without delay
 - ii The time for performance of that obligation shall then be extended accordingly. Sub-Clause 10. b. i. shall not operate so as to relieve liability for any matter which is a breach of Clause 3 of this Agreement
 - iii. For the purposes of this Agreement, Force Majeure means, in relation to either party, any circumstances beyond the reasonable control of that party.

11. Invalidity and Severability

In the event of a conflict between any provision of this Agreement and any law, regulation or decree affecting this Agreement, the provisions of this Agreement so affected shall be regarded as null and void or shall, where practicable, be curtailed and limited to the extent necessary to bring it within the requirements of such law, regulation or decree but otherwise it shall not render null and void other provisions of this Agreement.

12. Notices

The provisions of DEFCON 526 shall apply.

13. Precedence

In the event of any conflict between the terms of this Agreement and the Contract, then the terms of the Contract shall prevail in relation to the substance of the Messages in connection with the Contract.

14. Virus Control

Each party and its intermediary (if any) shall operate at all times a virus control check for all Interchange of Messages.

15. Limit of Liability

a. Each party agrees that, in relation to any claim, or series of connected claims, including claims for negligence but excluding claims resulting from wilful misconduct, arising from any delay or omission or error in the electronic transmission or receipt of any message pursuant to this Agreement, the liability of either party to the other shall be limited to £10,000, or, where the Contract provides otherwise, to such other amount as is specified in the Contract.

b. For the avoidance of doubt, liability in relation to any claim arising under the Contract shall be determined in accordance with the Contract.

c. In the event that a delay, omission or error as referred to in Clause 15a occurs, which causes a delay in the performance of an obligation by either party under the Contract, the period for the performance of that obligation by the affected party shall be extended by a period of time equal to the period of any such delay, omission or error.

16. Entire Agreement

This Agreement, including Annex A and any documents expressly referred to in this Agreement, represents the entire agreement between the parties and supersedes all other agreements oral or written, and all other communications between the parties relating to the subject matter hereof provided that nothing in this Clause shall exclude any liability for fraudulent misrepresentation.

Message Implementation Guidelines (MIGs)

The Message Implementation Guidelines, are available by telephoning the DECS Service Desk on 0870 241 3569, by post from the DECS Service Desk, Capgemini, 10 Henderson Rd, Inverness, Scotland IV1 1AU, or by fax on 01463 643099. The version of the MIG that is current at the time of signature of this Agreement, shall be the version specified below.

MIG Version 201

Unique Identifiers

Definitions

1. For the purposes of this Condition, Unique Identifiers comprise the following:
 - a) Unique Order Identifier (UOI) generated by P2P for non inventory purchase orders;
 - b) Unique Receipt Reference Identifier (URRI), generated by P2P 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 P2P purchase orders, the Contract or an order issued under an Enabling Contract 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.

Payment Under P2P

1. In order to obtain payment the Contractor shall, upon completion or performance of the Contract (or of any part of the Contract for which the Contractor is entitled to payment) submit a delivery label. The Contractor shall complete and dispatch the delivery label. For the purpose of DEFCON 522J, the 'delivery label' shall have the same meaning as the receipt of 'goods, works or services' following the process agreed in the Contract.
2. Upon receipt of the delivery label, the Authority shall without delay either: a) enter the relevant details into the Authority's ordering receipting and payment system (DECS P2P), indicating receipt of the applicable Articles or confirmation of performance of Services ('receipting'); or b) notify the Contractor in writing, giving reasons why it considers receipting of the applicable Articles or Services may be withheld.
3. The Contractor shall submit all claims for payment to the Authority, using a properly prepared message structure and format for an invoice in accordance with the arrangements set out or referenced in DEFFORM 30.
4. All valid, properly prepared invoices submitted to the Authority in accordance with this Condition shall be paid by the Authority on or before the Relevant Day.
5. Receipting 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 either under the Contract or otherwise.
6. Where the Authority is responsible for arranging all or any part of the transportation of Articles to be supplied under the Contract the Authority shall be deemed not to have received the delivery label for the purposes of Clause 2 and sub-Clause 9.c) of this Condition until either: a) the consignee has physically received the Articles; or b) 5 days after the Articles are ready for collection as notified to the Authority's Transport Office; whichever occurs first.

Wherever possible, the Contractor shall inform the Authority's Transport Office at least 2 days in advance of the date upon which the Articles shall be ready for collection.

7. Where and to the extent that the debt would otherwise be a 'qualifying debt' under the Late Payment of Commercial Debts (Interest) Act 1998 ('the Act'):

a) the interest provided for by this Condition is a contractual remedy and is not statutory interest. Therefore, to the extent permissible by law, the provisions of the Act relating to statutory interest shall not apply to the Contract;

b) from the day after the Relevant Day and thereafter until payment is made, simple interest at a rate calculated in accordance with sub-Clause 7.c) of this Condition, may be claimed by the Contractor on the value of all valid claims for payment (or unpaid parts thereof);

c) without prejudice to sub-Clause 7.a) of this Condition, the rate of interest referred to in sub-Clause 7.b) of this Condition shall be the prevailing rate of statutory interest (as defined in the Act) on the Relevant Day;

d) no interest shall be payable for any period of delay attributable to the conduct of the Contractor;

e) all claims for interest made pursuant to this Condition shall be notified in writing to the MOD commercial officer shown at box 1 of the Appendix; and

f) any interest pursuant to this Condition shall not form a part of the Contract Price and, as a remedy for late payment, shall not be subject to VAT.

8. If and to the extent that any term of this Condition shall be held to be, or to cause the Condition or Contract to be, void, invalid, unlawful or unenforceable, such term shall, to that extent, be omitted from this Condition and the rest of the Condition shall stand.

9. In this Condition:

a) 'the Appendix' means DEFFORM 111 appended to the Contract;

b) 'the consignee', 'the Authority's Transport Officer' and 'the Bill Paying Branch', shall be determined by reference, respectively, to boxes 9, 10 and 11 of the Appendix;

c) 'the Relevant Day' means the day which is 30 days after the later of:

i. the day upon which a valid delivery label in accordance with Clause 1 of this Condition is received by the Authority; and

ii. the date of completion or performance of the part of the Contract to which the delivery label relates.

10. Where and to the extent that the Housing Grants Construction and Regeneration Act 1996 applies to the Contract, a payment becomes due under the Contract on the day which is the later of:

a) the day upon which a delivery label is received by the Authority in accordance with Clause 1 of this Condition; and

b) the date of completion or performance of the part of the Contract to which the delivery label relates.

the final date for payment in relation to any sum which becomes due under the Contract is the Relevant Day.



