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[REDACTED]

18 December 2019

Dear [REDACTED]

Thank you for your email of 22 November 2019 requesting the following information:

On Ministry of Defence equipment contracts does the MOD have the 'right to repair' systems, equipment, components and assemblies. In this instance I am referring to 'right to repair' can be explained as the ability to modify or repair equipment directly, rather than having to return it to the manufacturer.

Could you please also provide details of any contracts in which the MOD does not have the right to repair.

I am treating your correspondence as a request for information under the Freedom of Information Act 2000 (FOIA).

When the Ministry of Defence purchases equipment, it usually owns the title to it and does not need to secure the right to repair it. It would be meaningless therefore to supply copies of contracts which contain, or indeed do not contain, this right.

The Ministry of Defence's policy on securing rights in its contracts is contained in the attached document, **MoD Guidelines for Industry**. See in particular para 18, with reference to defcon 16, which provides rights of use in operating manuals and repair and maintenance manuals/documentation.

This document and the standard terms and conditions referred to in it, including defcon 16, are available on the Knowledge in Defence web site, which can be accessed by registering through the following link: <https://www.gov.uk/guidance/knowledge-in-defence-kid#how-to-access-kid>.

If you have any queries regarding the content of this letter, please contact this office in the first instance.

If you wish to complain about the handling of your request, or the content of this response, you can request an independent internal review by contacting the Information Rights Compliance team, Ground Floor, MOD Main Building, Whitehall, SW1A 2HB (e-mail CIO-FOI-IR@mod.uk). Please

Ministry of Defence Guidelines for Industry

10. The Intellectual Property Rights (IPR) DEFCONs

Change History

1 October 2007

Paragraphs 16-18 amended to include information on DEFCON 703.

Disclaimer

This Guideline has been drafted at the request of and in consultation with the CBI to assist those contracting with the Ministry of Defence. Whilst all reasonable care has been taken to ensure that it accurately reflects Ministry Policy at the date of publication, it is for information purposes only and the information which it contains is given without liability or responsibility on the part of the Ministry of Defence. Those who contract with the Ministry of Defence should not do so in reliance upon this Guideline, which does not constitute, nor constitute part of, any contract or pre-contractual representation.

Part A Guidance Relating To DEFCONs 703 And 705

Section 1 – Scope

1. These Guidelines provide guidance for industry and for MOD staff on the application, implementation and interpretation of two new IPR conditions, DEFCON 703 (Edn 11/02) and DEFCON 705 (Edn 11/02). Top level information is provided in Section 4 ("Outline"). More detailed information is provided in the Sections which follow.

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Section 3 – Terminology

2. In general, terms used in capitals such as "Full Rights Versions" are terms defined in DEFCON 703 or 705. Explanation of some other terms is given below:
- a. "background" means not generated in the performance of work under the Contract, e.g. background information or background IPR.
 - b. "foreground" means generated in the performance of work under the Contract, see definitions in DEFCON 705 for Foreground Technical Information and Foreground IPR.
 - c. "results" means foreground information and foreground IPR, see definition in DEFCON 703
 - d. "IPR" means intellectual property rights, see definition in DEFCON 705
 - e. "Contract" means the subject contract whilst "contract" means any other contract or any contract, likewise "Contractor" and "contractor"
 - f. "Contractor" and "contractor" includes any sub-contractor(s) unless the context implies the contrary.
 - g. "Technology Readiness Level" is a measure of technical maturity on a standard scale of Level 1 (basic principles) to Level 9 (technology system qualified in successful operations) – see MOD Acquisition Management System guidance: go to Acquisition Topics ? Reference Documents ? Technology Readiness Levels Guidance.

Section 4 – Outline

3. Under UK Government policy the normal arrangement for research work funded from the public purse is that the research provider owns the IPR in the results - subject to the grant of a licence by him to the funding department for use of the results. MOD recognises that in most situations it makes sense to adopt this arrangement and this is adopted as the MOD standard, both for research work and other innovative work. However, there are limited situations where MOD will take ownership of the IPR in the results of work for itself, as explained in these Guidelines.
4. DEFCON 703 secures ownership for MOD of the results of contract work and it is used in certain circumstances which justify a departure from the standard arrangement. It is reserved for use in fully funded contracts, but its

use is not confined to research contracts. The circumstances in which MOD will invoke DEFCON 703 are fully set out in paragraph 16.

5. Under DEFCON 703, all foreground IPR is owned by MOD, including rights in information and copyright in documents. Restrictions on MOD's freedom to use the information and documents produced under the contract can nevertheless exist, as explained in paragraph 19. The Contractor is required to identify any material in those documents which is subject to third party confidentiality obligations.

6. DEFCON 703 does not provide any entitlement for MOD to make use of the Contractor's background rights, other than any background copyright and background confidential information contained in documents which are produced under the Contract. The implications of this are discussed in paragraph 22.

7. DEFCON 705 is MOD's standard IPR condition for fully funded research and technology contracts. It is a comprehensive condition which replaces the DEFCON 14/14A, 90 and 126 package for industry, the previous vesting arrangement for university work, and the previous tasking arrangement for DERA. The rights that MOD secures under DEFCON 705 apply only to Technical Information.

8. DEFCON 705 establishes two categories of Technical Deliverables: "Full Rights Versions" and "Limited Rights Versions". All deliverable Foreground Technical Information, and certain specified types of contract output (such as software and computer models created by the work) which may include a limited degree of background Technical Information, must be provided in the Full Rights Versions. Any other deliverable background information for which the Contractor wishes to exert his background rights in accordance with DEFCON 705, is to provided in separate Limited Rights Versions.

9. The set of rights that MOD secures for Full Rights Versions and their contents is more extensive than that available for information provided under DEFCON 90. It covers an extended right of disclosure and use for MOD's national procurement activity and for its international collaboration.

10. Limited Rights Versions and their contents are available to MOD principally for internal UK Government use. This material may be released to third parties only in tightly defined circumstances requiring the prior agreement of the Contractor.

11. DEFCON 705 creates a need for both MOD and the Contractor to place greater emphasis than before on establishing the Contract requirements for the Technical Deliverables. If these requirements are not properly agreed in the Contract MOD may not get the rights that it needs, or the Contractor

may be bound to provide more than he would wish to make available for MOD to disclose and use.

12. DEFCON 705 provides a patent licence which is similar in scope to that of DEFCON 14. It includes revised and extended procedural provisions for the handling of patent applications for classified and unclassified inventions.

13. DEFCON 705 entitles MOD to engage with the Contractor in monitoring the progress towards the Contractor's exploitation of the results of the Contract work. This is a direct response on MOD's part to the mandate placed by the UK Government on all its Departments to promote the exploitation of the results of publicly funded research.

Section 5 - DEFCON 703

Application Of DEFCON 703

14. MOD has previously used a variety of narrative conditions in circumstances where it has required ownership of the results of MOD-funded work. These have been variously known as "vesting" or "Crown rights" conditions. DEFCON 703 replaces all these previous conditions, (with the exception of the Atomic Weapons Establishment IPR condition GC55) and use of these earlier conditions is to be discontinued. Paragraph 16 sets out the circumstances in which DEFCON 703 will be used.

