Crown Commercial Service

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CONSTRUCTION PROFESSIONAL services framework schedule 5

template call off agreement (INCORPORATING THE nec4 professional services SHORT contract JUNE 2017 (including amendments issued january 2019 and october 2020) AND contract data

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**Date...03/11/2022...**

**FORM OF AGREEMENT**

**Incorporating the NEC4 Professional Services Short Contract June 2017 incorporating amendments January 2019 and October 2020**

**Between**

**Defence Infrastructure Organisation**

**And**

**Tetra Tech Limited**

**For the provision of**

**Bramcote Mains Disposal – Updated P1 and P2 Land Quality Assessment (LQA)**

**THIS AGREEMENT is made the 3rd day of November 2022**

**PARTIES:**

1. **DEFENCE INFRASTRUCTURE ORGANISATION** acting as part of the Crown (the "***Client***"); and

2. **TETRA TECH LIMITED**, which is a company incorporated in and in accordance with the laws of **English law** (Company No. **01959704** whose registered office address is at **3 Sovereign Square, Sovereign House, Leeds, LS1 4ER**(the "***Consultant***").

**BACKGROUND**

1. The Minister for the Cabinet Office (the "**Cabinet Office**") as represented by Crown Commercial Service, a trading fund of the Cabinet Office, without separate legal personality (the "**Authority**"), established a framework for construction professional services for the benefit of public sector bodies.
2. The *Consultant* was appointed to the Crown Commercial Services (CCS) framework and executed the framework agreement (with reference number RM6165 which is dated 03 November 2021 (the “**Framework Agreement**”). In the Framework Agreement, the Consultant is identified as the “Supplier”.
3. The *Consultant* has agreed to Provide the Services in accordance with this agreement and the Framework Agreement.

**IT IS AGREED AS FOLLOWS:**

1. The *Client* will pay the *Consultant* the amount due and carry out his duties in accordance with the *conditions of contract* identified in the Contract Data and the Contract Schedules.
2. The *Consultant* will Provide the Service in accordance with the *conditions of contract* identified in the Contract Data and the Contract Schedules.
3. This contract incorporates the conditions of contract in the form of the NEC4 Professional Services Short Contract June 2017 Edition incorporating amendments January 2019 and October 2020 and incorporating the additional conditions specified in the Client’s Contract Data, which form this contract together with the documents referred to in it. References in the NEC4 Professional Services Short Contract June 2017 Edition incorporating amendments January 2019 and October 2020 to "the contract" are references to this contract.
4. This contract and Framework RM6165 is the entire agreement between the parties in relation to the *service* and supersedes and extinguishes all prior arrangements, understandings, agreements, statements, representations or warranties (whether written or oral) relating thereto.
5. Neither party has been given, nor entered into this contract in reliance on any arrangements, understandings, agreements, statements, representations or warranties other than those expressly set out in this agreement.
6. Nothing in clauses 4 or 5 shall exclude liability in respect of misrepresentations made fraudulently.

**Executed under hand**

Signed by: ……………………..….[NAME OF DIRECTOR]

for and on behalf of Tetra Tech Limited

..................................................... [SIGNATURE OF DIRECTOR]

Director

Signed by: Kate Doyle……………..….[NAME OF CLIENT REPRESENTATIVE]

for and on behalf of the Client

***...Kate Doyle..........................***[SIGNATURE OF CLIENT REPRESENTATIVE]

|  |
| --- |
| nec4 Professional Service |

Short Contract

|  |  |
| --- | --- |
| **A contract between**  | DEFENCE INFRASTRUCTURE ORGANISATION |
|  |  |
| **and** | TETRA TECH LIMITED |
|  |  |
| **for** | Bramcote Mains Disposal – Updated P1 and P2 Land Quality Assessment (LQA) |

Contract Forms

Contract Data

The *Consultant’s* Offer

Price List

Scope

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| --- |
| Contract Data |
| The *Client’s* Contract Data |

The *Client* is

|  |  |
| --- | --- |
| Name  | DEFENCE INFRASTRUCTURE ORGANISATION  |
|  |  |
| Address for communications | DELANCY BUILDING, ARMY HQ, MARLBOROUGH LINES, MONXTON ROAD, ANDOVER, SP118HJ |
|  |  |
| Address for electronic communications | XXX  |
|  |  |
| The service is | A review and update of the Phase 1 LQA and additional groundwater monitoring to support the disposal of Bramcote Mains. |
| Q |  |
| The starting date is | 03/11/ 2022 |
|  |  |
| The completion date is | 03/05/ 2023 |
|  |  |
|  |  |  |
|  |
|  |
| The United Kingdom Housing Grants, Construction and Regeneration Act (1996) **does not** apply. |
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| Contract Data |
| The *Client’s* Contract Data |

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|  |
| The *Consultant* provides the following insurance cover |
| q |  |
| **INSURANCE AGAINST** | **MINIMUM AMOUNT OF COVER** | **PERIOD FOLLOWING COMPLETION OR EARLIER TERMINATION** |
| Liability of the *Consultant* for claims made against it arising out of the *Consultant's* failure to use the skill and care normally used by professionals providing services similar to the service. | Not less than £1,000,000 in respect of each claim, without limit to the number of claims except for claims arising out of pollution or contamination, where the minimum amount of cover applies in the aggregate in any one period of insurance and except for claims arising out of asbestos where a lower level may apply in the aggregate | From the date of the Framework Alliance Contract and renewable on an annual basis unless agreed otherwise by the Client in writing (a) throughout the Framework Period or until earlier termination of the Framework Alliance Contract and (b) for a period of 6 years thereafter.  |
| Loss of or damage to property and liability for bodily injury to or death of a person (not an employee of the *Consultant)* arising from or in connection with the *Consultant* Providing the Service | Not less than £2,000,000 in respect of any one occurrence, the number of occurrences being unlimited, but £2,000,000 any one occurrence and in the aggregate per annum in respect of products and pollution liability.  | From the starting date of the Contract (03/11/2022) until the final deliverable has been received and approved by the Client or earlier termination. |
| Liability for death of or bodily injury to employees of the *Consultant* arising out of and in the course of their employment in connection with the contract | Not less than £2,000,000 in respect of any one occurrence, the number of occurrences being unlimited, but £2,000,000 any one occurrence and in the aggregate per annum in respect of products and pollution liability.   | From the starting date of the Contract (03/11/2022) until the final deliverable has been received and approved by the Client or earlier termination. |
|  |

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| --- | --- |
| The *Consultant’s* total liability to the *Client* which arises under or in connection with the contract is limited to | £5,000,000. |
|  |  |

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| Contract Data |
| The *Client’s* Contract Data |