MINISTRY OF DEFENCE

Trading Partner Guide to the MOD's electronic purchasing process



Defence e-Procurement Services

Advantages of using the MOD's electronic purchasing process

FASTER PAYMENT

NO PAPER INVOICES

LESS BUREAUCRACY

ENVIRONMENTALLY FREINDLY

LESS MANUAL INTERVENTION

ACCURATE AND RELIABLE

IMPROVED MANAGEMENT INFORMATION

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Chapter one

Overview of the Ministry of Defence electronic purchasing process

Introduction

The MOD's electronic purchasing process has two main parts to it

- A secure electronic gateway for sending and receiving information between the MOD and industry called the Defence Electronic Commerce Service (DECS)¹
- An electronic purchasing system used internally across the MOD called Purchase to Payment (P2P)

Together, they provide a fully integrated electronic capability for generating orders within the MOD, sending those orders to industry and processing electronic invoices and payments

This chapter describes in more detail how the electronic purchasing process works

The Defence Electronic Commerce Service (DECS)

DECS is a managed service which provides a single e-business portal for trading between MOD and industry. Through a range of e-business services & connectivity options DECS enables the MOD to conduct business electronically across all industry sectors. Importantly, DECS presents a single 'electronic face' for the MOD to its trading community.

DECS is the key enabler in the creation of the Defence Community e-business environment. It is being continually developed, introducing

¹ DECS also hosts other services such as the Defence Collaboration Programme (DCP)

new & improved services to meet both MOD and trading partner requirements. DECS allows for an e-business environment where information is shared collaboratively with the MOD's trading partners for mutual benefit.

Purchase to Payment (P2P)

P2P is the MOD's electronic purchasing system. It enables electronic ordering, receipting and invoicing to take place with industry trading partners. It represents an important step in enabling the MOD and trading partners to meet e-commerce and e-business objectives.

P2P

- Provides a single purchasing process, with all orders recorded in a central orders database
- Captures demands from MOD users, converts them into orders and then routes them electronically via DECS to the appropriate MOD trading partner
- Enables trading partners to communicate electronically with the MOD via DECS by submitting order acknowledgements, shipping details and invoices
- Enables accelerated matching of invoices with orders and receipts allowing for quicker payment. The P2P system removes the need for paper advice notes e.g. Mod Form 640s & AG173s

- Provides visibility and use of electronic online purchasing catalogues (e-catalogues) across the MOD
- Provides the MOD with consolidated management information to support future procurement strategies and better management of trading partner business with the MOD

The MOD's electronic purchasing process

The electronic purchasing process is as follows:

- An electronic purchase order for goods or services is sent by the MOD to the trading partner who then sends back an electronic acknowledgement
- For many contracts, an advanced shipping notification is electronically sent in by the trading partner to the MOD when the goods are about to be despatched
- On delivery of the goods, or completion of the services ordered, an electronic receipt is recorded on the P2P system by the MOD
- An electronic invoice is then sent by the trading partner to the MOD
- The order, receipt and invoice are matched by the P2P system, triggering payment to the trading partner. This is known as the 3 way matching process

Note:

There is also a 2 way matching process, when required as part of the MOD's contract terms and conditions, which does not require a receipting function to be completed before payment is made. Payment is made just by matching the purchase order and invoice. This does not affect any of the other obligations of the contract, including the requirement to submit a shipping label in accordance with DEFCON 129J. Receipt details are still recorded by the MOD for audit purposes.

Also, the MOD has introduced 2 more electronic processes

- Request for Quotes (RFQ) – sent electronically from the MOD to a trading partner
- Electronic Quotation (Q) – sent electronically from a trading partner to the MOD in response to an RFQ

RFQ and Q are currently available to Trading partners connected to DECS via EDI/VAN and the HTTPS link.

Further information about the process and the information required to make it work effectively and correctly is provided in the rest of this chapter

Purchase order supplementary notes field

The "notes" field on the electronic order is to be used only with the prior agreement of the MOD and the trading partner. This supplementary notes field is to be used only for additional clarifying information or reference to additional clarifying information located elsewhere. This field cannot be used to change in anyway the contractually agreed terms and conditions. Trading partners may reject orders on the basis of unacceptable supplementary notes.

Advanced Shipment Notification (ASN)

The ASN is sent by the trading partner to provide details of the shipment including dates when consignments are to shipped and delivered. This advance notification is used to provide information to the MOD's logistic information systems to improve management of receipting, warehouse processes and consignment tracking processes within the MOD as well as providing MOD buyers with important information on order progress.

Certain contracts managed on P2P do not require ASNs. Trading Partners should check with their MOD commercial contact point to establish details of contracts that require the production of ASNs.



Use of the electronic (e) business delivery label/form

Label / form usage

The e Business delivery label / form, DEFFORM 129J, accompanies the package / consignment to which it applies. It may be attached as a label directly to the package surface, or as a form in a document envelope.

This label / form shall be provided by the Contractor for all deliveries of Articles and performance of Services where the original Order is raised under DEFFORM 30. Failure to provide this label / form will lead to greater resource effort, more input errors and delays in payment processes.

2 copies of the label are required, one with the goods and one in an attached envelope for easy receipting. Two copies are essential as it allows deliveries of heavy, bulky items to be made direct to the storage location.

Bar code symbology and print quality

The symbology to be used shall be Code 128 (ISO/IEC 15417 Information technology – Automatic identification and data capture techniques – Bar code symbology specification – Code 128), unless otherwise specified.

The barcode print quality shall be as defined in ISO/IEC 15416 (Information technology –

Automatic identification and data capture techniques – Bar code print quality test specification – Linear symbols). The Overall Grade shall be at least Grade B at point of printing and not less than Grade C at final point of receipt.

Certain contracts on P2P do not require the bar code to be included. Examples include many service delivery contracts. Trading Partners should check with their MOD commercial contact point to establish details of contracts that require the production of bar codes.

Delivery of goods and services

Goods, or services, are ‘delivered’ to the requested receiving points by the trading partner at which point they are either receipted into P2P manually with reference to the Unique Order Identifier (UOI)/Unique Receipt Reference Identifier (URRI), or alternatively information about the receipt is captured from the e Business Delivery label using Bar Code readers and then processed by one of the MOD’s logistic information systems.

The e Business Delivery label includes key information, including the UOI or URRI for each purchase order shipment created. The UOI/URRI provides a unique identification so that purchase orders, invoices and receipts can be automatically linked and matched later in the P2P process.

Important information about the UOI and URR1

The UOI has three parts to it:

- The purchase order number, a unique Purchase Order identifier generated by P2P
- The second part is the Purchase Order line number
- The third part is the shipment detail - the Purchase Order line shipment number

The URR1 is a unique reference, generated within P2P. URR1s are ONLY produced for orders for items classified as Inventory items (i.e. have a unique identifier known as a NATO Stock Number (NSN))

- The P2P system generates a unique alphanumeric code for each purchase order line and shipment created
- Trading partners must ensure that part deliveries are identified by adding a suffix after the URR1, A for the 1st consignment, B the 2nd consignment, and so on until the total shipment is completed

Trading partners must be able to identify the UOI and URR1 in their business processes, as the UOI and URR1 are essential references and must to be quoted in all electronic messages sent to P2P. Also the UOI/URR1 must be reproduced on the e Business delivery label that accompanies goods sent to the delivery addresses provided on the purchase order.

Receipting

Details about deliveries from trading partners are captured by the MOD at various receipting points. This information is sent to P2P in 2 ways; manually – by simply updating P2P records online, or the data is captured on one of the MOD's logistics systems and sent to P2P electronically. Either way ensures that P2P is rapidly updated once the delivery has been received.