15. DEFCON 703 is a comprehensive IPR condition which covers all forms of IPR that may be generated in the performance of work under the Contract, or a particular part of that work to which it is applied by the terms of the Contract. DEFCON 703 should not be applied to any portion of work below contract line item level. At the contract line item level or higher there is no need to invoke any supplementary IPR conditions other than DEFCON 531 (Disclosure of Information) and DEFCON 632 (Third Party Intellectual Property Rights). This does not mean that DEFCON 703 should be invoked in regard to all contract line items, each should be judged according to its merits. DEFCON 705 and DEFCON 703 may be used in the same contract when applied to different line items of different natures. Exceptionally, it may be necessary to supplement DEFCON 703 in some contracts by a licence clause for background rights, as explained in paragraph 22.

16. DEFCON 703 is to be used for fully funded work in the following circumstances only:

- a. acquisition support work which is providing:
 - independent advice to MOD on third party development programmes, equipment, processes, repair and maintenance schemes;
 - tender assessment and evaluation; or
 - independent advice to defence equipment capability managers.
- b. test and evaluation work on MOD or third party products.
- c. policy advice work, and consultancy work relating to policy or organisation
- d. work on the development, creation or writing of national or international standards.
- e. work on the preparation of procurement specifications and user requirements documents.
- f. work central to the operation of Government or to the formulation of Government policy, for which the results are intended to be openly published or released by MOD, in accordance with Government requirements.
- g. work of a highly sensitive nature where ownership by MOD is required to control disclosure and use of the results, or is required to comply with obligations owed to other governments.
- h. post design services work on equipment the IPR in which is owned by a third party not being a subcontractor of the Contractor.
- i. contracts for the operation of a Government owned facility;
- j. contracts with individuals or companies for the provision of manpower substitutes or contractor support personnel embedded within MOD teams or MOD organisations.
- k. in respect of data outputs from infrastructure projects where MOD reasonably requires control over such data;

I. limited circumstances, other than those covered in a-k. above, where MOD demonstrates a sound IPR-based reason for MOD ownership of the IPR for example:

- where the Contractor has stated that he is unable or unwilling to exploit the results of the Contract; or
- where the work comprises a comparatively minor task which builds on substantial MOD owned IPR.

17. When invoking DEFCON 703 for any contract or package of work, MOD commercial staff should identify in the contract documentation the category, from those identified in paragraph 16, to which the work applies. For the purposes of category "k" in paragraph 16, "infrastructure projects" includes the development or modification of buildings or static structures and associated equipments or services and software intensive projects for the processing and/or modification of Authority or third party owned data. In any instance in which MOD identifies category "k" or "l", MOD commercial staff should explain to the Contractor the circumstances and the reason why this leads MOD to invoke DEFCON 703. MOD commercial staff are encouraged to seek the opinion of MOD's IPR Group if they are unsure about whether proposed work relates to an "infrastructure project" or falls into the limited circumstances under "l". In regard to category "k" and "l" only, a prospective contractor who does not accept that a sound reason for invoking DEFCON 703 has been made out may seek a review and confirmation of the situation from MOD's IPR Group.

18. When DEFCON 703 is invoked by MOD in regard to categories "a" to "e" of paragraph 16, it shall not require the Contractor to provide, in any corresponding deliverable documents, any underpinning research results, technology, evaluation techniques or evaluation methods. If, in such circumstances, MOD funds work on these topics the work shall be subject to DEFCON 705 or another condition as appropriate. This restriction does not apply when DEFCON 703 is invoked by MOD in regard to categories "f" to "l" of paragraph 16, but the work for which MOD seeks ownership of results should be confined to that which is justified. Moreover, MOD should allow the Contractor to make representations for protecting sensitive background information, prior to acceptance, or during the subsistence, of the Contract as discussed in paragraph 23.

Provisions And Implementation of DEFCON 703

19. Clause 1 of the Condition secures ownership for MOD of all rights in intellectual property generated in the performance of work under the Contract (the "Results"). This will include the copyright in all the documents which are so generated, such as any report which may be required under the contract, even if parts of such a document are subject to pre-existing

copyright owned by the Contractor. However there can be legal restraints on MOD's freedom to use the information in these documents. These restraints can arise from

- a. the existence of confidentiality obligations to a third party in respect of proprietary information; and
- b. background patent, registered design and database rights

MOD's rights under DEFCON 703 do not extend to any documents which have not been generated in the performance of the work.

20. Clause 2 requires that copyright works produced under the Contract, such as technical reports, are to be marked with a Crown copyright legend. It also requires the Contractor to identify any information contained in these copyright works which is subject to obligations of confidence owed to a third party not employed in the performance of work under the Contract.

21. Clause 3 prohibits the Contractor from using or disclosing the Results without MOD agreement, unless and until these are properly published. Where appropriate, MOD can give its agreement to the Contractor's use and disclosure of the Results either in the Contract or subsequent to the issue of the Contract.

22. Clause 4 makes it clear that the Condition does not secure ownership of background IPR. If, very exceptionally, a more extensive right to use background IPR is considered by MOD to be necessary, MOD will need to reach agreement with the Contractor by means of a special clause in the contract or a separate licence agreement. In these instances, the MOD IPR Group should be consulted fully by MOD commercial staff to confirm the need is a real one and to devise appropriate arrangements.

23. Where a Contract has a requirement for the supply to MOD of substantial proprietary background information as a Contract deliverable for any work which is subject to DEFCON 703, the Contractor and MOD should discuss this prior to acceptance of the Contract. This background information should be provided in separate documents which are clearly marked with an appropriate proprietary legend. Before agreeing to these arrangements the MOD IPR Group should be fully involved in the process by MOD commercial staff.

24. There is no retention of records provision in DEFCON 703. If MOD has a need for the Contractor to retain records, a separate provision for this will be included in the Contract. Such a provision may provide for the Contractor to provide MOD with material from within the records at any time (usually on payment of a fair and reasonable charge), as well as for the retention of

records for a predetermined period. Any such provisions should be flowed down to sub-contractors as appropriate.

Section 6 - DEFCON 705

Application Of DEFCON 705

25. DEFCON 705 is MOD's standard IPR condition for contracts relating to Research and Technology work. It supersedes the IPR conditions that may have been used in the past for these contracts, including the package of IPR DEFCONs 14/14A, 90 and 126, and the IPR terms of the University condition FORM LIV/NNR2/6 (formerly CER(PE)63). DEFCON 705 will be used in all MOD's fully-funded Research and Technology contracts other than those subject to DEFCON 703, those subject to a special bespoke IPR condition (which is required in order to meet the requirements of an international collaboration agreement or, exceptionally, some other special business need) and those continuing previous work subject to another condition (within the guidance given in paragraph 30). It will not normally be used in contracts for which a financial contribution by the contractor to the work is explicitly provided for in the contract.