The *conditions of contract* are the NEC4 Professional Service Short Contract June 2017 incorporating amendments January 2019 and October 2020 and the following additional conditions

|  |
| --- |
| **Only enter details here if additional conditions are required** |
|  |
| **Option Z2 Identified and defined terms**applies**Option Z4 Admittance to Client’s Premises**Applies plus DEFCON 76 Personnel at Govn Establishments**Option Z5 Prevention of fraud and bribery**applies**Option Z6 Equality and Diversity**applies**Option Z7 Legislation and Official Secrets** applies**Option Z8 Conflict of Interest**applies**Option Z9 Publicity and Branding**applies**Option Z10 Freedom of information**applies**Option Z13 Confidentiality and Information Sharing**applies**Option Z14 Security Requirements** Applies plus Security Aspects Letter - ref. 3057-Bramcote Mains\_LQA dated 01/11/22**Option Z16 Tax Compliance**applies**Option Z22 Fair payment**applies**Option Z26 Building Information Modelling**does not apply**Option Z42 The Housing Grants, Construction and Regeneration Act 1996**does not apply**Option Z44 Intellectual Property Rights**Applies plus DEFCON 703 IPR**Option Z45 HMRC Requirements**does not apply**Option Z46 MoD DEFCON Requirements**Applies – see list below**Option Z47 Small and Medium Sized Enterprises (SMEs)**does not apply**Option Z48 Apprenticeships**does not apply**Option Z49** **Change of Control**applies**Option Z50 Financial Standing**applies**Option Z51 Financial Distress**does not apply**Option Z52** **Records, audit access and open book data**applies**Option Z100 Data Protection**Applies plus DEFCON 532A Protection of Personal Data**Option Z101 Cyber Essentials**Applies plus DEFCON 658 Cyber**Other additional conditions****\*\*\* As advised in the SOR If ALL/SOME Boreholes NOT serviceable, Tetra Tech MUST report back to DIO before continuing with Replacement\*\*\*****Option Z102 Limitation of Contractor’s Liability – mandatory MOD Schedule****DEFCON 005J Unique Identifiers****DEFCON 76 Personnel at Govn Establishments****DEFCON 703 IPR****DEFCON 129J Electronic Business Delivery Form****DEFCON 532A Protection of Personal Data****DEFCON 539 Transparency****DEFCON 658 Cyber****DEFFORM 111 Addresses & other info****DEFFORM 539A Tenderers Commercially secure Information** |

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| Contract Data |
| The *Consultant’s* Contract Data |

The *Consultant* is

|  |  |
| --- | --- |
| Name  | TETRA TECH LIMITED |
|  |  |
| Address for communications | 3 SOVEREIGN SQUARE. SOVEREIGN HOUSE, LEEDS, LS1 4ER |
|  |  |
| Address for electronic communications | XXXXX |
|  |  |
| The service is | A review and update of the Phase 1 Land Quality Assessment (LQA) and additional groundwater monitoring to support the disposal of Bramcote Mains. |
| q |  |
| The starting date is | 03 11 2022 |
|  |  |
| The completion date is | 03 05 2023 |
|  |  |
|  |  |
| The *people rates* are |  |  |
| **category of person** | **unit** | **rate** |
|  |  |  |
| SME LQA | XXX | XXX |
|  |  |  |
| Principal Geo-Environmental Consultant | XXX | XXX |
|  |  |  |
| Geo-Environmental Consultant | XXX | XXX |
|  |  |  |
| Geo-Environmental  | XXX | XXX |
|  |  |  |
| Graphics | XXX | XXX |

The contract is awarded on a firm price basis but the Consultants’ people rates have been provided above for information and transparency for the Client when invoices are prepared by the Consultant.

Should any additional work required be carried out on a time change basis the *Consultant* includes *people rates* for its own people as well as people provided by a subcontractor

The *key persons* are

|  |  |
| --- | --- |
| Name | **XXX** |
| Job | **XXX** |
| Responsibilities | **XXX** |
| Qualifications | **XXX** |
| Experience | **XXX** |

|  |  |
| --- | --- |
| Name | **XXX** |
| Job | **XXX** |
| Responsibilities | **XXX** |
| Qualifications | **XXX** |
| Experience | **XXX** |

|  |
| --- |
| The *Consultant’s* Offer  |

The *Consultant* offers to Provide the Service in accordance with these *conditions of contract* for an

amount to be determined in accordance with these *conditions of contract*.

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| The offered total of the prices is  |  | £XXX if Boreholes serviceable |  | £XXX MAX if Boreholes not serviceable |
|  |  |  |  |

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| --- |
| Price List |

XXX

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| Scope |

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| 1. **Purpose of the *Service***
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| The site is currently tenanted by a farmer with grazing animals, although formerly has been used by a clay pigeon shooting club and historically formed part of RAF Bramcote. Whilst it is referred to as a training area in previous LQAs, it is not known to have been used as such, with a previous airfield dispersal being on site and the site being classified as a historical landfill (believed to have been backfilled when in MOD ownership). A previous Phase 1 and 2 LQA produced in 2012 to support the disposal of the site highlighted a moderate risk to groundwater and surface water features from arsenic and ammonium concentrations detected in one sampling round of three monitoring wells and a surface water location at Kingfisher Pool (located offsite to the East of site). There was also an incident in 2008 where 40 fish died in the neighbouring ponds, however the cause of this was not confirmed, and it is understood there have been no further incidents. A review and update of the Phase 1 and additional groundwater and surface water monitoring (3 rounds) is required to better understand the impact the site is having on controlled waters receptors prior to the sale of the site. |
|  |
| 1. **Description of the *service***
 |
| **For full description of the Scope see Annex C Statement of Requirement.** |
|  |
| Task 1• A review and update of Phase 1 LQA with site walkover to confirm the current site condition and ongoing activities • Borehole condition survey to be undertaken as part of the Phase 1 site walkover (existing boreholes are understood to be top hats and co-ordinates are provided in previous report but the use of metal detector and necessary GPS equipment should be included in the proposal)• Groundwater and surface water sampling of MW1, MW2, MW3 and Kingfisher Pool (as a minimum) on three occasions • Updated risk assessment considering all necessary receptors following the additional monitoring • A combined Phase 1 and Phase 2 LQA to include borehole condition survey as tabulated below* A letter summarising the findings of the site visit and the status of the existing boreholes will be required. Recommendations as to how to proceed; undertake monitoring on the existing boreholes or replace boreholes as required before monitoring.