Where a 'Service' has been provided by a trading partner, rather than 'goods', then receipt details are entered manually into P2P by the authority within the MOD who ordered the service

Invoicing

Trading partners send invoices to P2P via DECS once the goods are consigned to the MOD (invoices should not be input before the goods are despatched or the services have been provided). The quantity invoiced must be equal to the quantity actually despatched in any shipment – any difference will result in a failure of the invoice matching process and delay payment whilst the discrepancy is investigated and resolved. This also applies to differences in the item price invoiced against the agreed contract item price.

On line credit notes

Trading partners will be able to submit electronic Credit Notes (CN) to the MOD from Summer 2010. This will be the MOD's preferred method of receiving credits for orders/invoices that have been generated and sent electronically between the MOD and its Trading partners.

Electronic catalogues (e Catalogues)

Important Information about electronic invoicing

Invoice information must include (amongst other data)

- Trading partner's GAX (contractor) code (see below)
- The Unique Order Identifier/Unique Receipt Reference Identifier
- Invoice quantity
- Gross invoice value
- Various VAT data items, including the trading partner's VAT registration number

The GAX code (contractor code) is provided by the MOD's Financial Management Shared Services Centre (FMSSC) Contractor Registration Team and the format must be 1234500, i.e. a 7 digit number, without any embedded spaces. Supplying an incorrect GAX code format will result in delayed payment. The first 5 numbers are the specific GAX code (DFM contractor Code) and the last two digits are the pay site identifier (address code). For Trading partners with a single pay site, the address code will normally be "00", but it should not be assumed to be so.

Trading partners unsure of their GAX code should contact their MOD commercial officer, or the FMSSC on 0151 237 6538.

Commercial style invoice numbering is supported, provided invoice numbers are unique within the trading partner/trading partner pay site (i.e. unique within the GAX code). When supplying an invoice reference number, trading partners should be aware that P2P will only retain the first 14 characters for UK Invoices and the first 10 characters for non UK invoices.

Invoice amounts should be entered to 2 decimal places.

Payment

The invoice, purchase order and receipt quantities and values are checked and matched in P2P and provided all the details matched up payment is made. (In some cases, just the invoice and purchase order details are matched up) Validated P2P invoices will be included within the overall payment made to a trading partner by the MOD, accompanied by a remittance advice containing details of all invoices covering P2P and non P2P payments.

The electronic catalogue service allows trading partner to provide their product catalogue in electronic form on the MOD's electronic purchasing system, P2P. This enables MOD employees to purchase these items online. Trading partners can update their e catalogue electronically – update prices, add additional items etc. The orders are channelled through P2P which enables electronic invoicing, thereby producing quicker payment and improved cash flow. Further details about how to use the e catalogue service can be found at the www.d2btrade.com

Chapter two

Connecting to the Defence Electronic Commerce Service (DECS)

Introduction

IMPORTANT

Prospective suppliers to the MOD must be registered as DECS trading partners before they can trade electronically with the MOD

**REGISTERING FOR CONNECTION TO DECS DOES NOT GUARANTEE
A CONTRACT WITH THE MOD**

This chapter provides information on the message standards used and the connectivity channels options available to trading partners for exchanging purchasing and payment information with the MOD electronically.

More detailed information can be found on the DECS website www.d2btrade.com

The minimum requirements to allow secure electronic transfer of business documents between computer systems:

These are the minimum requirements for information transfer between e business systems

- A standard format for arranging and presenting the business data within the message. Examples include traditional Electronic Data Interchange (EDI) standards such as EDIFACT and emerging standards such as eXtensible Mark-up Language (XML)

- A communication mechanism for transporting the message between the parties, in a secure and reliable fashion. Examples include the use of commercial EDI network providers, or use of the internet

- Systems or procedures in place at each end to receive/translate/process and reply to messages. Examples range from manual procedures, for example, printing/re-keying message into back-end systems, to complex message transformation and brokering systems with automated interfaces into a range of enterprise systems

Message standards

DECS provides a number of connectivity options which utilise either the United Nations EDIFACT (Electronic Data Interchange For Automotive Commercial & Transport) standards, or XML Open Application Group Integration Specification (OAGIS) v9 standard as the basis for defining electronic interchanges with trading partners.

Security

Moving from a paper based process to an electronic purchasing process means that systems have had to be developed to meet the strict security requirements of the MOD

Connectivity overview

A communication mechanism for transporting a message electronically must provide:

- A network infrastructure connecting the systems
- A standard protocol for transferring the message itself between systems

Connectivity options

There are three routes for sending and receiving purchasing information from DECS:

1. Access via the Exostar Exchange service provider – internet and message based options are available;
2. A commercial EDI Value-Added Network (VAN) service provider e.g. Global eXchange Services;

3. Direct connection to DECS using HTTPS.

The choice of connectivity option depends on a number of factors; key ones being;

- Volume of transactions expected
- Location of users (co-located or spread over multiple sites)
- Cost of connectivity
- Desire/need to integrate DECS messages within trading partner's internal IT systems
- Existing infrastructure or capabilities

DECS connectivity options

Trading partners need to decide how they wish to connect to DECS whilst taking into consideration their e-business strategy as well as the type and volume of trade conducted with the MOD. A number of options are available, designed to provide accessibility dependent on size, budget and IT capabilities. Detailed information for each connectivity option can be found on www.d2btrade.com

| Connectivity option | Features | Factors for trading partners to consider | Typical time to implement |
|---------------------|--|--|---------------------------|
| Exostar | <p>Internet-based connection to a leading commercial aerospace and defence trading exchange Enables e-business with the MOD and other Exostar subscribers via the same channel</p> <p>Ability to handle large transaction volumes (Machine Link service) or low/medium volumes (Supply Chain Platform (SCP) service) Ease of set-up (SCP) - a Microsoft internet web browser is required</p> | <p>Do you already have an Internet Service Provider subscription?</p> <p>Extent to which you trade with Exostar Buyer Members as well as the MOD</p> <p>Aspirations for Business2Business trade - which may include e-sourcing and buying - with other organisations in the aerospace and defence business</p> <p>Requirement to integrate with back-office systems (Machine Link)</p> <p>Single user interface and integration mechanism for all orders from MOD and other Exostar buyers</p> | 2 - 4 weeks |

Trading partners connecting via Exostar do not actually connect to DECS – Exostar is a service provider the trading partner signs up to a contract with Exostar.

