

Call-Off Schedule 17 (MOD Terms)

For Call-Off Contract – 709640450.

1. Definitions

- 1.1 In this Schedule, the following words shall have the following meanings and they shall supplement Joint Schedule 1 (Definitions):

"MOD Terms and Conditions"	the terms and conditions listed in this Schedule.
"MOD Site"	shall include any of Her Majesty's Ships or Vessels and Service Stations.
"Officer in charge"	shall include Officers Commanding Service Stations, Ships' Masters or Senior Officers, and Officers superintending Government Establishments;

2. Access to MOD sites

- 2.1 The Buyer shall issue passes for those representatives of the Supplier who are approved for admission to the MOD Site and a representative shall not be admitted unless in possession of such a pass. Passes shall remain the property of the Buyer and shall be surrendered on demand or on completion of the supply of the Deliverables.
- 2.2 The Supplier's representatives, when employed within the boundaries of a MOD Site, shall comply with such rules, regulations, and requirements (including those relating to security arrangements) as may be in force for the time being for the conduct of staff at that MOD Site. When on board a ship, compliance shall be with the Ship's Regulations as interpreted by the Officer in charge. Details of such rules, regulations and requirements shall be provided, on request, by the Officer in charge.
- 2.3 The Supplier shall be responsible for the living accommodation and maintenance of its representatives while they are employed at a MOD Site. Sleeping accommodation and messing facilities, if required, may be provided by the Buyer wherever possible, at the discretion of the Officer in charge, at a cost fixed in accordance with current Ministry of Defence regulations. At MOD Sites overseas, accommodation and messing facilities, if required, shall be provided wherever possible. The status to be accorded to the Supplier's staff for messing purposes shall be at the discretion of the Officer in charge who shall, wherever possible, give his decision before the commencement of this Contract where so asked by the Supplier. When

Call-Off Schedule 17 (MOD Terms)

Call-Off Ref: 709640450

Crown Copyright 2022

sleeping accommodation and messing facilities are not available, a certificate to this effect may be required by the Buyer and shall be obtained by the Supplier from the Officer in charge. Such certificate shall be presented to the Buyer with other evidence relating to the costs of this Contract.

- 2.4 Where the Supplier's representatives are required by this Contract to join or visit a Site overseas, transport between the United Kingdom and the place of duty (but excluding transport within the United Kingdom) shall be provided for them free of charge by the Ministry of Defence whenever possible, normally by Royal Air Force or by MOD chartered aircraft. The Supplier shall make such arrangements through the Technical Branch named for this purpose in the Buyer Contract Details. When such transport is not available within a reasonable time, or in circumstances where the Supplier wishes its representatives to accompany material for installation which it is to arrange to be delivered, the Supplier shall make its own transport arrangements. The Buyer shall reimburse the Supplier's reasonable costs for such transport of its representatives on presentation of evidence supporting the use of alternative transport and of the costs involved. Transport of the Supplier's representatives locally overseas which is necessary for the purpose of this Contract shall be provided wherever possible by the Ministry of Defence, or by the Officer in charge and, where so provided, shall be free of charge.
- 2.5 Out-patient medical treatment given to the Supplier's representatives by a Service Medical Officer or other Government Medical Officer at a Site overseas shall be free of charge. Treatment in a Service hospital or medical centre, dental treatment, the provision of dentures or spectacles, conveyance to and from a hospital, medical centre or surgery not within the Site and transportation of the Supplier's representatives back to the United Kingdom, or elsewhere, for medical reasons, shall be charged to the Supplier at rates fixed in accordance with current Ministry of Defence regulations.
- 2.6 Accidents to the Supplier's representatives which ordinarily require to be reported in accordance with Health and Safety at Work etc. Act 1974 shall be reported to the Officer in charge so that the Inspector of Factories may be informed.
- 2.7 No assistance from public funds, and no messing facilities, accommodation or transport overseas shall be provided for dependants or members of the families of the Supplier's representatives. Medical or necessary dental treatment may, however, be provided for dependants or members of families on repayment at current Ministry of Defence rates.
- 2.8 The Supplier shall, wherever possible, arrange for funds to be provided to its representatives overseas through normal banking channels (e.g., by travellers' cheques). If banking or other suitable facilities are not available, the Buyer shall, upon request by the Supplier and subject to any limitation

Call-Off Schedule 17 (MOD Terms)

Call-Off Ref: 709640450

Crown Copyright 2022

required by the Supplier, make arrangements for payments, converted at the prevailing rate of exchange (where applicable), to be made at the Site to which the Supplier's representatives are attached. All such advances made by the Buyer shall be recovered from the Supplier.