Task 2 – to be costed, and will be considered in addition to task 1 should MW1, 2 and 3 not be available for sampling* Drilling of 3 boreholes to replace MW1, 2 and 3 with collection of soil samples for a testing suite to address potential contaminants of concern
* It is the intention of DIO to establish a national database of factual exploratory records for the retained estate. To support this process, factual exploratory records should be provided in AGS 4.0 format and all exploratory holes named with the spec code prefix for each area as set out in Table 1 (i.e., GACK01\_BH101).
 |

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| Scope |

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| 1. **Existing information**
 |
| The 2012 LQA Reports for the site can be downloaded from Defence Share. |
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| 1. **Specifications and standards**
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| The assessment is to be completed in accordance with the 2021 Land Quality Directive and with reference to the Land Quality Management Guide. |

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| Scope |

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| 1. **Constraints** **on how the *Consultant* provides the Service**
 |
| **State any constraints on sequence and timing of work and on method and conduct of work including the requirements for any work by the *Client.***The work should be conducted in line with the Statement of Requirement. Additional time may be required in a scenario where Task 2 needs to be completed |

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| Scope |

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| 1. **Requirements for the programme**
 |
| Not Applicable |

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| Scope |

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| 1. **Information and other things provided by the *Client***
 |
| **Describe what information and other things the** *Client* **is to provide and by when. Information is that which is not currently available, but will become available during the contract. Other things could include access to a person, place (such as office space or a site) or the** *Client's* **information technology systems.** |

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| **ITEM**  | **DATE BY WHICH IT WILL BE PROVIDED** |
| Production of a draft Combined Phase 1 and 2 LQA report and accompanying Technical Note for Task Officer comment/review (to be uploaded to Defence Share). | **3rd February 2023** |
| Final Combined Phase 1 and Phase 2 LQA and accompanying Technical Note (to be uploaded to Defence Share). | **24th February 2023** |
| Provision of an electronic copy of all exploratory records in AGS 4.0 format transferred by Defence Share (including: exploratory hole logs, monitoring installations, groundwater monitoring records, chemical analytical data, field testing and vapour monitoring) | **24th February 2023** |
| CDM H&S File (1 No. electronic copy) | **24th February 2023** |

**SCHEDULE OF AMENDMENTS TO NEC4 PROFESSIONAL SERVICES SHORT CONTRACT**

**Option Z2 - Identified and defined terms**

11.3 (1) Auditor is:

* the *Client’s* internal and external auditors;
* the *Client’s* statutory or regulatory auditors;
* the Comptroller and Auditor General, their staff and/or any appointed representatives of the National Audit Office;
* HM Treasury or the Cabinet Office;
* any party formally appointed by the *Client* to carry out audit or similar review functions; and
* successors or assigns of any of the above;

11.3 (2) Change of Control is a change of control within the meaning of Section 450 of the Corporation Tax Act 2010;

11.3 (3) Client Confidential Information is all Personal Data and any information, however it is conveyed, that relates to the business, affairs, developments, trade secrets, know-how, personnel, and contractors of the *Client*, including all IPRs, together with all information derived from any of the above, and any other information clearly designated as being confidential (whether or not it is marked "confidential") or which ought reasonably be considered to be confidential.

* 1. (4) Client Data is the data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media, and
		+ which are supplied to the *Consultant* by or on behalf of the *Client*,
		+ which the *Consultant* is required to generate, process, store or transmit pursuant to this contract or
		+ which are any Personal Data for which the *Client* is the Data Controller to the extent that such Personal Data is held or processed by the Consultant.

11.3 (5) Client’s Premises are premises owned, occupied or leased by the Client and the site of any works to which the *service* relates.

11.3 (6) Commercially Sensitive Information is the information agreed between the Parties (if any) comprising the information of a commercially sensitive nature relating to the *Consultant*, the charges for the service, its IPR or its business or which the *Consultant* has indicated to the *Client* that, if disclosed by the *Client*, would cause the *Consultant* significant commercial disadvantage or material financial loss.

11.3 (7) Confidential Information is the Client's Confidential Information and/or the Consultant's Confidential Information.

11.3 (8) Contracting Body is any Contracting Body as defined in Regulation 5(2) of the Public Contracts (Works, Service and Supply) (Amendment) Regulations 2000 other than the Client*.*

11.3 (9) Consultant's Confidential Information is any information, however it is conveyed, that relates to the business, affairs, developments, trade secrets, know-how, personnel and consultants of the *Consultant*, including IPRs, together with all information derived from the above, and any other information clearly designated as being confidential (whether or not it is marked as "confidential") or which ought reasonably to be considered to be confidential, including the Commercially Sensitive Information.

11.3 (10) Crown Body is any department, office or agency of the Crown.

11.3 (11) DASVOIT is the Disclosure of Tax Avoidance Schemes: VAT and other indirect taxes contained in the Finance (No.2) Act 2017.

11.3 (12) Data Controller has the meaning given to it in the Data Protection Legislation.

11.3 (13) Data Protection Legislation is (i) the GDPR, (ii) the Data Protection Act 2018 to the extent that it relates to processing of personal data and privacy; (iii) all applicable Law about the processing of personal data and privacy, which, pending a decision from the competent authorities of the EU on the adequacy of the UK data protection regime will include the requirements set out or referenced in Part Three, Title VII, Article 71(1) of the Withdrawal Agreement signed by the UK and the EU in December 2019;

11.3 (14) DOTAS is the Disclosure of Tax avoidance Schemes rules which require a promoter of tax schemes to tell HM Revenue & Customs of any specified notable arrangements or proposals and to provide prescribed information on those arrangements or proposals within set time limits as contained in Part 7 of the Finance Act 2004 and in secondary legislation made under vires contained in Part 7 of the Finance Act 2004 and as extended to National Insurance Contributions by the National Insurance Contributions (Application of Part 7 of the Finance Act 2004) Regulations 2012, SI 2012/1868 made under s.132A Social Security Administration Act 1992.

11.3 (15) Environmental Information Regulations is the Environmental Information Regulations 2004 and any guidance and/or codes of practice issued by the Information Commissioner in relation to such regulations.

11.3 (16) FOIA is the Freedom of Information Act 2000 and any subordinate legislation made under this Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner in relation to such legislation.

11.3 (17) General Anti-Abuse Rule is

* + - the legislation in Part 5 of the Finance Act 2013 (as amended) and
		- any future legislation introduced into parliament to counteract tax advantages arising from abusive arrangements and to avoid national insurance contributions.

11.3 (18) Halifax Abuse Principle is the principle explained in the CJEU Case C-255/02 Halifax and others.

* 1. (19) Intellectual Property Rights or "IPRs" is
		+ copyright, rights related to or affording protection similar to copyright, rights in databases, patents and rights in inventions, semi-conductor topography rights, trade marks, rights in internet domain names and website addresses and other rights in trade names, designs, Know-How, trade secrets and other rights in Confidential Information,
		+ applications for registration, and the right to apply for registration, for any of the rights listed in the first bullet point that are capable of being registered in any country or jurisdiction,
		+ all other rights having equivalent or similar effect in any country or jurisdiction and
		+ all or any goodwill relating or attached thereto.
	2. (220 Law is any law, statute, subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978, bye-law, enforceable right within the meaning of section 2 of the European Communities Act 1972, regulation, order, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements of any regulatory body with which the *Consultant* is bound to comply under the *law of the contract*.