Trading partners wishing to connect via Exostar should obtain an account via the DECS Service desk on 0870 241 3569.

| Connectivity option | Features | Factors for trading partners to consider | Typical time to Implement |
|---|---|---|--|
| EDI | <p>Exchange of structured messages via a Value Added Network (VAN)</p> <p>Proven technology</p> <p>Capable of handling large Volumes of transactions</p> <p>Reliable, resilient and secure</p> <p>Potential to integrate with Back office systems</p> | <p>Transaction volumes on MOD contracts</p> <p>Is EDI Part of your existing and/or future Strategy?</p> <p>In house or third party expertise required</p> <p>For message translation and processing</p> <p>Set-up and ongoing costs for VAN and other software</p> | <p>Typically 4 - 20 weeks depending on the specific solution adopted</p> |
| XML/Hyper Text Transport Protocol Secure (HTTPS) | <p>Exchange of structured messages via an HTTPS link</p> <p>Use of OAGIS v 9.00 XML messages</p> <p>Proven technology</p> <p>Capable of handling a large volume of transactions</p> <p>Potential to integrate with back-office systems</p> | <p>Connection will be via the internet</p> <p>Do you have the capability or are you already working with XML messages under OAGIS – can you undertake the work to create the messages as per the specifications?</p> <p>Could you have the capability to link via HTTPS?</p> <p>Do you already have an Internet Service Provider subscription?</p> <p>B2B connector software will be required to handle HTTPS</p> <p>Client and server certificates issued by Trustis are required</p> <p>The time frame can be long – does this fit in with the required target go live date?</p> <p>Can you provide a secure site to host the transactions?</p> | <p>Typically 8 - 20 weeks</p> |

Connectivity costs

Trading partners will have to decide the way in which they wish to connect to DECS. Various

options are available and will range from a few hundred pounds to several thousands, depending on the solution that is chosen. Some examples are provided below:

| | EDI | Exostar Trading partner Membership | XML/HTTPS |
|--------------------------|---|--|--|
| Setup Charges | Depends entirely on internal costs to develop "in house", or to employ a third party service provider | None | Initial certificate costs (see below) plus internal costs to develop "in house", or to employ a third party service provider |
| Recurring Charges | As above | Transaction based charge ranging from zero to \$2,500 per annum per account. 0 - 24 Free 25 - 120 \$449 121 - 1,200 \$745 1,201 - 4,200 \$1,149 Over 4,200 - \$2,500 | You will require a Trustis Server and Client Certificate. The cost of the Production certificates are: 1 year TLS certificate £275 2 year TLS certificate £470 3 year TLS certificate £615 |
| Notes | Specialist companies exist that will provide EDI development services, if you do not wish to develop "in house" | Prices are per Exostar account, not per user. Transaction volume will be monitored for first 9 months after registration date to establish a 12 month volume – the following years will be priced based on previous 12 months transaction volume. Transaction Types included: Purchase Orders, Change Orders, Planning Schedules, Advance Ship Notices, Goods Receipts and Invoices. Machine Link, if required, is additional cost and can vary depending on complexity of implementation | Guidance on how to apply for the certificates will be provided by the Trading partner Take-On Team once you have registered |



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Summary of Exostar connection

Exostar Exchange Connection

Requirements:

- Register with Exostar via DECS service desk on 0870 241 3569
- ISP subscription
- Microsoft Internet web browser software
- Reasonably low volume of transactions (low 100s per year. System will permit unlimited number of transactions, but with too high a volume these become unmanageable for a user)
- Machine Link (for high volume users) – Discuss with Exostar individual business requirements to determine cost

Advantages:

- All orders (MOD and non-MOD) managed through a single interface
- Easy access
- Web access without Smartcards
- Low cost if low volume, through transaction based subscription
- Can offer high volume user option-Machine link
- Multiple and/or generic user account per subscription
- Allows trading with other Exostar buyers
- Produces Shipping label
- Secure

Summary of EDI VAN connection

Connection via EDI VAN

Requirements:

- VAN subscription (provides dedicated mailbox on VAN network).
- Communication software/hardware and communication link (e.g. dial-up) as required by VAN.
- VAN-interconnect arrangement if not subscribing to the GXS Trading Grid.
- Where Trading partners have integrated to their own systems they should have the capability to Re-invoice. They should also be able to "hold" and turn-round data items, e.g. unique order identifier

Advantages:

- Particularly suitable for existing EDI VAN subscribers
- Proven, widely-used technology
- Assured delivery
- Integration to Trading partner's own systems
- Good for high volume use (1000s + per year)
- VANs typically support intermittent / dial-up connections.
- Supports inventory requirements
- Secure

Summary of HTTPS connection

Connection via HTTPS

Requirements:

- ISP subscription
- Web browser software.
- B2B connector software will be required to handle HTTPS
- A client and server certificate issued by Trustis

Advantages:

- Easy access
- No subscription/3rd party involved
- Good route for high volumes
- Secure

Message security

For Exostar Exchange, a secure connection is in place between Exostar and DECS.

For the EDI VAN, the MOD have agreed that UK EDI VAN connectivity is secure and will not require further encryption. Requirements for delivery assurance are specific to the connectivity method adopted.

HTTPS connection will be via the internet using Trustis Client and Server Certificates. Trading partners must ensure that data transferred to/from DECS is hosted on a secure site. For more details please see document DECS trading partner HTTPS Connection Guide on www.d2btrade.com

Message translation/processing options

The electronic transfer of business documents requires systems or procedures in place at each end to receive, translate process and reply to messages.

Exostar Exchange has the systems/procedures in place on behalf of trading partners.

Trading partners who already participate in EDI networks will already have systems and/or procedures in place.

For those trading partners who do not have the systems/procedures in place, the range of possible approaches includes;

- Manually driven procedures for example checking a VAN mailbox via a dial-up connection using applications provided by the VAN
- Developing direct interfaces from Enterprise Resource Planning (ERP)/sales order/production systems to EDI VANs and HTTPS
- Utilising message transformation and brokering systems to connect multiple ERP/sales order/production systems to EDI VANs and HTTPS



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Chapter three

The P2P message set

Introduction

This chapter provides an overview of the P2P message set. The full P2P message set consists of seven message types;

Purchase Order

Purpose: Conveys the MOD's requirements; Sent **from/to:** From MOD to trading partner.

Business Rules;

- Purchase Orders (POs) represent either an acceptance of a contractor's Offer or an Offer of Contract by the Authority to the contractor in accordance with the Terms and Conditions of the contract e.g. DEFCON 615A
- Purchase Orders can have multiple lines with multiple shipments per individual line, and the shipments could all be to different locations
- Certain information on the order needs to be returned to the MOD on the resulting invoice in the same format and case as sent – e.g. the Payment terms, and the Unique Order Identifier./URRI
- MOD has the capability to send "notes to trading partners" with the header, every line and every shipment on the order. These are 80 character free text fields (for line and shipment) and 240 characters for the header note in the P2P PO message Trading partners will need to consider the practicalities of receiving orders with notes, particularly if they are integrating automatically to internal systems. MOD will not use the notes fields to vary commercial

terms but there could be important information held in these notes

- MOD also has the facility to supply large text fields formatted on a contract by contract basis (by agreement between MOD and trading partner)

Purchase Order change

Purpose: Conveys changes to the MOD's original requirements; sent **from/to:** From MOD to trading partner.

Business Rules;

- In accordance with DEFCON 503, Purchase Orders Amendments (POAs –also known as a Purchase Order Change Order) can represent either an acceptance of a contractor's Offer of Amendment to Contract, or an Offer of Amendment of Contract by the Authority to the contractor in accordance with the Terms and Conditions of the contract. Where Offer and Acceptance has already taken place outside of the P2P environment a PO message conveys to the contractor the information required to produce the e Business Delivery label and an Invoice message e.g. under DEFCON 615B arrangements. In all circumstances the Terms and Conditions of the contract shall have precedence
- When an order change is sent from P2P, the whole amended order is re-sent, not just the amended lines/items/data

Purchase Order Acknowledgment/ Negative Acknowledgement

Purpose: Response to a Purchase Order. Positive acknowledgment accepts purchase order. A Negative acknowledgment declines Purchase Order or parts thereof; Sent **from/to:** From trading partner to MOD.