3. DEFCONS and DEFFORMS

- 3.1 The DEFCONS and DEFFORMS listed in Annex 1 to this Schedule are incorporated into this Contract.
- 3.2 Where a DEFCON or DEFFORM is updated or replaced, the reference shall be taken as referring to the updated or replacement DEFCON or DEFFORM from time to time.
- 3.3 In the event of a conflict between any DEFCONS and DEFFORMS listed in the Order Form and the other terms in a Call-Off Contract, the DEFCONS and DEFFORMS shall prevail.

4. Authorisation by the Crown for use of third-party intellectual property rights

- 4.1 Notwithstanding any other provisions of the Call Off Contract and for the avoidance of doubt, award of the Call Off Contract by the Buyer and placement of any contract task under it does not constitute an authorisation by the Crown under Sections 55 and 56 of the Patents Act 1977 or Section 12 of the Registered Designs Act 1949. The Supplier acknowledges that any such authorisation by the Buyer under its statutory powers must be expressly provided in writing, with reference to the acts authorised and the specific intellectual property involved.

ANNEX 1 - DEFCONS & DEFFORMS (pages A1-1 to A1-8)**ANNEX 2 - ADDITIONAL CONDITIONS (pages A2-1 to A2-2)****ANNEX 3 - TRANSFER UNDERTAKINGS (pages A3-1 to A3-12)****ANNEX 4 - SECURITY ASPECTS LETTER (SAL) (pages A4-1 to A4-15)****ANNEX 5 - LIMITATION OF CONTRACTORS LIABILITY (pages A5-1 to A5-6)**

ANNEX 1 - DEFCONS & DEFFORMS

The full text of Defence Conditions (DEFCONS) and Defence Forms (DEFFORMS) are available electronically via <https://www.gov.uk/guidance/knowledge-in-defence-kid>.

The following MOD DEFCONS and DEFFORMs form part of this contract:

DEFCONS (Defence Conditions)

DEFCON Nos	Version	Description
5J	18/11/2016	Unique Identifiers
129J	18/11/2016	The Use of Electronic Business Delivery Form
501	01/10/2021	Definitions and Interpretations
503	01/06/2022	Formal Amendments to Contract
513	01/07/2024	Value Added Tax (VAT)
514	01/08/2015	Material Breach
515	01/06/2021	Bankruptcy and Insolvency
516	01/04/2012	Equality
518	01/02/2017	Transfer
520	01/10/2023	Corrupt Gifts and Payments of Commission
522	01/11/2021	Payment and Recovery of Sums Due
526	01/08/2002	Notices
527	01/09/1997	Waiver
529	01/09/1997	Law [English]
530	01/12/2014	Dispute Resolution
531	01/09/2021	Disclosure of Information
532B	01/12/2022	Protection of Personal Data (where personal data is being processed on behalf of the Authority)
534	01/06/2021	Subcontracting and Prompt Payment
537	01/12/2021	Rights of Third Parties
538	01/06/2002	Severability
539	01/01/2022	Transparency
540	01/05/2023	Conflicts of Interest
550	01/02/2014	Child Labour and Employment Law
565	01/07/2023	Supply Chain Resilience and Risk Awareness
566	01/04/2024	Change of Control of Contractor
602B	01/12/2006	Quality Assurance [without deliverable quality plan]
609	01/07/2021	Contractors Records
620	01/06/2022	Contract Change Control Procedure
632	01/11/2021	Third Party Intellectual property- Rights and Restrictions
642	01/07/2021	Progress Meetings
656B	01/08/2016	Termination for Convenience – Over £5M

Call-Off Schedule 17 (MOD Terms)

Call-Off Ref: 709640450

Crown Copyright 2022

658	01/10/2022	<p>Cyber</p> <p>Further to DEFCON 658 the Cyber Risk Profile of the Contract is HIGH, as defined in Def Stan 05-138.</p> <p>In respect of the reference to the period of 6 years after contract end or termination at clause 6.2, this period will commence from the completion of the final run off case.</p>
660	01/12/2015	Official-Sensitive Security Requirements
670	01/02/2017	Tax Compliance
671	01/10/2022	Plastic Packaging Tax

DEFFORMs (Ministry of Defence Forms)

DEFFORM No	Version	Description
532 At pages A1-1 to A1-3	10/2019	Personal Data Particulars
539B At pages A1-7 to A1-9	01/2022	Publishable Performance Information - Key Performance Indicator Data Report

DEFSTANs (Ministry of Defence Standards)

DEFSTAN No	Description
05-138	<p>Cyber Security for Defence Suppliers</p> <p>As per clause 7.3 of DEFCON 658, the Authority has absolute discretion to determine changes to DEFSTAN 05-138 and issue new or updated Cyber Security Instructions.</p>

Personal Data Particulars

This Form forms part of the Contract and must be completed and attached to each Contract containing DEFCON 532B.