26. DEFCON 705 is a complete IPR condition which covers all forms of IPR including patents, design rights, copyright and other rights in Technical Information and it is not intended that it should be used in conjunction with other IPR conditions in any contract at the same line item level, excepting DEFCON 531 (Disclosure of Information) and DEFCON 632 (Third Party Intellectual Property Rights). However, DEFCON 705 and DEFCON 703 may be used in the same contract when applied to different line items of different natures.

27. The term "Research and Technology" embraces all the Research Programme funded by MOD. It also extends to work up to the MOD "Initial Gate" project approval stage. DEFCON 705 will be the normal condition for this work but it will not be used for MOD projects beyond the initial gate approval stage, except for work on any specific research task required by MOD which does not directly lead to the design of equipment for subsequent production.

28. DEFCONs 14/14A, 15, 16, 90, 91 and 126 still remain as the standard MOD IPR conditions for the design and development of products at MOD expense. Therefore MOD will not seek to impose DEFCON 705 when contracting for the design or development of equipment or software products or for post design services work (as a rule of thumb at Technology Readiness Level 6 or above).

29. An exemption from the use of DEFCON 705 can be made if the work continues seamlessly from work under a previous contract (which was not subject to this condition) to a degree which requires MOD to place the contract for continuation work with the original contractor on a non-competitive basis. In such instances the new contract may invoke the IPR conditions used in the previous contract. The MOD intention is to move to use of DEFCON 705 as quickly and completely as is practicable.

30. The Contractor will be responsible for flowing down the terms of DEFCON 705 in all instances where the sub-contractor is engaged to perform innovative work in the field of Research and Technology, unless the sub-contractor accepts that this is not appropriate and is prepared to vest ownership of the Foreground IPR in the Contractor. In this alternative situation, the Contractor must take ownership of the sub-contract Foreground IPR and MOD will secure its own user rights via the DEFCON 705 conditions in the Contract. In all cases where the flow down route is followed, the Contractor is responsible for ensuring, prior to placement of the sub-contract, that the sub-contractor has entered into a direct agreement with MOD in the form of DEFFORM 177, unless MOD has given its prior written agreement to the contrary.

Provisions And Implementation Of DEFCON 705

Ownership Of Foreground IPR

31. DEFCON 705 vests ownership in the Contractor of all the IPR in Foreground Technical Information (Foreground IPR). The Contractor is responsible for ensuring that the terms of engagement of individuals carrying out the work provide the required ownership for the Contractor. This is particularly important in the case of work undertaken by persons other than regular employees, such as consultants, secondees and students.

32. The Contractor is prohibited from assigning his ownership of Foreground IPR without providing for the continuance of MOD's rights under DEFCON 705. This does not require that the Contractor must secure MOD's prior agreement to assignment, or that the Contractor must inform MOD of the terms of any assignment.

Exploitation Of Research Results

33. Although under DEFCON 705 the Contractor is responsible for and retains control of commercial exploitation of the research results, MOD is able to engage with the Contractor in promoting its commercial exploitation. It has the right to require the Contractor to inform it of the plans for and the extent to which the research results are being or will be exploited in both the defence market and other markets. It may conduct a technology review and

may require the Contractor to engage with it in discussions aimed at promoting commercial exploitation. Moreover, the Contractor must notify MOD if he is unable or unwilling to exploit these research results.

34. There is no requirement for the Contractor to pay any levy or royalty to MOD in the event that the research results are commercially exploited.

35. MOD is obliged to favourably consider any request by the Contractor for the grant of a licence under MOD IPR, as needed to permit commercial exploitation of the research results. This consideration is subject to any existing obligations. Any licence granted under this provision would be a non-exclusive licence and would be subject to payment to MOD on a fair and reasonable basis.

Publication Of Research Results

36. MOD will not normally stand in the way of the publication of research results by the contractor, providing that the work and its results are UNCLASSIFIED. Nevertheless, the Contractor is required to give MOD 45 business days notification of intended publication, and MOD may raise an objection on national interest grounds where this is appropriate.

37. MOD has the right to secure publication for itself of a brief summary indicating the nature of the work to be performed under the Contract. Also, it is entitled to publish an abstract of the research results obtained from the Contract to a non-commercially sensitive level. MOD may require the Contractor to provide this abstract for publication. If this is not done or if the Contractor's abstract is not suitable, MOD may prepare the abstract itself but in this instance it must consult the Contractor before proceeding to publication, allowing 45 business days for response.

MOD's Rights To Use Technical Information

38. DEFCON 705 gives MOD specific free rights to use Technical Information and associated IPR. These rights do not apply to information provided solely by oral communication, nor do they apply to information in non-technical documents. Except for the limited right of publication described in paragraph 37, these rights are subject to a general obligation of confidence.

39. MOD's DEFCON 705 rights in regard to Technical Information apply to any output of work which constitutes a "Technical Deliverable", and to any Foreground Technical Information acquired under a supplementary ordering provision. A "Technical Deliverable" is a document or product comprising Technical Information which is required to be provided to MOD under the terms of the Contract. Thus a Technical Deliverable can be a report on work, a set of data resulting from the work, a package of software (whether in

source code or object code), or a requirements document or specification. This list is not exhaustive. The key requirements are that the document or product comprises Technical Information resulting from a research and technology activity and that the Contract requires it to be provided to MOD.

40. Hardware cannot constitute a Technical Deliverable under the terms of DEFCON 705. This means that even if a contract containing DEFCON 705 requires hardware to be provided to MOD, that hardware is not a vehicle for the acquisition of user rights in Technical Information or IPR under DEFCON 705.

Full Rights/Limited Rights Regime

41. DEFCON 705 establishes a new regime for identifying, protecting and delivering sensitive proprietary Technical Information as Limited Rights Information. There are two categories of Technical Deliverable (Full Rights Versions and Limited Rights Versions), and two categories of Technical Information (Full Rights Information and Limited Rights Information). The two categories of Technical Deliverable and of Technical Information are completely segregated. DEFCON 705 sets out in full detail the rights which are available to MOD for these categories. The rights that MOD secures for Full Rights Versions and Full Rights Information are intended to be adequate for all MOD's usual national and international business needs to obviate the need for special conditions. These rights are more extensive than are provided under DEFCON 90.

42. The term "Full Rights Information" is defined in definition 1.d of DEFCON 705. It consists of Foreground Technical Information but may include a limited degree of background information when present within certain "items" (such as software packages), requirement documents or specifications identified in the definition, which may be specifically required to be produced in the performance of work in the contract. The term "item" does not include hardware items.

43. "Limited Rights Information" consists of all background information which falls within the terms of definition 1.f of DEFCON 705. This includes information in certain specified categories together with any other information allowed by a specific agreement between the Contractor and the MOD. Any such agreement must be identified in the Contract at the time that the relevant requirements for Technical Deliverables are established. This provides MOD with full visibility, at the earliest time, of the rights that it will secure.

44. Background information which has been generated by the Contractor under a previous MOD contract (not subject to DEFCON 705) may be identified as Limited Rights Information when included in a Technical

Deliverable, provided that it meets the requirements explained in paragraph 43. This does not erode or extinguish MOD's rights in the deliverable information supplied under the original contract.