Business Rules;

- Dependent upon the purpose of the order or order change, an Order Acknowledgement represents either an acceptance of an offer or confirmation of receipt of the message. In all circumstances the Terms and Conditions of the contract shall have precedence.

- Acknowledgement at Header level but applies to all line-shipments in the PO
- Use free text to identify reason for rejection or amendment (valid codes to be agreed with the MOD) and identify which line/shipment(s) are involved
- Some MOD contracts do not require acknowledgements at all, some only require negative acknowledgements and others require both positive and negative acknowledgements
- Notes should be provided if the line is not accepted
- For EDIFACT messages the Acceptance codes should be either 27 (Not accepted), 29 (Accepted without amendment) or 30 (Accepted with amendment) – see message 1290_DECS_P2P EDIFACT ORDRSP specification.doc for further detail
- For XML OAGIS messages the Acceptance codes should be either Accepted, Rejected or Modified – see message 2327_DECS_P2P Order Acknowledgement OAGIS v9 Message Implementation Guide.doc for further detail

Advance Shipment Notification

Purpose: Provides despatch advice; Sent **from/to:** From trading partner to MOD.

Business Rules;

- No limit to the number of shipments detailed in an ASN
- A maximum of 26 part-shipments can be made against a requirement, as Z is the final suffix available. Trading partners should contact the MOD to agree an order amendment where further shipments are necessary
- ASN's can relate to shipments from different Purchase Orders for a single contract

Invoice

Purpose: Requests payment from the MOD; Sent **from/to:** From trading partner to MOD.

Business Rules;

- In all circumstances the Terms and Conditions of the contract shall have precedence
- There is no limit to the number of invoice lines per Invoice message but all lines must relate to a single Purchase Order
- Invoice quantity should match the delivery quantity
- Invoices should not be submitted until goods or services have been delivered
- Purchase Order shipments may be part invoiced

On line credit notes

Purpose: To make refunds for returned items or make corrections to previously submitted invoices

From/to: From trading partner to MOD

- A quantity correction CN will allow the total quantity billed against an order shipment to be reduced or a full credit to be applied.
- A price correction CN will allow the price billed against an order shipment to be reduced.
- A CN for a combination of both part quantity and part price correction should not be

submitted; this may result in the CN being processed but the invoice not. In these cases the original invoice will need to be cancelled and a new invoice submitted.

More information is available on the www.d2btrade.com website.

Request for Quotes

Purpose: Request for a Quotation (RFQ);
Sent **from/to:** From MoD to trading partner.

Business Rules;

- In all circumstances the Terms and Conditions of the contract shall have precedence
- There may or may not be a target price
- The trading partner being sent the request must be capable of electronic trading with the MOD using DECS and have an existing contract

Quote

Purpose: Provides price 'offer' to the MOD against request for goods or services;
Sent **from/to:** From trading partner to MoD.

Business Rules;

- In all circumstances the Terms and Conditions of the contract shall have precedence
- Line and revision number must match the line and revision number on the RFQ
- Quote must be in response to a Request for Quote sent by the MOD

Which messages are available using the different connectivity options?

The table below summarises which messages are available using the different connectivity to DECS options

| | Purchase Order | Purchase Order Change | PO Acknowledge PO Negative Acknowledge | Advance Shipment Notification | Invoice | Request for Quote | Quote. |
|----------------|----------------|-----------------------|---|-------------------------------|---------|-------------------|--------|
| Exostar | Yes | Yes | Yes | Yes | Yes | N/A | N/A |
| EDI | Yes | Yes | Yes | Yes | Yes | Yes | Yes |
| HTTPS | Yes | Yes | Yes | Yes | Yes | Yes | Yes |

Further information about the P2P message set

Trading partners will find full details on the EDIFACT and XML OAGIS message specifications on the d2btrade.com website.

Trading partners that use the EDI or HTTPS messages into their internal systems should incorporate all message fields. Certain MOD commercial departments and contracts may agree a limited message field set e.g. no Acknowledgement or Order Change messages, but trading partners developing their systems with restrictions should be aware that they

will be limiting their ability to trade with other MOD areas. The optimum way to maintain full flexibility is to implement processing for the full message set.

P2P e-Catalogue purchases use the same messages as all other P2P purchases.

MOD e-Catalogues used by Other Government Departments (OGDs) only use the Purchase Order and Purchase Order Acknowledgement messages – trading partners should agree with the buyer(s) in OGDs how they intend to bill for purchases made, as the P2P Invoice message will not be processed for these orders.

² RFQ and Quote messages are unavailable at this time on Exostar.

TaxCon Message

The TaxCon message is not required for electronic Invoice messages sent by trading partners to the MOD via DECS. If trading partners need to include a TaxCon message e.g. to be consistent with their other EDIFACT implementations, it will be ignored by the DECS EDIFACT interface software. In this case it would also be advisable to inform Capgemini so that unnecessary support calls do not get raised.

The e Business Delivery Label

The e Business Delivery label is specified by the MOD in DEFFORM 129J Edn 05/03 for use by trading partners responding to P2P orders for both goods and services. Trading partners may need software to produce the label and a range of commercial packages are available which can do this. It may be beneficial for trading partners to discuss this requirement with their MOD commercial staff as, there may be flexibility particularly for some ranges of goods and services depending on the nature of business and the contracts involved.

Although not part of the electronic message set, the e Business Delivery label is a very significant part of the end to end purchasing process, its use speeds up delivery processing within the MOD and also helps the MOD make prompt payment. To ensure full compliance with P2P trading rules, and to ensure that a trading partner does not limit their ability to trade with anyone in the MOD, the full specification as covered by DEFFORM 129J must be applied.

Full details on the label are available on the www.d2btrade.com



Chapter four

MOD contract terms and conditions applying to e purchasing

Purpose

This chapter covers the contractual conditions that must be adhered to before purchasing can take place between a trading partner and the MOD

In order to trade electronically, Contracts with the MOD must contain the following conditions

- **DEFFORM 30** – The Electronic Transactions Agreement – Stand alone document referenced in the contract.
- **DEFCON 5J** – Unique Identifiers
- **DEFCON 129J** – The Use of the e Business Delivery Form
- **DEFFORM 129J** - The e Business Delivery Form – There are commercial software packages available in order to produce the label to required specifications
- And either, **DEFCON 522J** – Payment under P2P

Or,

- **DEFCON 522JA** – Payment under P2P – Matching the Invoice and Order (Two-way Match)

Copies of the latest edition of each DEFCON and DEFFORM are available on the MOD's Acquisition Operating Framework Commercial Toolkit (AOF – CMT)

<http://www.aof.mod.uk/aofcontent/tactical/toolkit/index.htm>

The following provides a brief overview of each of the DEFFORMs and DEFCONs

DEFFORM 30 – The Electronic Transactions Agreement

The DEFFORM 30 is a model agreement which is essential to enable electronic commerce to take place between the MOD and a trading partner using the Defence Electronic Commerce Service (DECS). It sets out the terms that will govern the conduct and methods of operation between the MOD and the Trading partner in relation to electronic messaging, data security and performance standards

The agreement deals with issues such as security of data, authenticity of messages, acknowledgement of receipt of messages, storage of data, intermediaries, interruption of service and limit of liability.