11.3(21) An Occasion of Tax Non-Compliance is

* + - where any tax return of the *Consultant* submitted to a Relevant Tax Authority on or after 1 October 2012 is found on or after 1 April 2013 to be incorrect as a result of
		- a Relevant Tax Authority successfully challenging the *Consultant* under the General Anti-Abuse Rule or the Halifax Abuse Principle or under any tax rules or legislation that have an effect equivalent or similar to the General Anti-Abuse Rule or the Halifax Abuse Principle or
		- the failure of an avoidance scheme which the *Consultant* was involved in, and which was, or should have been, notified to a Relevant Tax Authority under DAVOIT, DOTAS or VADR or any equivalent or similar regime and

where any tax return of the *Consultant* submitted to a Relevant Tax Authority on or after 1 October 2012 gives rise, on or after 1 April 2013, to a criminal conviction in any jurisdiction for tax related offences which is not spent at the date of this contract or to a civil penalty for fraud or evasion.

11.3 (22) Personal Data has the meaning given to it in the Data Protection Legislation.

11.3 (23) Prohibited Act is

* to directly or indirectly offer, promise or give any person working for or engaged by the *Client* or other Contracting Body or any other public body a financial or other advantage to
	+ induce that person to perform improperly a relevant function or activity or
	+ reward that person for improper performance of a relevant function or activity,
* to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this contract,
* committing any offence
	+ under the Bribery Act 2010 (or any legislation repealed or revoked by such Act),
	+ under legislation or common law concerning fraudulent acts or
	+ defrauding, attempting to defraud or conspiring to defraud the *Client* or
* any activity, practice or conduct which would constitute one of the offences listed above if such activity, practice or conduct had been carried out in the UK.

11.3 (24) Request for Information is a request for information or an apparent request under the Code of Practice on Access to government Information, FOIA or the Environmental Information Regulations.

11.3 (25) Relevant Requirements are all applicable Laws relating to bribery, corruption and fraud, including the Bribery Act 2010 and any guidance issued by the Secretary of State for Justice pursuant to section 9 of the Bribery Act 2010.

11.3 (26) Relevant Tax Authority is HM Revenue & Customs, or, if applicable, a tax authority in the jurisdiction in which the *Consultant* is established.

11.3 (27) Security Policy means the *Client*’s security policy attached as Appendix 1 to Contract Schedule J (Security Provisions) as may be updated from time to time.

11.3 (28) VADR is the VAT disclosure regime under Schedule 11A of the Value Added Tax Act 1994 (VATA 1994) (as amended by Schedule 1 of the Finance (No. 2) Act 2005).

**Option Z 4 - Admittance to Client’s Premises**

18.1 The *Consultant* submits to the *Client* details of people who are to be employed by it and its subcontractors in Providing the Service. The details include a list of names and addresses, the capabilities in which they are employed, and other information required by the *Client*.

18.2 The *Client* may instruct the *Consultant* to take measures to prevent unauthorised persons being admitted to the Client’s Premises.

18.3 Employees of the *Consultant* and its subcontractors are to carry a *Client’s* pass and comply with all conduct requirements from the *Client* whilst they are on the parts of the Client’s Premises identified in the Scope.

18.4 The *Consultant* submits to the *Client* for acceptance a list of the names of the people for whom passes are required. On acceptance, the *Client* issues the passes to the *Consultant*. Each pass is returned to the *Client* when the person no longer requires access to that part of the Client’s Premises or after the *Client* has given notice that the person is not to be admitted to the Client’s Premises.

18.5 The *Consultant* does not take photographs of the Client’s Premises or of work carried out in connection with the *service* unless it has obtained the acceptance of the *Client*.

18.6 The *Consultant* takes the measures needed to prevent its and its subcontractors’ people taking, publishing or otherwise circulating such photographs.

**Option Z5 - Prevention of fraud and bribery**

17.4.1 The *Consultant* represents and warrants that neither it, nor to the best of its knowledge any of its people, have at any time prior to the date of this contract

* + - * committed a Prohibited Act or been formally notified that it is subject to an investigation or prosecution which relates to an alleged Prohibited Act or
			* been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act.

17.4.2 During the carrying out of the *service* the *Consultant* does not

* + - * commit a Prohibited Act and
			* do or suffer anything to be done which would cause the *Client* or any of the *Client’s*

employees, consultants, contractors, sub-contractors or agents to contravene any of the Relevant Requirements or otherwise incur any liability in relation to the Relevant Requirements.

17.4.3 In Providing the Service the *Consultant*

* + - * establishes, maintains and enforces, and requires that its subcontractors establish, maintain and enforce, policies and procedures which are adequate to ensure compliance with the Relevant Requirements and prevent the occurrence of a Prohibited Act,
			* keeps appropriate records of its compliance with this contract and make such records available to the *Client* on request and
			* provides and maintains and where appropriate enforces an anti-bribery policy (which shall be disclosed to the *Client* on request) to prevent it and any *Consultant’s* people or any person acting on the *Consultant's* behalf from committing a Prohibited Act.

17.4.4 The *Consultant* immediately notifies the *Client* in writing if it becomes aware of any breach of clause 17.4.1, or has reason to believe that it has or any of its people or subcontractors have

* + - * been subject to an investigation or prosecution which relates to an alleged Prohibited Act,
			* been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act or
* received a request or demand for any undue financial or other advantage of any kind in

connection with the performance of this contract or otherwise suspects that any person or party directly or indirectly connected with this contract has committed or attempted to commit a Prohibited Act.

17.4.5 If the *Consultant* makes a notification to the *Client* pursuant to clause 17.4.4, the *Consultant* responds promptly to the *Client's* enquiries, co-operates with any investigation, and allows the *Client* to audit any books, records and/or any other relevant documentation in accordance with this contract.

17.4.6 If the *Consultant* breaches clause 17.4.3, the *Client* may by notice require the *Consultant* to remove from carrying out the *service* any person whose acts or omissions have caused the *Consultant*’s breach.

**Option Z6 - Equality and diversity**

25.1 The *Consultant* performs its obligations under this contract in accordance with

* all applicable equality Law(whether in relation to race, sex, gender reassignment, religion or belief, disability, sexual orientation, pregnancy, maternity, age or otherwise); and
* any other requirements and instructions which the *Client* reasonably imposes in connection with any equality obligations imposed on the *Client* at any time under applicable equality Law*;*

25.2 The *Consultant* takes all necessary steps, and informs the *Client* of the steps taken, to prevent unlawful discrimination designated as such by any court or tribunal, or the Equality and Human Rights Commission or (any successor organisation).