45. If MOD needs rights to use Limited Rights Information for purposes other than provided by DEFCON 705 it may seek to secure these by negotiation with the Contractor, outside the terms of DEFCON 705. In all such cases MOD commercial staff should involve the MOD IPR Group in the process fully.

46. Full Rights Versions must be coherent in their own right, i.e. intelligible and without discontinuities, and must comply with the requirements of the Contract as to form and content. However, clause 9 of DEFCON 705 prevents MOD from requiring the Contractor to provide Limited Rights Information in Full Rights Versions and indeed requires the Contractor to exclude Limited Rights Information from Full Rights Versions. The limited degree of background information which may be provided within "items" called for under sub-clauses 1.d.ii or specifications or requirements documents called for under sub-clause 1.d.iii is treated as Full Rights Information, not Limited Rights Information.

47. The Contractor is required to provide a Full Rights Version of each specified Technical Deliverable unless otherwise stated in the Contract, and is required to provide a Limited Rights Version containing the balance of deliverable Technical Information in any instance where the Full Rights Version does provide all of it. Usually, some dialogue between the prospective contractor and MOD will be needed prior to contract in order to clarify and agree the versions and the content of the Technical Deliverables that will be provided to MOD.

Establishing The Requirements For Technical Deliverables

48. Each DEFCON 705 Contract must set out in clear terms the documents or products comprising Technical Information which are to be provided to MOD. These constitute the Technical Deliverables, which provide the principal vehicle by which MOD acquires Technical Information and the rights to use it. Additionally, the Contract should specify adequately the requirements for form and content of the Technical Deliverables, either individually or by type. This ensures that MOD will get the full content required and gives the Contractor visibility of MOD's requirements.

49. There is no requirement for MOD to call up the Technical Deliverables in the Contract by use of that term or by using a particular form. Nevertheless MOD should adopt a disciplined approach to specifying the required Technical Deliverables, using that term as far as practicable. A non-mandatory contract template for setting down the requirements for Technical Deliverables is

provided in the Annex to this Guideline, but other ways of establishing MOD's requirements may be used.

50. Whatever way the requirements for Technical Deliverables are set out, it is important for MOD to identify clearly any of these Technical Deliverable which fall within the scope of sub-clauses 1d.i to 1d.iii of the definition of Full Rights Information. These Technical Deliverables must be provided as Full Rights Versions under DEFCON 705 but this requirement may be not be clear to the Contractor in the absence of a reference to the appropriate sub-clause. In any instance that MOD sets out requirements for a Technical Deliverable by reference to any one of these sub-clauses, the Contractor should be given an opportunity to make representations to MOD if he believes that it requires the provision of significant proprietary background information which should not be provided within a Full Rights Version. MOD must not distort the regime for protecting Limited Rights Information by demanding these Full Rights Versions of Contract outputs if they clearly involve more than a limited degree of proprietary background information.

51. It is not essential for the Contract to require the Contractor to provide all the Technical Deliverables on or before completion of the Contract, or indeed by any given date. MOD may choose to identify a requirement for a specific Technical Deliverable or Deliverables to be supplied if and when it is demanded within a period agreed in the Contract. This avoids the need for MOD to take early possession of Technical Deliverables for which it has no immediate need, whilst still giving the Contractor full visibility of what might be required in the future. All charges for the provision of these "deferred" Technical Deliverables are to be included in the Contract price, unless specifically agreed to the contrary. There are different arrangements, described in paragraph 59, for obtaining Full Rights Information beyond that contained in the agreed Technical Deliverables.

52. If there is any doubt about the status of any technical material called up under the Contract without reference to the term "Technical Deliverable", MOD will seek to resolve the matter in consultation with the Contractor. Also, the Contractor may raise this issue with MOD prior to accepting the relevant Contract requirement. Documents which are not of a technical nature cannot be Technical Deliverables.

Markings For Technical Deliverables

53. DEFCON 705 requires the Contractor to mark each Technical Deliverables with a proprietary legend which identifies the owner of the rights and which makes reference to the Contract concerned and to DEFCON 705. This is required in order that MOD can handle the Technical Deliverable properly and in order that MOD can identify its rights and the origin of these

when the Technical Deliverable is separated from the Contract. Limited Rights Versions must be clearly marked as such.

54. The Contractor's proprietary legend may include statements reserving rights to the Contractor provided that these are stated in terms consistent with MOD's rights under the condition.

55. MOD is required to maintain the Contractor's marking (providing it is properly applied in accordance with the condition) and to perpetuate the marking on any copies it makes of the Technical Deliverables. These requirements must be imposed upon third parties to whom the Technical Deliverables are provided.

Scope Of Full Rights

56. The rights that MOD secures in Full Rights Versions and Full Rights Information are set out in full in clause 12 of DEFCON 705. These rights are exhaustive, i.e. anything which is not within the scope of the statement of rights is excluded. These rights are free rights within the terms of paragraph 58. Some comments on key points of the rights are given below, by reference to the individual sub-clauses concerned. The portions of the headings given in italics are not used in the condition and are included here solely for ease of reference.

Sub-Clause 12.a – Internal Government Use

- Under this sub-clause Full Rights Versions and Full Rights Information are available for internal use for any purpose within UK Government Departments (including the armed forces), the police and civil defence agencies, but must not be disclosed outside these bodies.

Sub-Clause 12.b – UK National Defence Agreements

- The term UK National Defence Agreement is defined in definition 1.j. It covers all forms of arrangement which MOD may enter into with third parties, within the terms of the definition, for UK defence, but excludes arrangements for international collaboration and agreements for commercialisation beyond MOD's own requirements for products and services.
- This right permits MOD to disclose Full Rights Information to invite tenders and place contracts for further research and technology and for all stages of MOD's equipment project cycle.

- External release by MOD may comprise disclosure to its own supplier base for information awareness only providing this is conducted under a binding confidentiality agreement.
- The UK National Defence Agreement must not be one for the sole benefit of a third party (such as a contract placed on behalf of another government)

Sub-Clause 12.c – Research And Technology Agreements

- The term "Research and Technology Agreement" is defined at 1.l. It excludes agreements established for the development or procurement of a specific equipment.
- Research and Technology Agreements may pertain to the following: information exchanges, information awareness or assessment, research projects and technology demonstrators.
- MOD's rights under this sub-clause are not dependent upon any identification of the Research and Technology Agreement in the Contract concerned. However, MOD should endeavour to inform the Contractor (if possible before concluding the contract) of any Research and Technology Agreement in respect of which MOD intends to exercise this right insofar as this can be foreseen at the time, and of the terms and conditions of that Agreement.
- Release to and use by foreign participants' contractors is permitted under the following conditions: (a) the release is authorised by MOD and is made in confidence, (b) the release complies with the Research and Technology Agreement which provides for these releases on a reciprocal basis, and is limited to the purposes of the Agreement, and (c) MOD's obligations under the reciprocity arrangements for all Collaborative Defence Agreements (which are discussed below under sub-clause 12.d).