A copy of the DEFFORM including more detailed guidance and explanatory notes can be found on the AOF-CmT:

<http://www.aof.mod.uk/aofcontent/tactical/toolkit/content/defforms/defelec.htm>

It is the intention that all DEFFORM 30 Agreements are signed by a trading partner at the corporate level, and individual contracts refer to that one agreement.

Information on whether a corporate DEFFORM 30 already exists between your organisation and the MOD, or how to go about signing up to one, is available from the MOD's trading partner Co-ordination team

Telephone: 01225 828690
E-Mail:
mailto:www.DES-DePS-BusSpt1a@mod.uk

DEFCON 5J – Unique Identifiers

This replaces DEFCON 5 (that continues to be used for contracts that are not managed under the terms of the DEFFORM 30 agreement). The Condition refers to Unique Order Identifiers (UOI) and Unique Receipt Reference Identifiers (URRI) which uniquely identify a specific transaction. It is a vital element of allowing offer and acceptance to take place and to allow electronic receipting and invoicing to take place.

This Condition applies to the supply of both Articles and Services; though Clause 4 is only applicable to Articles.

DEFCON 129J – The Use of the Electronic Business Delivery Form

This replaces DEFCON 129 (that continues to be used for contracts that are not managed under the terms of the DEFFORM 30 agreement) and makes the use of the eBusiness Delivery Form mandatory. It requires that the form shall be provided by the trading partner for all deliveries of articles and performance of services where the original order is raised under the DEFFORM 30 agreement

The Form shall accompany the package/consignment to which it applies. It may be attached as a label, directly to the package surface, or as a form in a document envelope.

Failure to provide this label/form will lead to greater resource effort, more input errors and delays in the payment process.

This DEFCON calls up DEFFORM 129J – The Electronic Business Delivery Form.

What is the difference between DEFCON 129J and a DEFFORM 129J?

DEFCON 129J is the contractual condition that requires the use of the Electronic Business Delivery Form, whereas DEFFORM 129J is the Electronic Business Delivery Form itself.

DEFCON 522J – Payment under P2P

This condition details the payment obligations for contracts using e commerce . It states that in order to obtain payment the contractor shall, upon completion or performance of the Contract (or of any part of the Contract for which the trading partner is entitled to payment), submit an e Business Delivery Form in accordance with DEFCON 129J. This will enable the MoD to receipt the delivery of the articles or confirm performance of a service. The trading partner will then be required to submit an invoice. The MOD's P2P system will then match the original purchase order, the receipt for the goods or service and the invoice. Once a match is made payment is authorised.

This condition also details the MOD's responsibilities pertaining to the 'Late Payment of Commercial Debts (Interest) Act 1998'

DEFCON 522JA – Payment under P2P – Matching the Invoice and Order (Two-Way Match)

This condition is an alternative to DEFCON 522J, and details the payment obligations for P2P contracts where a Two-Way Match has been agreed.

Chapter five

Standards and requirements to communicate with DECS

Introduction

This chapter provides an overview on the standards and requirements for communicating with DECS ,

System operations

All trading partners should test and maintain their equipment, software and services necessary to effectively and reliably connect to DECS.

A Microsoft Internet Web Browser is required for connection to DECS via the EXOSTAR service provider

DECS change and configuration management

A comprehensive configuration and release management process is used to manage changes to the DECS environment. Changes and upgrades to DECS components are subjected to a controlled release cycle, moving through a number of environments and platforms before being applied to the live environment. All key components of the live DECS environment are continuously monitored for failure via an enterprise systems management tool, which raises alerts if exceptions occur. Any reported faults are recorded, and their resolution tracked through the standard DECS service desk tools and procedures.

DECS availability

The DECS agreement between Capgemini and the MOD includes a Service Availability Schedule, setting out availability targets for various aspects of the DECS service. For the message delivery service this is 98% of operational time where operational time is 24x365 less any planned down time. No distinction is made between service availability to the MOD or to the trading partners.

From time to time, planned down-time will be required to carry out essential work not possible whilst the service is operational. There is also a housekeeping window booked every month, normally the second Tuesday of the month between 18:00 and 22:00. This has been agreed with the MOD in order to carry out routine maintenance tasks and hence the service will be unavailable during this period. This will not be subject to notification as it will happen every month and so does not fall under the planned downtime for notification. Such non-availability of systems will, wherever possible, be scheduled outside of the normal working day. Except in an emergency such non-availability will be agreed with the MOD in advance.

Details of planned downtime will be notified to trading partners – either via details published on the DECS website at www.d2btrade.com and/or by direct communications (email or

telephone) with the Trading partner contacts nominated during the DECS registration process. Trading partners need to ensure their contact details are kept up-to-date.

Trading partner validation testing

Each trading partner connecting to DECS will go through a validation test prior to live trading, as part of the take-on process. Trading partners should make available the appropriate systems, resources and personnel, as required, to undertake this validation testing in a timely fashion. Trading partners developing their own software to receive and process P2P messages will be expected to fully test this before entering into a final test stage with Capgemini. Testing guidelines and generic test data can be made available to the Trading partner, in line with the P2P EDIFACT and P2P HTTPS XML Message Implementation

Trading partner training

Trading partners connecting via the Exostar Exchange should refer to www.exostar.com where they will find downloadable documents such as user or training guides as well as detail of any computer based self-teach training that is on offer.

EDI and HTTPS XML trading partners are expected to be interfacing DECS messages to their own systems and so are assumed to already have documentation and training materials for these systems.

Trading partner system changes & availability

If, at any time, a trading partner is unable to trade with the MOD via DECS, the Trading partner is responsible for ensuring that the MOD is informed accordingly and advised of any impact on their business.

If a trading partner's system is unavailable – such that the trading partner will not be able to receive or respond to DECS messages in their usual timescales – the DECS service

desk should also be informed accordingly. Similarly, trading partners should inform the DECS service desk, in advance, of any significant changes to the trading partner systems that might impact or alter their ability to transmit or receive messages to/from DECS.

The DECS service desk can be contacted on 0870 241 3569 or by email to decs.servicedesk@capgemini.co.uk

Once a trading partner has successfully undergone the validation testing for connection to DECS and been declared "DECS Ready", the responsibility for ensuring continuing compatibility with DECS rests with the trading partner. If a trading partner wishes to repeat the DECS validation testing, the trading partner may be expected to bear the costs of such tests.

Security procedures & services

The d2btrade.com website describes the security measures built-in to DECS and specifies the general security obligations upon the trading partner. This section sets out additional information and technical requirements.

Trading partners are strongly recommended to apply the security controls specified in ISO 27001 to ensure that their systems are not misused in a manner which could disrupt, or attempt to disrupt the provision of the DECS service.