**Option Z7 - Legislation and Official Secrets**

20.4 The *Consultant* complies with Law in the carrying out of the *service.*

20.5 The Official Secrets Acts 1911 to 1989, section 182 of the Finance Act 1989 and, where appropriate, the provisions of section 11 of the Atomic Energy Act 1946 apply to this contract.

20.6 The *Consultant* notifies its employees and subcontractors of their duties under these Acts.

**Option Z8 – Conflicts of interest**

26.1. The *Consultant* takes appropriate steps to ensure that neither the *Consultant* nor any of its personnel are placed in a position where (in the reasonable opinion of the *Client*) there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the *Consultant* or its personnel and the duties owed to the *Client* under this contract.

26.2. The *Consultant* promptly notifies and provides full particulars to the Client if such conflict referred to in clause 26.1 arises or may reasonably been foreseen as arising.

26.3. The *Client* may terminate the *Consultant’s* obligation to Provide the Service immediately under reason R2 and/or to take such other steps the *Client* deems necessary where, in the reasonable opinion of the *Client*, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the *Consultant* and the duties owed to the *Client* under this contract.

**Option Z9 – Publicity and Branding**

27.1 The *Consultant* does not

* make any press announcements or publicise this contract in any way
* use the *Client's* name or brand in any promotion or marketing or announcement of the contract

without approval of the *Client*.

27.2. The *Client* is entitled to publicise the contractin accordance with any legal obligation upon the *Client*, including any examination of the contractby the National Audit Office pursuant to the National Audit Act 1983 or otherwise.

**Option Z10 - Freedom of information**

22.1 The *Consultant* acknowledges that unless the *Client* has notified the *Consultant* that the *Client* is exempt from the provisions of the FOIA, the *Client* is subject to the requirements of the Code of Practice on Government Information, the FOIA and the Environmental Information Regulations. The *Consultant* cooperates with and assists the *Client* so as to enable the *Client* to comply with its information disclosure obligations.

22.2 The *Consultant*

* transfers to the *Client* all Requests for Information that it receives as soon as practicable and in any event within two working days of receiving a Request for Information,
* provides the *Client* with a copy of all information in its possession, or power in the form that the *Client* requires within five working days (or such other period as the *Client* may specify) of the *Client’s* request,
* provides all necessary assistance as reasonably requested by the *Client* to enable the *Client* to respond to the Request for Information within the time for compliance set out in section 10 of the FOIA or regulation 5 of the Environmental Information Regulations and
* procures that its Subcontractors do likewise.

22.3 The *Client* is responsible for determining in its absolute discretion whether any information is exempt from disclosure in accordance with the provisions of the Code of Practice on Government Information, FOIA or the Environmental Information Regulations.

22.4 The *Consultant* does not respond directly to a Request for Information unless authorised to do so by the *Client*.

22.5 The *Consultant* acknowledges that the *Client* may, acting in accordance with Cabinet Office Freedom of Information Code of Practice, be obliged to disclose information without consulting or obtaining consent from the *Consultant* or despite the *Consultant* having expressed negative views when consulted.

22.6 The *Consultant* ensures that all information is retained for disclosure throughout the *period for retention* and permits the *Client* to inspect such records as and when reasonably requested from time to time.

**Option Z13 - Confidentiality and Information Sharing**

23.1 Except to the extent set out in this clause or where disclosure is expressly permitted elsewhere in this contract, each Party shall

* treat the other Party's Confidential Information as confidential and safeguard it accordingly,
* not disclose the other Party's Confidential Information to any other person without prior written consent,
* immediately notify the other Party if it suspects unauthorised access, copying, use or disclosure of the Confidential Information and
* notify the Serious Fraud Office where the Party has reasonable grounds to believe that the other Party is involved in activity that may be a criminal offence under the Bribery Act 2010.

23.2 The clause above shall not apply to the extent that

* such disclosure is a requirement of the Law placed upon the party making the disclosure, including any requirements for disclosure under the FOIA or the Environmental Information Regulations pursuant to clause Z10 (Freedom of Information),
* such information was in the possession of the party making the disclosure without obligation of confidentiality prior to its disclosure by the information owner,
* such information was obtained from a third party without obligation of confidentiality,
* such information was already in the public domain at the time of disclosure otherwise than by a breach of this contract or
* it is independently developed without access to the other party's Confidential Information.

23.3 The *Consultant* may only disclose the Client Confidential Information to the people who are directly involved in Providing the Service and who need to know the information, and shall ensure that such people are aware of and shall comply with these obligations as to confidentiality. The *Consultant* shall not, and shall procure that the *Consultant’s* people do not, use any of the Client Confidential Information received otherwise than for the purposes of this contract.

23.4 The *Consultant* may only disclose the Client Confidential Information to *Consultant’s* people who need to know the information, and shall ensure that such people are aware of, acknowledge the importance of, and comply with these obligations as to confidentiality. In the event that any default, act or omission of any *Consultant’s* people causes or contributes (or could cause or contribute) to the *Consultant* breaching its obligations as to confidentiality under or in connection with this contract, the *Consultant* shall take such action as may be appropriate in the circumstances, including the use of disciplinary procedures in serious cases. To the fullest extent permitted by its own obligations of confidentiality to any *Consultant’s* people , the *Consultant* shall provide such evidence to the *Client* as the *Client* may reasonably require (though not so as to risk compromising or prejudicing the case) to demonstrate that the *Consultant* is taking appropriate steps to comply with this clause, including copies of any written communications to and/or from *Consultant’s* people, and any minutes of meetings and any other records which provide an audit trail of any discussions or exchanges with *Consultant’s* people in connection with obligations as to confidentiality.

23.5 At the written request of the *Client*, the *Consultant* shall procure that those members of the *Consultant’s* people identified in the *Client*'s request signs a confidentiality undertaking prior to commencing any work in accordance with this contract.

23.6 Nothing in this contract shall prevent the *Client* from disclosing the Consultant’s Confidential Information

* to any Crown Body or any other Contracting Bodies. All Crown Bodies or Contracting Bodies receiving such Confidential Information shall be entitled to further disclose the Consultant’s Confidential Information to other Crown Bodies or other Contracting Bodies on the basis that the information is confidential and is not to be disclosed to a third party which is not part of any Crown Body or any Contracting Body,
* to a professional adviser, contractor, consultant, supplier or other person engaged by the *Client* or any Crown Body (including any benchmarking organisation) for any purpose connected with this contract, or any person conducting an Office of Government Commerce Gateway Review,
* for the purpose of the examination and certification of the *Client*'s accounts,
* for any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the *Client* has used its resources,
* for the purpose of the exercise of its rights under this contract or
* to a proposed successor body of the *Client* in connection with any assignment, novation or disposal of any of its rights, obligations or liabilities under this contract,

and for the purposes of the foregoing, disclosure of the Consultant’s Confidential Information shall be on a confidential basis and subject to a confidentiality agreement or arrangement containing terms no less stringent than those placed on the *Client* under this clause 23.6.