Sub-Clause 12.d – Collaborative Defence Agreements

- The term "Collaborative Defence Agreement" is defined in definition 1.k. It covers all formal arrangements entered between the UK Government and other governments, NATO etc. for defence purposes, civil defence, security and intelligence. Research and Technology Agreements (see discussion on sub-clause 12.c above) are a subset of these.
- For Collaborative Defence Agreements other than Research and Technology Agreements, the Contractor must be given advance

notice that MOD intends to invoke this right (subject to one exception). This may be done by stating in the Contract, when it is placed, that the Contract will involve the release and use of Full Rights Information in a named Collaborative Defence Agreement. Alternatively, MOD may inform the Contractor of its intentions after placement of the Contract, but in this instance will give the Contractor an opportunity to make representations. MOD is obliged to take the Contractor's representations into account before deciding whether to exercise this right, but MOD's decision is final. When either of these mechanisms are instigated by MOD, it should endeavour to give the Contractor full visibility of the situation insofar as this is known at the time, including the circumstances of the release and the terms under which it will be made.

- The requirement to give advance notice to the Contractor by one or other of these two mechanisms, as a preliminary to exercising this right, may only be dispensed with in the exceptional situation that the Collaborative Defence Agreement concerned is one of such security sensitivity that its existence and terms may not be acknowledged to the Contractor.
- Release to and use by foreign participants' contractors is permitted subject to the following: (a) the release must be authorised by MOD and be made in confidence, (b) the release must comply with the Collaborative Defence Agreement and be limited to the purposes of that Agreement, and (c) MOD's must honour its obligations under the reciprocity arrangements for all Collaborative Defence Agreements (which are discussed below).
- MOD undertakes under sub-clause 12.e of DEFCON 705 that whenever Full Rights Information is to be disclosed to a contractor of another participant in a Collaborative Defence Agreement (including a Research and Technology Agreement) it will use all reasonable endeavours to release to the Contractor and other MOD contractors relevant Technical Information received from the other participant or its contractors under the relevant Collaborative Defence Agreement commensurate with the terms of release and use set out in that Agreement.

Sub-Clause 12.f – Disposals

- This provides special rights for use of research materials in connection with the sale or disposal of surplus, outworn or obsolete products but only those made using Full Rights Information. It does not extend to the use of these materials in connection with products specifically procured for sales purposes.

Scope Of Limited Rights

57. The rights that MOD secures in for Limited Rights Versions and Limited Rights Information are set out in full in clause 14 of DEFCON 705. The right for internal UK Governmental use under sub-clause 14.a is identical to that secured under clause 12 for Full Rights Information. A single specific right for external release and use of Limited Rights Information is secured under sub-clause 14.b and this is much reduced in comparison with those available under clause 12 in recognition of the fact that this material comprises commercially sensitive background information.

- MOD has a specific right which permits release to and use of Limited Rights Information by service providers engaged by MOD to provide a specific service to MOD related to the Contract.
- The service concerned must be limited to managing, monitoring, evaluating, assessing or auditing the work under the Contract unless otherwise specified in the Contract or subsequently agreed by the Contractor.
- The service provider must be identified in the Contract at the time of Contract placement, or else agreed with the Contractor to avoid conflicts of interest.

Freedom From Payment

58. The rights that MOD secures in respect of Full Rights and Limited Rights Information described in paragraphs 56 and 57 are free of payment to the Contractor. This freedom from payment extends to the use, via the material concerned, of any IPR owned or controlled by the Contractor which relates to the form or content of the deliverable material – typically copyright and confidential information – and of any patent or registered design which constitutes Foreground IPR. It does not extend to any other patent or registered design, whether owned by the Contractor or a third party. MOD's rights in any patents and registered designs which comprise Foreground IPR are described in paragraphs 60-63.

Supplementary Technical Information And Technical Assistance

59. DEFCON 705 requires the Contractor to maintain a record of the work performed under the Contract and the results obtained for a period of five years after contract completion, or such other period as is specified in the Contract. MOD has the right to be supplied with Foreground Technical Information for as long as it exists, by separate order and on a fair and reasonable price and other relevant terms. Information so secured is treated as Full Rights Information. Also, MOD has the right to secure assistance in

understanding Full Rights Versions for MOD or for those to whom MOD has disclosed these, on fair and reasonable terms and conditions.

Patents And Registered Designs

60. DEFCON 705 secures for MOD a licence under patents and registered designs for Foreground IPR. It also imposes some administrative and procedural responsibilities upon the Contractor in regard to applications for those patents and registered designs. These are described in the following paragraphs.

61. The definition of "Foreground IPR" includes patents for any inventions generated in the performance of work under the contract. It also includes patents for any inventions conceived out of the technical requirements of the contract, e.g. as set out in the ITT or the Contracts Bulletins if these have been first "enabled" in the course of work under the contract. A patent is "enabled" if it has moved beyond the mere concept of an invention to the stage where the practical embodiments and description exist which are necessary to support a valid patent. Thus a patent constitutes Foreground IPR, if the invention was conceived from the technical requirements of the Contract otherwise than in the performance of work under the Contract in the instance that the first practical embodiments and supporting detail were so generated. This extension of MOD's rights with respect to the position under DEFCON 14 or 14A is intended to counter any attempt to monopolise the subject matter of the Contract by the pre-contract filing of patent applications for concept inventions which will be first substantiated by the work under the Contract. In practice this situation may be very difficult to confirm and consequently MOD will not assert any entitlement to a patent licence under this "first enablement" provision without the authority of MOD's Director of Intellectual Property Rights.

62. Under DEFCON 705 MOD secures an irrevocable, world-wide, non-exclusive payment-free licence, with the right to sublicense, for any patents or designs (registered or unregistered) constituting Foreground IP. The licence covers all things done in connection with the procurement of goods and services for, and in connection with, the operation of Government Departments and the UK Armed Forces. It also permits MOD to grant a licence to another government, government agency, intergovernmental organisation or its agency, under the terms of a Collaborative Defence Agreement insofar as needed for any joint activity under that Agreement (including the provision of jointly produced equipment to all the participants thereof).

63. DEFCON 705 removes the right of any statutory compensation in regard to patents comprising Foreground IPR which might otherwise be due for hardship consequent upon the imposition of a security prohibition order.

64. Clauses 19-21 of DEFCON 705 requires the Contractor to provide MOD with details of applications filed for the protection of Foreground IPR. This requirement applies to applications for patents (and like protection such as "utility model" protection) and to applications for registered design protection. This notification is required by MOD in order that MOD can take note of its rights in respect of the applications and take steps to register its interests before the appropriate IP offices. Notifications are to be provided to MOD's Director of Intellectual Property Rights. These can be provided on a case by case basis or on an aggregated basis. Under DEFCON 705 MOD undertakes to hold all copies of applications in confidence unless and until they are published in the normal way.

65. Clauses 24-29 of DEFCON 705 imposes additional procedural obligations for patent applications for inventions constituting Foreground IPR, which may have security implications. These obligations apply also to patent applications for other inventions in the instance that such an application discloses classified matter connected with the Contract, except that there is no requirement to notify the UK Patent of any connection with MOD or to authorise MOD inspection of the patent application. None of these procedural obligations will apply to any application once it has been reviewed by an appropriate classification authority and declared to be UNCLASSIFIED. Providing the required procedures are followed, any patent application will be considered to have been made with the prior consent of MOD for the purposes of DEFCON 659 (Security Measures).