In particular, industry best practices should be adopted to ensure that:

- All messages destined for DECS are free of viruses
- Any systems connecting directly to DECS via the Internet are secured from the Internet by the use of firewalls and other devices installed to industry best practice
- No attempt is made to connect to systems or services within the DECS infrastructure other than those agreed to when establishing the connection

Message processing

Trading partners should check for and process messages from DECS in a timely fashion. Where response times are defined in business agreements between the parties (i.e. MOD and Trading partners) these will take precedence. However, as a minimum, it is recommended that DECS messages should be processed at least once per day, Monday-Friday.

Exception handling

Notification

The DECS Service Desk should be contacted by a trading partner experiencing an exceptional interruption to normal service – including, for example:

- Significant hardware, software, system or network failures
- Failures of third party services used by the trading partner (e.g. VANs, Internet Service Providers)
- Loss or corruption of data
- Security breach
- Denial of service attack
- Virus infection

Similarly, trading partners will be informed of any exceptional interruptions to the DECS services – either via details published on the DECS website at www.d2btrade.com and/or direct communications (email or

telephone) with the trading partner contacts nominated during the DECS registration process. Trading partners need to ensure their contact details are kept up-to-date.

Recovery and contingency arrangements

Comprehensive recovery and contingency processes have been developed for the DECS environment, to address potential failure of any of the DECS components. However, certain failure scenarios could result in the following occurrences:

- **Duplicate messages sent from DECS.**
Trading partner systems and processes should be capable of recognising a duplicate message (e.g. Purchase Order) and handling this in an appropriate fashion
- **Requests for re-transmission of messages to DECS.**
Trading partners may be asked to re-transmit messages to DECS. Trading partners should ensure that copies of sent messages are retained in a manner that allows re-transmission

Trading partners should ensure that they have recovery and contingency processes in place for their interactions with DECS. DECS is capable of recognising and processing duplicate messages received from trading partners. If a trading partner requires a message to be re-sent from DECS, this can be requested by logging a call with the DECS Service Desk.



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Appendix A

Overview of the general EDI Interchange Handling Requirements

General EDI interchange handling requirements

This section sets out the specifications for certain technical and procedural requirements for use of the P2P service.

EDI message standards

DECS uses the UN/EDIFACT standards for electronic data interchange with P2P.

EDIFACT directories

The UN/EDIFACT directories used are Version D, Release 99B and Release 02B.

Syntax and character set

The application-level syntax is the EDIFACT default level A (UNOA) version 1. However, note that DECS additionally supports (and will send)

both UPPERCASE and lowercase character sets. The case in which a field is sent can be significant

The following characters are reserved for use as control characters within the UNOA character set and their use in data elements should be avoided if possible. If their use within data cannot be avoided, the Question Mark (?) character can be used to "escape" any separators that are part of the UNOA character set.

' (Apostrophe) segment terminator
+ (Plus sign) segment tag and data element separator
: (Colon) sub-element separator
? (Question mark) release character

Message set

The following messages are used. Refer to the relevant Message Implementation Guide for full definitions of the usage of each message.

| P2P Document | EDIFACT Message Type | Message Implementation Guideline |
|--------------------------|----------------------|---|
| Purchase Order | ORDERS | 1287_DECS_P2P EDIFACT ORDERS Message Implementation Guide |
| Order Acknowledgement | ORDRSP | 1290_DECS_P2P EDIFACT ORDRSP Message Implementation Guide |
| Purchase Order Amendment | ORDCHG | 1288_DECS_P2P EDIFACT ORDCHG Message Implementation Guide |
| Advance Shipment Notice | DESADV | 2212_DECS_P2P EDIFACT DESADV Message Implementation Guide |
| Invoice | INVOIC | 1289_DECS_P2P EDIFACT INVOIC Message Implementation Guide |
| Request for Quote | REQOTE | 2216_DECS_P2P EDIFACT REQOTE Message Implementation Guide |
| Quote | QUOTES | 2217_DECS_P2P EDIFACT QUOTES Message Implementation Guide |

EDIFACT envelope

Interchange envelopes (also known as Service Segments) enclose all EDIFACT data segments being sent to the same destination. The envelope contains the identity and electronic mailbox address of the sender and the receiver and holds a count of the number of transactions taking place.

The P2P interchange does not handle combinations of messages from a Trading partner within an EDIFACT envelope. Individual files must be created i.e. one for invoices and another for order acknowledgements, for each party the messages are to be sent to.

Refer to the P2P EDIFACT envelope specification for full implementation details – see document 1291_DECS_P2P EDIFACT Envelope Specification.

EDI address

Both DECS and Trading partners are required to supply an Interchange Identifier or "EDI identifier" which uniquely addresses their particular organisation, and optionally, a specific system within the organisation.

If connecting over a VAN, the VAN provider can issue the EDI identifier to the Trading

partner. Existing VAN users will use their existing identifier. It is also possible for both parties to mutually define their own named ID to represent themselves. This would apply for Trading partners not using a VAN (i.e. connecting via the Internet) or if for some reason the VAN provider is unable to provide the identifier.

P2P Purchase Orders and Purchase Order Amendments will include a "routing address" or "sub-address" element (EDIFACT composite/element S002/0008) to distinguish between orders sent from P2P or EBC. Return messages sent to DECS by the Trading partner must include the same "routing address" or "sub-address".

Refer to the P2P EDIFACT envelope specification for full details of the identifiers used and required – see document 1291_DECS_P2P EDIFACT Envelope Specification.

Further information

For general information on the EDIFACT standard message types, refer to the United Nations Directories for Electronic Data Interchange for Administration, Commerce and Transport, which can be found at <http://www.unece.org/trade/untdid/>.

Appendix B

Overview of the general XML Interchange Handling Requirements

General XML interchange handling requirements

This section sets out the specifications for certain technical and procedural requirements for use of the P2P service using XML.

XML message standards

DECS uses the XML OAGIS v9 standards for electronic data interchange with P2P.

| P2P Document | XML Message Type | Message Implementation Guideline |
|--|------------------|---|
| Purchase Order Purchase Order Amendment | ORDERS ORDCHG | 2329_DECS_P2P Order OAGIS v9 Message Implementation Guide.doc |
| Order Acknowledgement | ORDRSP | 2327_DECS_P2P Order Acknowledgement OAGIS v9 Message Implementation Guide.doc |
| Advance Shipment Notice | DESADV | 2326_DECS_P2P Advance Shipment Notification OAGIS v9 Message Implementation Guide.doc |
| Invoice | INVOC | 2328_DECS_P2P Invoice OAGIS v9 Message Implementation Guide.doc |
| Request for Quote | REQOTE | 2330_DECS_P2P RFQ OAGIS v9 Message Implementation Guide.doc |
| Quote | QUOTES | 2331_DECS_P2P Quotation OAGIS v9 Message Implementation Guide.doc |

Message set

The following messages are used. Refer to the relevant Message Implementation Guide for full definitions of the usage of each message.

XML envelope

All OAGIS v9 XML messages must contain a header (or envelope) known as the Application Area, which directly precedes the message content (known as the Data Area). Refer to the P2P XML envelope specification for full implementation details – see document: 2332_DECS_P2P Envelope OAGIS v9 Message Implementation Guide.doc

Further information

For general information on the OAGIS standard message types, refer to <http://www.openapplications.org/global/intro.htm>

Appendix C

References

The following documents comprise the complete hierarchy of documentation for the P2P service, which are referenced within this document or provide important related information. All of the documents can be found via the d2btrade website, or on request via the DECS helpdesk.