23.7 The *Client* shall use all reasonable endeavours to ensure that any government department, Contracting Body, people, third party or subcontractor to whom the Consultant's Confidential Information is disclosed pursuant to the above clause is made aware of the *Client*'s obligations of confidentiality.

23.8 Nothing in this clause shall prevent either party from using any techniques, ideas or know-how gained during the performance of the contract in the course of its normal business to the extent that this use does not result in a disclosure of the other party's Confidential Information or an infringement of IPR.

23.9 The *Client* may disclose the Consultant Confidential Information

* to Parliament and Parliamentary Committees or if required by any Parliamentary reporting requirement,
* to the extent that the *Client* (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions.

**Option Z14 - Security Requirements**

The *Consultant* complies with, and procures the compliance of the *Consultant’s* people, with the Security Policy and the Security Management Plan produced by the *Consultant* and the *Consultant* shall ensure that the Security Management Plan fully complies with the Security Policy and Contract Schedule [Security Aspects Letter - ref. 3057-Bramcote Mains\_LQA dated 01/11/22].

**Option Z16 - Tax Compliance**

24.1 The *Consultant* represents and warrants that at the date of this contract, it has notified the *Client* in writing of any Occasions of Tax Non-Compliance or any litigation that it is involved in that is in connection with any Occasions of Tax Non-Compliance.

24.2 If, at any point prior to the *defects date*, an Occasion of Tax Non-Compliance occurs, the *Consultant* shall

* notify the *Client* in writing of such fact within 5 days of its occurrence and
* promptly provide to the *Client*
	+ details of the steps which the *Consultant* is taking to address the Occasions of Tax Non-Compliance and to prevent the same from recurring, together with any mitigating factors that it considers relevant and
	+ such other information in relation to the Occasion of Tax Non-Compliance as

the *Client* may reasonably require.

**Option Z22 - Fair payment**

53.1 The *Consultant* assesses the amount due to a subcontractor without taking into account the amount certified by the *Client*.

53.2 The *Consultant* includes in the contract with each subcontractor

* a period for payment of the amount due to the subcontractor not greater than 5 days after the final date for payment in this contract. The amount due includes, but is not limited to, payment for work which the subcontractor has completed from the previous assessment date up to the current assessment date in this contract,
* a provision requiring the subcontractor to include in each subsubcontract the same requirement (including this requirement to flow down, except that the period for payment is to be not greater than 9 days after the final date for payment in this contract and

a provision requiring the subcontractor to assess the amount due to a subsubcontractor without taking into account the amount paid by the *Consultant.*

**Option Z44 - Intellectual Property Rights**

**“Document”** means all designs, drawings, specifications, software, electronic data,

photographs, plans, surveys, reports, and all other documents and/or information prepared by

or on behalf of the *Consultant* in relation to this contract.

70.1 The Intellectual Property Rights in all Documents prepared by or on behalf of the *Consultant* in relation to this contract and the work executed from them remains the property of the *Consultant*. The *Consultant* hereby grants to the *Client* an irrevocable, royalty free, non-exclusive licence to use and reproduce the Documents for any and all purposes connected with the construction, use, alterations or demolition of the *service*. Such licence entitles the *Client* to grant sub-licences to third parties in the same terms as this licence provided always that the *Consultant* shall not be liable to any licencee for any use of the Documents or the Intellectual Property Rights in the Documents for purposes other than those for which the same were originally prepared by or on behalf of the *Consultant*.

70.2 The *Clien*t may assign novate or otherwise transfer its rights and obligations under the licence granted pursuant to clause 70.1 to a Crown Body or to anybody (including any private sector body) which performs or carries on any functions and/or activities that previously had been performed and/or carried on by the *Client*.

70.3 In the event that the *Consultant* does not own the copyright or any Intellectual Property Rights in any Document the *Consultant* uses all reasonable endeavours to procure the right to grant such rights to the *Client* to use any such copyright or Intellectual Property Rights from any third party owner of the copyright or Intellectual Property Rights. In the event that the *Consultant* is unable to procure the right to grant to the *Client* in accordance with the foregoing the *Consultant* procures that the third party grants a direct licence to the *Client* on industry acceptable terms.

70.4 The *Consultant* waives any moral right to be identified as author of the Documents in accordance with section 77, Copyright Designs and Patents Acts 1988 and any right not to have the Documents subjected to derogatory treatment in accordance with section 8 of that Act as against the *Client* or any licensee or assignee of the *Client*.

70.5 In the event that any act unauthorised by the *Client* infringes a moral right of the *Consultant* in relation to the Documents the *Consultant* undertakes, if the *Client* so requests and at the *Client'*s expense, to institute proceedings for infringement of the moral rights.

70.6 The *Consultant* warrants to the *Client* that it has not granted and shall not (unless authorised by the *Client*) grant any rights to any third party to use or otherwise exploit the Documents.

70.7 The *Consultant* supplies copies of the Documents to the *Client* and to the *Client*’s other contractors and consultants for no additional fee to the extent necessary to enable them to discharge their respective functions in relation to this contract or related service.

70.8 After the termination or conclusion of the *Consultant*’s employment hereunder, the *Consultant* supplies the *Client* with copies and/or computer discs of such of the Documents as the *Client* may from time to time request and the *Client* pays the *Consultant*’s reasonable costs for producing such copies or discs.

70.9 In carrying out the *service* the *Consultant* does not infringe any Intellectual Property Rights of any third party. The *Consultant* indemnifies the *Client* against claims, proceedings,

compensation and costs arising from an infringement or alleged infringement of the Intellectual Property Rights of any third party.

**Option Z46 - MoD DEFCON Requirements**

This clause is to incorporate MoD special terms and conditions in the form of DEFCONs and DEFORMs as detailed at [https://www.gov.uk/guidance/knowledge-in-defence-kid](https://protect-eu.mimecast.com/s/NShMCNxBzcXyxEVcmva1a?domain=gov.uk) . For ease the mentioned DEFCONs and DEFFORMs can be found at **Annex H.**

**DEFCON 005J Unique Identifiers**

**DEFCON 76 Personnel at Govn Establishments**

**DEFCON 703 IPR**

**DEFCON 129J Electronic Business Delivery Form**

**DEFCON 532A Protection of Personal Data**

**DEFCON 539 Transparency**

**DEFCON 658 Cyber**

**DEFFORM 111 Addresses & other info**

**DEFFORM 539A Tenderers Commercially secure Information**

# Option Z49 – Change of Control

19.1 The *Consultant* notifies the *Client* immediately in writing and as soon as the *Consultant*  is aware (or ought reasonably to be aware) that it is anticipating, undergoing, undergoes or has undergone a Change of Control and provided such notification does not contravene any Law. The *Consultant* ensures that any notification sets out full details of the Change of Control including the circumstances suggesting and/or explaining the Change of Control.