Arrangements For "Interim Versions" Of DEFCON 705

66. DEFCON 705 was first promulgated as an "interim version" in DCTM 44/2001. A second interim version ("Interim Version 2") was promulgated in DCTM 27/2002. These interim versions have been replaced by Edition 11/02 (the "definitive version") and are not to be used for any new contracts. The differences between Interim Version 2 and the definitive version are not major but more significant differences exist between the first interim version and the definitive version.

67. MOD should seek to amend all contracts which are subject to Interim Version 2 of DEFCON 705, by agreement with the Contractor, to substitute the definitive version of DEFCON 705, unless there is a specific reason for not doing so. This is primarily a measure for good housekeeping and does not convey any additional benefit to MOD. If the Contractor does not wish to accept the change, he should not be pressed to do so. If the Contractor has not been offered this amendment, he may request MOD to make the change and MOD should not unreasonably refuse to accede to this request.

68. Either MOD or the Contractor may request the other to agree to substitute the definitive version of DEFCON 705 for the first interim version by amendment to the Contract. When it is intended to make such an amendment, the following arrangements should be adopted:

- MOD should check that the Contract is not one placed in pursuance of an International Collaboration Agreement which requires MOD to disclose Limited Rights Information to the other participants – this is unlikely but possible and if it is the case the change should not be made without a specific dispensation from the Contractor to allow the rights under sub-clause 4.1 of the first interim version to continue;
- The amendment must not prejudice actions already undertaken, or commitments made, by or for MOD prior to the date of the change.
- The amendment must allow MOD to identify in the Contract:
 - relevant outputs of the Contract work as falling within the terms of sub-clauses 1.d.ii or 1.d.iii
 - any Collaborative Defence Agreement under which MOD intends to disclose the Full Rights Information (this identification is not required for Research and Technology Agreements); and,
 - service providers for the purposes of sub-clause 14.b;
 - with the same effect for the purposes of DEFCON 705 as if done at the date of the Contract.

69. In a number of Contracts, the Contractor has secured the right to have an interim version of DEFCON 705 replaced by the definitive version. In such instances it is strongly recommended that the practical implications of this, such as those such as those identified in paragraph 68, are addressed by both parties. One conclusion might be that the Contractor might prefer not to exercise this right for an extant or completed Contract.

ANNEX To Guidelines For Industry Of DEFCONS 703 AND 705

Optional Contract Template For Establishing Requirements Under Defcon 705 For Technical Deliverables

When using this template MOD commercial officers should include in the Schedule of Requirements for the Contract the non-italicised part of the template and the detail required by the directions given in italics. The wording of the non-italicised text for the first three bullet points reflect the wording of DEFCON 705 and should be included without modification in the Schedule of Requirements, together with the explanatory text at the asterisk which points out to the Contractor the impact of these requirements.

LISTING OF TECHNICAL DELIVERABLES IN CONTRACT SUBJECT TO DEFCON 705

Data or information set resulting from studies analyses or tests conducted in the performance of work*

– yes/no – if yes describe below and identify whether scheduled deliverable or deferred deliverable

Mathematical models, algorithms, software programs, or similar items specifically required to be produced in the performance of work*

– yes/no – if yes describe below and identify whether scheduled deliverable or deferred deliverable

Requirement document or specification specifically required to be produced in the performance of work*

– yes/no – if yes describe below and identify whether scheduled deliverable or deferred deliverable

* indicates Technical Deliverables which are to be provided in Full Rights Versions only in accordance with DEFCON 705 Sub-Clause 1.d.

Progress reports – yes/no scheduled deliverable/deferred deliverable

Full Rights Version + Limited Rights Versions as dictated by content – yes/no

OR

Limited Rights Version only – yes/no

Final report – yes/no scheduled deliverable/deferred deliverable

Full Rights Version + Limited Rights Versions as dictated by content – yes/no

OR

Limited Rights Version only – yes/no

Any other Technical Deliverable identified below – yes/no scheduled deliverable/deferred deliverable

Full Rights Version + Limited Rights Versions as dictated by content – yes/no

OR

Limited Rights Version only – yes/no

Deliverables identified as "scheduled deliverables" are required to be provided to MOD at the time established under this Contract

Deliverables identified as "deferred deliverables" are not immediately required by MOD but are costed as an option for MOD within the price of the Contract and these are to be provided to MOD promptly without additional charge if it makes a written demand for such a deliverable at any time within five years/ ??years from the completion of the Contract.

Part B Guidance Relating to DEFCONs 15, 16 And 21

Contents Of Part B

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Guidance for the Preparation of CDRs - DEFFORM 315

Guidance for the Preparation of CDRs - DEFFORM 315

[Annex B](#) - Example of the preparation of CDRs

[Annex C](#) - Data Item Description for Manufacturing Data Pack

[Annex D](#) - Documentation for Inclusion in an Operation, or Repair and Maintenance Data Pack CDR

[Annex E](#) - Letter from Chief of Defence Procurement (CDP) to the Director General of the Confederation of British Industry (CBI)

Introduction

1. This Part B of the Guideline relates to DEFCONs 15, 16 and 21, which are used by MOD in contracts which involve the preparation of documents suitable for production or for in-service support. All references to these DEFCONs in this Part B are to the current (Edn 2/98) versions unless otherwise stated. Copies of these Conditions are included at Appendix 1.

Use Of The DEFCONs 15, 16 And 21

2. Except in the circumstances discussed in paragraphs 3,4 and 5 below, DEFCONs 15, 16, and 21 will be used in Invitations To Tender (ITT) and offers of contract in accordance with the criteria discussed in paragraphs 8 to 27 below. The current DEFCON 15 has been agreed with industry for use with all defence contractors, there is no special version for use with SBAC members. Furthermore, none of the modifications applicable to the previous edition of DEFCON 15 (Edn 8/74) should be used with the current DEFCON 15.

3. Where a new or continuation contract, such as a CDS or PDS contract, continues development work begun by the contractor under an earlier contract, it is normal practice to flow into the new or continuation contract the same IP Conditions as were included in the earlier development contract. Where the earlier contract contained the previous editions of DEFCONs 15 and 21, these previous editions should be used in the new or continuation contract rather than the current DEFCONs 15 and 21 to ensure continuity of rights. DEFCON 16 will not be used in such a case.

4. DEFCONs 15, 16 and 21 should not be used in contracts where the MOD is to take ownership of IP generated under the contract.

5. DEFCONs 15, 16 and 21 are intended for use in fully funded contracts. Where the contract is part funded, special IP clauses based on the new DEFCONs may be required.