When a Trading partner registers and selects a connectivity option they will be sent the appropriate reference documents.

DEFFORM 30

Before the MOD trades electronically with a trading partner, contracts between the MOD and Trading partners for the provision of goods and/or services must contain an *electronic agreement (Defform 30) reference number. This will cover the commercial aspects of trading using e business processes it will be signed at corporate level. On rare occasions due to exceptional circumstances an individual contract level Defform 30 will be agreed upon.

Message Set Version 201 for EDIFACT messaging and Message Set Version 3.1 for XML/HTTPS messaging is covered by Defform 30 Edn 01/07 (Electronic Trading Agreement)

The DECS website

www.d2btrade.com Provides up to date news and information on DECS, also contains *Frequently Asked Questions* on a number of topics. Web Browser and PC Specification

It provides an outline recommendation on the specification for the Microsoft Web browser and PC, for use with each Service provided by the DECS.

P2P Message Implementation Guides (MIG's)

It provides detailed technical specifications on the implementation of the DECS P2P messages. Copies of these technical specifications are available on the d2btrade.com website.

E Business delivery label specification

It provides details of the accompanying hard copy information that trading partners may need to provide for any item delivered where the originating purchase order was raised through P2P. Speak to your MOD contact in the first instance for details and requirements on labelling for your contract(s). The DECS website www.d2btrade.com links to external documentation that MOD has provided regarding Delivery Label specifications (e.g. e Business Delivery label – DEFFORM 129J, DEFCON 129J and DEFCON 5J).

DECS P2P EDI connectivity guidance for Trading Partners

It provides detailed guidance for trading partners choosing to connect to DECS with EDI, particularly those wishing to integrate the DECS message set with their own internal systems. This can be found on the www.d2btrade.com website.

DECS P2P EDI Connectivity – Testing Guidelines

It is a companion document to the EDI guidance above to assist in the testing phases of the implementation.

DECS Catalogue Trading Partner Engagement Guidance Document

Provides technical detail for Trading partners wishing to provide electronic catalogues for the MOD to purchase from via P2P. Please refer to www.d2btrade.com or further information on catalogue functionality.

Third Parties involved with DECS Connectivity

Exostar provides proprietary software that allows connectivity to DECS. Click Commerce (formerly known as Requisite Technologies) provide catalogue content management technology and services. Outline information on these organisations can be found via the d2btrade website, and more detail can be found directly from the organisations at;

www.exostar.com

www.clickcommerce.com

Useful contact details

WWW.d2btrade.com

- To register on line for the Defence Electronic Commerce Service (DECS)
- For information and guidance on DECS and the electronic services it offers.
- For frequently asked questions and answers area which you may find useful
- For an online copy of the Trading Partner Guide.

The DECS Helpdesk – 0870 241 3569

- For advice on DECS registration, queries arising using DECS, changes to your company name & contact details

The MOD's Financial Management Share Services Centre (FMSSC)– 0151 242 2000

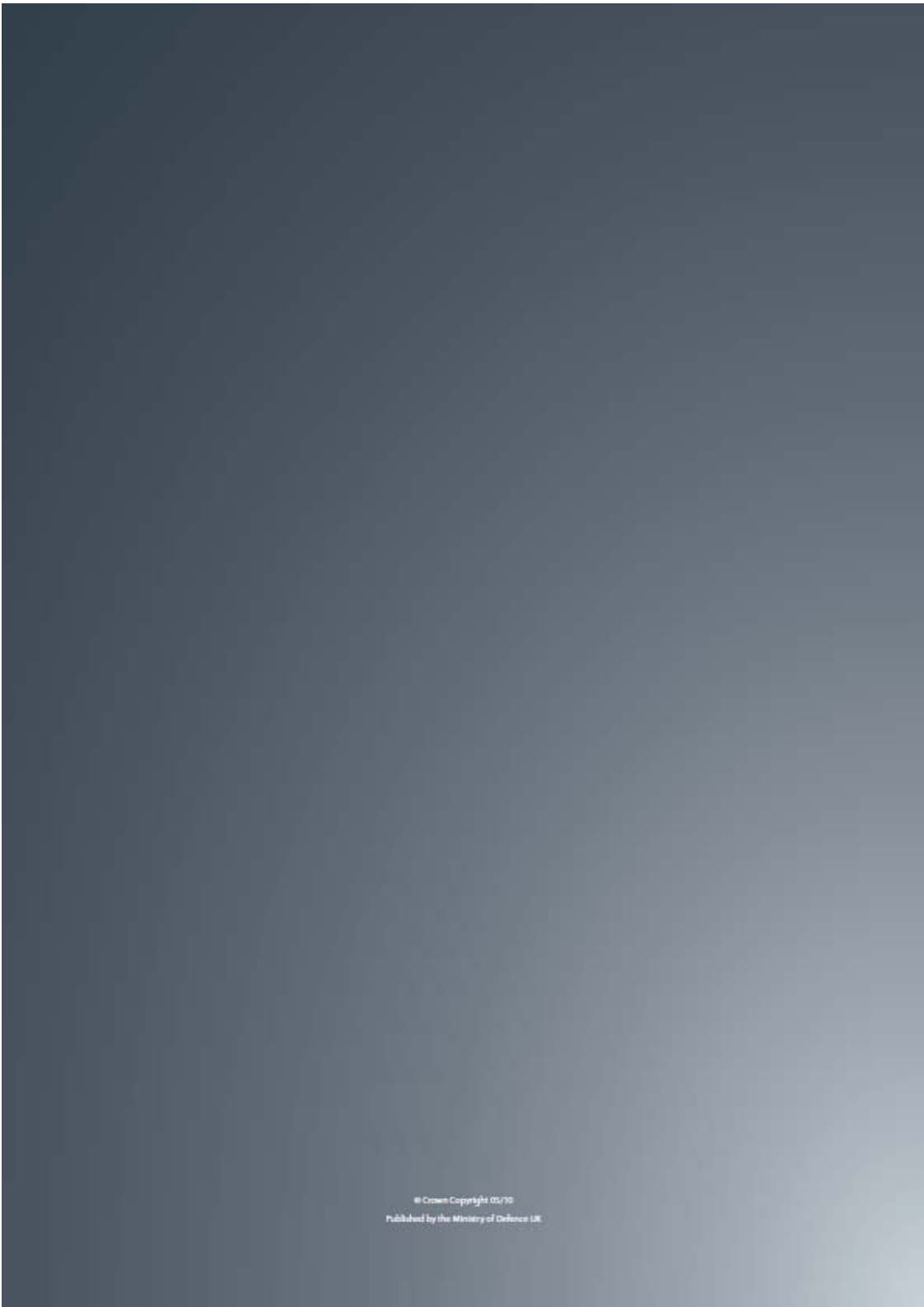
- For payment queries

DE&S DePS business support – trading partner take on - 01225 828690

- For trading partner general guidance on DECS electronic trading via P2P

Go to: Other useful websites

- EXOSTAR www.exostar.com
- Click Commerce www.clickcommerce.com



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