90.7 The *Client* may terminate the *Consultant’s* obligation to Provide the Service (which shall take effect as termination under reason R2) within six months from

* being notified in writing that a Change of Control is anticipated or is in contemplation or has occurred; or
* where no notification has been made, the date that the *Client* becomes aware that a Change of Control is anticipated or is in contemplation or has occurred, but shall not be permitted to terminate where an approval was granted prior to the Change of Control.

**Option Z50 – Financial Standing**

90.8 The *Client* may terminate the *Consultant’s* obligation to Provide the Service (which shall take effect as termination under reason R2) where in the reasonable opinion of the *Client* there is a material detrimental change in the financial standing and/or the credit rating of the *Consultant* which:

* adversely impacts on the *Consultant’s* ability to perform its obligations under this contract; or
* could reasonably be expected to have an adverse impact on the *Consultant’s* ability to perform its obligations under this contract.

**Option Z52 – Records, audit access and open book data**

28.1 The *Consultant* keeps and maintains for the periodof the *Consultant’s* liability under this contract full and accurate records and accounts of the operation of this contract including the *service* provided under it, any subcontracts and the amounts paid by the *Client*.

28.2 The Consultant

* keeps the records and accounts referred to in clause 28.1 in accordance with Law
* affords any Auditor access to the records and accounts referred to in clause 28.1 at the *Consultant’s* premises and/or provides records and accounts (including copies of the *Consultant’s* published accounts) or copies of the same, as may be required by any Auditor from time to time during the *Consultant* Providing the Service and the liability period under the contract in order that the Auditor may carry out an inspection to assess compliance by the *Consultant* and/or its subcontractors of any of the *Consultant’s* obligations under this contract including in order to:
* verify the accuracy of any amounts payable by the *Client* under this contract (and proposed or actual variations to them in accordance with this contract)
* verify the costs of the *Consultant* (including the costs of all subcontractors and any third party suppliers) in connection with Providing the Service
* identify or investigate an actual or suspected Prohibited Act, impropriety or accounting mistakes or any breach or threatened breach of security and in these circumstances the *Client* has no obligation to inform the *Consultant* of the purpose or objective of its investigations
* obtain such information as is necessary to fulfil the *Client’s* obligations to supply information for parliamentary, ministerial, judicial or administrative purposes including the supply of information to the Comptroller and Auditor General
* enable the National Audit Office to carry out an examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the *Client* has used its resources
* subject to the *Consultant’s* rights in respect of Consultant’s Confidential Information, the *Consultant* provides the Auditor on demand with all reasonable co-operation and assistance in respect of
* all reasonable information requested by the *Client* within the scope of the audit
* reasonable access to sites controlled by the *Consultant* and to any *Consultant’s* equipment used to Provide the Service
* access to the *Consultant’s* personnel.

28.3 The Parties bear their own respective costs and expenses incurred in respect of compliance with their obligations under this clause 28, unless the audit reveals a default by the *Consultant* in which case the *Consultant* reimburses the *Client* for the *Client’s* reasonable costs incurred in relation to the audit.

28.4 This clause does not constitute a requirement or agreement for the purposes of section 6(3)(d) of the National Audit Act 1983 for the examination, certification or inspection of the accounts of the *Consultant* and the carrying out of an examination under Section 6(3)(d) of the National Audit Act 1983 in relation to the *Consultant* is not a function exercisable under this contract.

**Option Z100 – GDPR**

The *Client* and the *Consultant* shall comply with the provisions of DEFCON 532A Protection of Personal Data

**Option Z101 – Cyber Essentials**

The *Client* and the *Consultant* shall comply with the provisions of DEFCON 658 CYBER

**Option Z102 Limitation of Contractor’s Liability**

**1. LIMITATIONS ON LIABILITY Definitions**

 In this Condition [1] the following words and expressions shall have the meanings given to them, except where the context requires a different meaning:

“Charges” means any of the charges for the provision of the Services, Contractor

Deliverables and the performance of any of the Contractor’s other obligations under this Contract, as determined in accordance with this Contract;

|  |
| --- |
| “Data Protection Legislation” means all applicable Law in force from time to time in the  |
| UK relating to the processing of personal data and privacy, including but not limited to:  |

1. UK GDPR;
2. DPA 2018; and
3. the Privacy and Electronic Communications (EC Directive) Regulations 2003 (SI 2003/2426) as amended, each to the extent that it relates to the processing of personal data and privacy;

“Default” means any breach of the obligations of the relevant Party (including fundamental breach or breach of a fundamental term) or any other default, act, omission, negligence or statement of the relevant Party, its employees, servants, agents or subcontractors in connection with or in relation to the subject matter of this Contract and in respect of which such Party is liable to the other. In no event shall a failure or delay in the delivery of an Authority responsibility or an activity to be carried out by the Authority or its

representatives in accordance with the Contract be considered a Default;

 ‘DPA 2018’ means the Data Protection Act 2018;

“Law” means any applicable law, subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978, regulation, order, regulatory policy, mandatory guidance or code of practice judgment of a relevant court of law, or directives or requirements of any regulatory body, delegated or subordinate legislation or notice of any regulatory body;

“Service Credits” means the amount that the Contractor shall credit or pay to the Authority in the event of a failure by the Contractor to meet the agreed Service Levels as set out/referred to in [cross refer to service credit regime in the contract];

“Term” means the period commencing on [the commencement date / the date on which this Contract is signed / the date on which this Contract takes effect] and ending [on the expiry of x years /on x date] or on earlier termination of this Contract.

‘UK GDPR’ means the General Data Protection Regulation (Regulation (EU) 2016/679) as retained in UK law by the EU (Withdrawal) Act 2018 and the Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019;

**Unlimited liabilities**

  Neither Party limits its liability for:

1.2.1 death or personal injury caused by its negligence, or that of its employees, agents or sub-contractors (as applicable);

 1.2.2 fraud or fraudulent misrepresentation by it or its employees;

1.2.3 breach of any obligation as to title implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982; or

 1.2.4 any liability to the extent it cannot be limited or excluded by law.

 The financial caps on liability set out in Clauses 1.4 and 1.5 below shall not apply to the following:

* + 1. for any indemnity given by the Contractor to the Authority under this Contact, including but not limited to:
			1. the Contractor's indemnity in relation to DEFCON 91 (Intellectual Property in Software) and DEFCON 632 (Third Party IP - Rights and Restrictions);
			2. the Contractor's indemnity in relation to TUPE at Schedule [(TUPE)];

1.3.2 for any indemnity given by the Authority to the Contractor under this Contract, including but not limited to:

 1.3.2.1 the Authority’s indemnity under DEFCON 514A (Failure of Performance under Research and Development Contracts)

 1.3.2.2 the Authority’s indemnity in relations to TUPE under Schedule [(TUPE)];

1.3.3 breach by the Contractor of DEFCON 532A and Data Protection Legislation; and

1.3.4 to the extent it arises as a result of a Default by either Party , any fine or penalty incurred by the other Party pursuant to Law and any costs incurred by such other Party in defending any proceedings which result in such fine or penalty.