Contract Data Requirement (CDR)

6. All contracts which call up DEFCONs 15, 16, and 21 must contain one or more CDRs. A CDR identifies a particular item of information to be delivered under the contract. In order to secure the appropriate rights and related obligations in an item of information under one or more of these DEFCONs, it is necessary to indicate on a CDR which of the DEFCONs will apply to the information identified on the CDR. The CDR should be produced using, a copy of which is at Annex A. An example of how the DEFCONs might be applied to a contract is at Annex B. Manufacturing information subject to DEFCON 15

called up in a CDR should be defined by reference to a Data Item Description (DID), which is at Annex C (UK DID MDP (Issue 2/98)). Support information subject to DEFCON 16 should be defined by reference to a standard document, such as AvP 70. Statements describing the information in generic terms such as "Any information necessary for manufacture by a third party" are not acceptable. Consequently, use of the CDR system will require careful consideration of the information required to be delivered under the contract bearing in mind factors such as the future procurement and support policy for the equipment.

Scope And Application Of The DEFCONs

DEFCON 15 (Edn 2/98)

7. The primary purpose of DEFCON 15 is to acquire for the MOD rights of use in information contained in a manufacturing data pack for the purpose of competitive procurement. However, DEFCON 15 provides the MOD with rights of use in that information for a number of secondary purposes. These include the right to use the information in relation to trainers and simulators, for interfacing with other equipment, for development of jigs, tools and test equipment, disposal of articles and for monitoring work under the contract (See clause 4 of DEFCON 15). The rights of use acquired can be exercised by the MOD itself, any other United Kingdom Government department, or an agent, or a contractor in pursuance of a contract.

8. The MOD also acquires under DEFCON 15 rights to use the information contained in a manufacturing data pack for the purposes of modifying the design of an article. However, this right can only be exercised in the following circumstances:

- a. where the contractor is not able to perform or is unwilling to accept a contract for the modifications required on fair and reasonable terms;
or
- b. where the modifications are required to enable the articles to interface with equipment supplied by a third party.

9. Where the MOD exercises its right under DEFCON 15 to modify a design, or have a design modified by a third party, the contractor must be supplied with a copy of all information delivered to the MOD in relation to the modification and the MOD is required to provide the contractor with a licence to use such information (See clauses 4.f and 12 of DEFCON 15). In such a situation, a special IP condition will be required in the contract for the modification work.

10. In circumstances where the MOD wants information specifically adapted for one of the "secondary" purposes (i.e. non-manufacturing) under DEFCON 15, it may be appropriate to require a data pack specifically adapted for that secondary purpose and the CDR concerned should specify the requirement. In other circumstances it may be appropriate to request the delivery of a data pack which is a sub-set of the manufacturing data pack. An example would be where information is required for interface purposes where only that data necessary to enable proper interfacing is required rather than a full manufacturing data pack.

11. DEFCON 15 should be used in all contracts for the following:

- a. the design and development of an article for possible subsequent manufacture, including development/initial production and similar package deal contracts;
- b. the modification of an article which was originally designed and developed by the contractor under an MOD contract which included DEFCON 15;
- c. Continuing Development Services (CDS), Post Design Services (PDS), and other contracts where continuing/further design work may occur (including replacement of obsolete components/materials) in relation to articles which were originally designed and developed by the contractor under an MOD contract which included DEFCON 15 (not the previous version);
- d. contracts in which development of a material, manufacturing process or technique is specified in the contract Schedule of Requirements.

12. In relation to paragraph 11, sub-paragraphs b and c above, use of the current DEFCON 15 is only appropriate where the modification work or further development is being carried out by the contractor which originally designed the equipment and where the original development contract contained the current DEFCON 15 (See paragraphs 3 and 4 above). It should also be noted that a distinction should be drawn between genuine continuing post design work, for which the IP conditions present in the original contract would normally be flowed in to the new contract, and work effectively to develop a new, self-standing design, for which the current DEFCONs should be used as appropriate.

13. Normally research, study, project definition or similar contracts do not require the production of a manufacturing data pack. For these contracts either DEFCON 703 or DEFCON 705 will be used as explained in Part A of the Guideline.

Background IPR

14. In CDP's letter to the CBI dated 18 March 1998 (Annex E), CDP confirmed that the MOD did not intend to acquire rights in "self-standing background materials, processes or designs" (background IP) through use of DEFCON 15. This statement by CDP does not represent a change in the MOD's practice in regard to the exclusion of private venture materials, processes or designs from the scope of DEFCON 15. Assessment of what constitutes background IPR which may be excluded from DEFCON 15 should not, therefore, differ from accepted practice under the previous edition of DEFCON 15 (Edn 8/74). However, for guidance purposes only, in relation to designs the term "self-standing" is intended to cover separately identifiable designs, which are likely to be for functional units or sub-units, provided that such units could be supplied separately. The term is not intended to encompass the designs of component parts of a minor nature. In addition, a material, process or design may be regarded as self-standing background if the MOD has not previously acquired user rights in the material, process or design, and provided that the material, process or design is used without further substantial development under the contract. The above is of course a generalisation and an assessment of what constitutes a self-standing background material, process or design may need to be made in particular cases.

15. In order that there should be no doubt about the MOD's rights under any specific contract, the contractor should be asked to identify all of his own self-standing background IP in which the MOD is not to be given full DEFCON 15 rights as soon as he becomes aware of the possibility of such self-standing background IP being used in fulfilment of the contract. Where no such self-standing background IP is identified, the MOD will assume that its rights under DEFCON 15 are not subject to any limitations as a result of background IP. In relation to background proprietary processes, the contractor would only be expected to identify such a process prior to delivery of the manufacturing data pack where he is aware that there are no alternative processes available to other potential contractors and that manufacture of an article, or a part of an article, is dependent on the use of that process. In such cases the contractor should notify the MOD as soon as he becomes aware that manufacture of the article is likely to be dependent on use of the background proprietary process.

16. Design sub-contractors, to whom DEFFORM 177 should apply, would also be expected to notify self-standing background IP. Notification would not be required of other sub-contractors, although the actual manufacturing data pack which is deliverable under the contract should contain sufficient information to clearly identify any such sub-contractor and the proprietary item supplied, other than for consumable items.

17. Where the MOD project manager considers that it is essential to have a second source of supply in relation to such self-standing background IP, an agreement should be sought from the contractor that he will provide a manufacturing data pack and will license use of the information, by or for the MOD, on fair and reasonable terms. In circumstances where it is subsequently considered necessary to acquire rights of use in self-standing background IP, those rights should be sought outside of DEFCON 15. The MOD will only seek rights of use in self-standing background IP for the purposes of competitively procuring an article, or part of an article, in which the self-standing background IP has been incorporated. Rights will not be acquired for the purposes of competing the self-standing background IP as such. The acquisition by MOD of rights of use in respect of such self-standing background IP will eventually be covered by a new DEFCON 19, for which further guidance will be issued when it is introduced.

DEFCON 16

18. The purpose of DEFCON 16 is to secure for the MOD rights of use in information contained in operating manuals, Repair and Maintenance manuals, or other standard Repair and Maintenance documentation, and in particular the right for MOD to pass the information to third party contractors to enable Repair and Maintenance activities to be competed. DEFCON 16 provides the MOD with certain further rights of use in the information which include the right to use it to operate articles, to dismantle and scrap articles, for use in relation to the design and production of jigs, tools and test equipment for in-service support, and for monitoring work under the contract. The rights of use provided by DEFCON 16 do not extend to use for redesign, or manufacture of any replacement or new parts, or the design of any modification. The rights of use acquired can be exercised by the MOD itself, any other United Kingdom Government Department, or an agent, or a contractor in pursuance of a contract.