1.3.5 For the avoidance of doubt any payments due from either of the Parties to the other in accordance with DEFCON 811 or the Defence Reform Act 2014 and/or the Single Source Contract Regulations 2014, as amended from time to time, shall not be excluded or limited under the provisions of Clause 1.4 and/or 1.5 below.

**Financial limits**

  Subject to Clauses 1.2 and 1.3 and to the maximum extent permitted by Law:

1.4.1 [throughout the Term] the Contractor's total liability in respect of losses that are caused by Defaults of the Contractor shall in no event exceed:

1.4.1.1 in respect of DEFCON 76 [£ pounds] (£5,000,000.00) in aggregate;

* + - 1. in respect of DEFCON 514 [£ pounds] (£5,000,000.00) in aggregate;
			2. in respect of DEFCON 611 [£ pounds] (£5,000,000.00) in aggregate; and
			3. in respect of DEFCON 612 [£ pounds] (£5,000,000.00) in aggregate;

1.4.2 without limiting Clause 1.4.1 and subject always to Clauses 1.2, 1.3 and 1.4.3, the Contractor's total liability throughout the Term in respect of all other liabilities (but excluding any Service Credits paid or payable in accordance with [ insert cross reference to service credit/performance provisions] and [insert cross reference to any other relevant provisions], whether in contract, in tort (including negligence), arising under warranty, under statute or otherwise under or in connection with this Contract shall be [£ pounds] (£5,000,000.00) in aggregate;

1.4.3 on the exercise of any and, where more than one, each option period or agreed extension to the Term, the limitation of the Contractor's total liability (in aggregate) set out in Clauses 1.4.1 and 1.4.2 above shall be fully replenished

such that on and from each such exercise or extension of the Term, the Authority shall be able to claim up to the full value of the limitation set out in Clauses 1.4.1 and 1.4.2 of this Contract.

 Subject to Clauses 1.2, 1.3 and 1.6, and to the maximum extent permitted by Law the Authority's total liability (in aggregate) whether in contract, in tort (including negligence), under warranty, under statute or otherwise under or in connection with this Contract shall in respect of all liabilities (taken together) be limited to the Charges paid by the Authority in the relevant Contract Year in respect of any and all claims in that Contract Year.

 Clause 1.5 shall not exclude or limit the Contractor's right under this Contract to claim for the Charges.

**Consequential loss**

 Subject to Clauses 1.2, 1.3 and 1.8, neither Party shall be liable to the other Party or to any third party, whether in contract (including under any warranty), in tort (including negligence), under statute or otherwise for or in respect of:

 1.7.1 indirect loss or damage;

 1.7.2 special loss or damage;

 1.7.3 consequential loss or damage;

 1.7.4 loss of profits (whether direct or indirect);

 1.7.5 loss of turnover (whether direct or indirect);

1.7.6 loss of business opportunities (whether direct or indirect);

1.7.7 damage to goodwill (whether direct or indirect), even if that Party was aware of the possibility of such loss or damage to the other Party.

 The provisions of Clause 1.7 shall not restrict the Authority's ability to recover any of the following losses incurred by the Authority to the extent that they arise as a result of a Default by the Contractor:

1.8.1 any additional operational and administrative costs and expenses arising from the Contractor's Default, including any costs paid or payable by the Authority:

1.8.1.1 to any third party

1.8.1.2 for putting in place workarounds for the Contractor Deliverables and

1.8.1.3 other deliverables that are reliant on the Contractor Deliverables; and

1.8.1.4 relating to time spent by or on behalf of the Authority in dealing with the consequences of the Default;

1.8.2 any or all wasted expenditure and losses incurred by the Authority arising from the Contractor's Default, including wasted management time;

1.8.3 the additional cost of procuring and maintaining in place transitional assistance and replacement deliverables for the remainder of the Term and any option period or agreed extension to the Term (including legal and other consultants' fees, re-procurement project costs, other expenses associated with such exercise and any increase in the fees for the replacement services over and above the Contract Price that would have been payable for the relevant Contractor Deliverables);

1.8.4 any losses arising in connection with the loss, destruction, corruption, inaccuracy or degradation of Authority data, or other data or software, including, to the extent the Authority data, other data or software can be recovered or reconstituted, the fees, costs and expenses of reconstituting such Authority data, data or software;

1.8.5 damage to the Authority's physical property and tangible assets, including damage under DEFCON 76 and 611*;*

1.8.6 costs, expenses and charges arising from, or any damages, account of profits or other award made for, infringement of any third-party Intellectual Property Rights or breach of any obligations of confidence;

1.8.7 any additional costs incurred by the Authority in relation to the Authority's contracts with a third party (including any compensation or interest paid to a third party by the Authority) as a result of the Default (including the extension or replacement of such contracts);

1.8.8 any fine or penalty incurred by the Authority pursuant to Law and any costs incurred by the Authority in defending any proceedings which result in such fine or penalty; or

1.8.9 any savings, discounts or price reductions during the Term and any option period or agreed extension to the Term committed to by the Contractor pursuant to this Contract.

**Invalidity**

 If any limitation or provision contained or expressly referred to in this Condition [1] is held to be invalid under any Law, it will be deemed to be omitted to that extent, and if any Party becomes liable for loss or damage to which that limitation or provision applied, that liability will be subject to the remaining limitations and provisions set out in this Condition [1].

**Third party claims or losses**

 Without prejudice to any other rights or remedies the Authority may have under this Contract (including but not limited to any indemnity claim under DEFCONs 91 and 632 or at Law), the Authority shall be entitled to make a claim under this Contract against the Contractor in respect of any losses incurred by the Authority which arise out of a claim made against the Authority by a third party under any contract with that third party provided that such third party claim:

1.10.1 arises naturally and ordinarily as a result of the Contractor's failure to provide the Contractor Deliverables or failure to perform any of its obligations under this Contract; and

1.10.2 is a type of claim or loss that would have been recoverable under this Contract if the third party were a party to this Contract (whether as the Authority or the Contractor), such claim to be construed as direct losses for the purpose of this Contract.

**No double recovery**

 Neither Party shall be entitled to employ such rights and remedies available to it so as to seek to recover more than once in respect of the same loss, but the Authority shall be entitled to use (singly or together) such rights and remedies available to the Authority so as to recover the full extent of any recoverable losses suffered or incurred, including any remedies the Authority may have against any guarantor.