19. It should be noted that the scope of DEFCON 16 does not preclude amendment or modification of the information either by the MOD or its agents or contractors.

20. DEFCON 16 should be used in all contracts in which the contractor is required to produce and/or supply operating manuals, Repair and Maintenance manuals, or other standard Repair and Maintenance documentation for use by or for the MOD in operating, Repairing and/or Maintaining equipment, including where appropriate contracts for Commercial-Off-The-Shelf (COTS) equipment.

21. The MOD Project manager will need to specify the operating, Repair and Maintenance manuals or other standard Repair and Maintenance documentation required to be delivered under the contract in a CDR. The

manuals and/or documentation should be specified by reference to an appropriate military standard or, where acceptable to MOD, standard civil documentation. Annex D contains a non-exhaustive list of recognised military standards in relation to operating manuals, Repair and Maintenance manuals and standard documentation.

DEFCON 21

22. The purpose of DEFCON 21 is to ensure that the contractor keeps a copy of all information deliverable under the contract which has been made the subject of either of DEFCONs 15 or 16. The contractor may not amend the copy without written authorisation from the MOD, except where such an amendment does not result in an alteration to the build standard. The period for which the copy is to be maintained is determined by the MOD project manager but will usually be at least two years. The copy, which is known as a Control Copy, is owned by the MOD who can, at any time during the period for which the contractor is required to maintain the copy, take possession of it or request the contractor to supply further copies. Unlike the previous edition of DEFCON 21 (Edn 1/58), the current DEFCON 21 does not provide the MOD with any rights of use in information supplied under it. Rights of use are now provided under the DEFCONs 15 or 16 linked to an appropriate CDR.

23. DEFCON 21 (Edn 2/98) should be used in all contracts which are to be subject to either of the new DEFCONs 15 or 16.

Selection Of Appropriate DEFCON Rights In Information Resulting From Development Or Modification Contracts

24. In a typical development program, information contained in operating manuals, Repair and Maintenance manuals, or other standard Repair and Maintenance documentation would be made the subject of DEFCON 16 whilst information for inclusion in a manufacturing data pack would be made the subject of DEFCON 15.

25. It should be noted that DEFCONs 15 and 16 should not be applied together to the same data item(s), except in very unusual circumstances. For example, DEFCON 16 should not be applied to a manufacturing data pack subject to DEFCON 15. Rather the contract should require the preparation of a separate Repair and Maintenance data pack to which DEFCON 16 is applied. This is so even where the information required in a Repair and Maintenance data pack is also present in the manufacturing data pack.

26. The current editions DEFCONs 15, 16 and 21 should not be used in conjunction with previous editions of DEFCONs 15 (Edn 8/74) and 21 (Edn

1/58). It should also be noted that use of DEFCON(s) 15 and/or 16 in conjunction with DEFCON 703 or DEFCON 705 will not usually be appropriate.

Use Of DEFCONs 14, 14a, 90, 91 And 126 In Conjunction With DEFCONs 15, 16 And 21

27. DEFCONs 14, 14a, 90, 91 and 126 should be used in conjunction with the DEFCONs 15, 16 and 21 as appropriate to the contract and in accordance with current policy relating to the use of these existing DEFCONs. See the example in Annex B.

28. DEFCONs 14, 14a, 90, 91 and 126 are to be called up in the main body of the contract but are not to be identified in CDRs.

Technical Publications Clause

29. Special IP contract conditions taking rights of use for the MOD in operating manuals, Repair and Maintenance manuals or other standard Repair and Maintenance documentation, sometimes known as Technical Publications Clauses, should not be used in conjunction with the DEFCONs 15 and/or 16. Rights of use in such support publications should be secured using DEFCON 16.

Confidentiality

30. Information which is subject to either of DEFCONs 15 and 16 is disclosed to the MOD in confidence and must only be used by or for the MOD in accordance with the provisions of the relevant DEFCON. The MOD shall ensure that where it exercises its rights under either of DEFCONs 15 or 16 to release any such information to a third party, the information released is limited to that necessary to undertake the task on which the third party is engaged. Furthermore, the MOD shall ensure that all disclosures of such information to third parties are under express conditions of confidentiality between the MOD and the third party. This requirement will usually be satisfied by the inclusion in an ITT of DEFFORM 47 and in an offer of contract of DEFCON 531. If requested by the originating contractor, the MOD will procure a direct confidentiality agreement in the form of DEFFORM 94 (See clauses 14 and 15 of DEFCON 15 and clauses 13 and 14 of DEFCON 16).

31. It is MOD's intention that where third parties are to be engaged by the MOD for the purpose of monitoring and evaluating work under a contract, the contractor whose work is being monitored will be notified in advance and given the opportunity to make representations. The MOD will take due regard of the contractors representations before deciding whether and to what extent a contract should be placed with a third party. In normal

circumstances, third parties chosen for monitoring and evaluation work will not be direct competitors of the contractor in the field concerned.

Marking

32. Information supplied which is subject to either DEFCON 15 or 16 may be marked by the contractor with his own copyright and/or other restrictive legend provided that the legend acknowledges the MOD's rights under the relevant DEFCON. Where a contractor uses such a marking, the marking will be perpetuated in any copies made of the information (see clause 17 of DEFCON 15 and clause 16 of DEFCON 16). If a contractor includes a legend which does not acknowledge the MOD's rights, the information bearing the legend will be returned immediately with a request that the legend be removed or amended to acknowledge the MOD's rights.

Clarification Of Information

33. Under the terms of DEFCONs 15 and 16, on request the contractor is required to provide assistance by way of clarification to the MOD or its agents and contractors in using the information delivered. Such a requirement would normally be satisfied via a separate contract under which payment for the clarification services would be made. It is not intended that assistance to be provided under these conditions would amount to full technical assistance and unless the contractor is willing, he would not be required to train the recipient of the information or lead the recipient by the hand.

Competition Of Future Work

34. Where the MOD exercises its rights under either DEFCON 15 or 16 to invite tenders for future work, the MOD will invite the originating contractor to tender for that work except where this is impracticable or where the originating contractor is no longer eligible to perform the work.

note that any request for an internal review should be made within 40 working days of the date of this response.

If you remain dissatisfied following an internal review, you may raise your complaint directly to the Information Commissioner under the provisions of Section 50 of the Freedom of Information Act. Please note that the Information Commissioner will not normally investigate your case until the MOD internal review process has been completed. The Information Commissioner can be contacted at: Information Commissioner's Office, Wycliffe House, Water Lane, Wilmslow, Cheshire, SK9 5AF. Further details of the role and powers of the Information Commissioner can be found on the Commissioner's website at <https://ico.org.uk/>.

Yours faithfully,

MOD LEGAL ADVISERS