Data Controller	<p>The Data Controller is the Secretary of State for Defence (the Authority).</p> <p>The Personal Data will be provided by: <i>Army Personnel Centre, MP 555 Kentigern House, 65 Brown St, Glasgow G2 8EX</i></p> <p>APC-Sp-Disclosures1@mod.gov.uk</p> <ul style="list-style-type: none">Disclosures 1 - disclosure of non-medical enquiries, received on behalf of discharged Army personnel in accordance with Departmental Disclosures Policy as outlined in JSP 400 and Data Protection Act 1998. <p>APC-Sp-Disclosures2@mod.gov.uk</p> <ul style="list-style-type: none">Disclosures 2 - release of information under the Data Protection Act 1998 (DPA 98) to serving and former Army Personnel. <p>APC-SP-Litigation-MedicalRecords@mod.gov.uk</p> <ul style="list-style-type: none">Disclosures 3 - release of medical information from former servicemen and their agents in accordance with the Data Protection Act 1998. <p>APC-Sp-Disclosures4@mod.gov.uk</p> <ul style="list-style-type: none">Disclosures 4 - disclosure of information from the archived Army personnel files of deceased soldiers and officers discharged from regular or reserve service since 1921. <p>Nor-polishdiscoffice@mod.gov.uk</p> <ul style="list-style-type: none">Disclosures 5 - disclosure of information from service personnel records of Polish forces under British command during WWII. <p><i>Air Command COS Personnel, Room 14D, RAF Cranwell, Sleaford, NG34 8HB</i></p> <p>Air-Health-MedLegalSpt@mod.gov.uk – for RAF medical records</p> <p>Air-COSPers-Disclosures@mod.gov.uk – for RAF personnel records and general enquires.</p>
------------------------	---

Call-Off Schedule 17 (MOD Terms)

Call-Off Ref: 709640450

Crown Copyright 2022

	<p><i>Navy Med Personnel Policy, HMS President, 72 St Katharines Way, London E1W 1UQ</i> NAVYSEC-PILITMAILBOX@mod.gov.uk – for personnel records and general enquires. NAVYMED-DISCLOSURELEGMAILBOX@mod.gov.uk – for medical records</p> <p><i>Defence Business Services (for civilian records), Gloucester, GL3 1HW</i> peopleservices@dbb.mod.uk</p>
Data Processor	<p>The Data Processor is the Contractor. The Personal Data will be processed at:</p> <p>Redacted Under FOIA Section 40, Personal Information Morton Fraser MacRoberts LLP Quartermile Two 2 Lister Square Edinburgh EH3 9GL Redacted Under FOIA Section 40, Personal Information Redacted Under FOIA Section 40, Personal Information</p>
Data Subjects	<p>The Personal Data to be processed under the Contract concern the following Data Subjects or categories of Data Subjects: <i>MOD employees, current and former, and members of the public bringing compensation claims against the MOD.</i></p>
Categories of Data	<p>The Personal Data to be processed under the Contract concern the following categories of data: <i>Individuals name, address, telephone number, personnel, and medical records.</i></p>
Special Categories of data (if appropriate)	<p>The Personal Data to be processed under the Contract concern the following Special Categories of data: <i>Medical information, racial or ethnic origin.</i></p>
Subject matter of the processing	<p>The processing activities to be performed under the contract are as follows: <i>Personal data is required in order to assess and validate compensation claims brought against the MOD to enable decisions to be made on liability and where appropriate pay compensation.</i></p>
Nature and the purposes of the Processing	<p>The Personal Data to be processed under the Contract will be processed as follows: <i>Recording, storage, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, the purpose is in accordance with Civil Procedure Rules and Court</i></p>

Call-Off Schedule 17 (MOD Terms)

Call-Off Ref: 709640450

Crown Copyright 2022

	<i>procedures in relation to the management of the claimant's claim for compensation for injury or loss.</i>
Technical and organisational measures	<p>The following technical and organisational measures to safeguard the Personal Data are required for the performance of this Contract:</p> <p><i>Personal Data to be protected in accordance with requirements of Article 32.1 of the General Data Protection Regulation, 2016, the Data Protection Act 2018 and technical requirements prescribed by Secure by Design, the High Cyber Risk Profile and Cyber Essentials Plus.</i></p> <p><i>All information graded OFFICIAL-SENSITIVE sent between MOD and the Supplier must be transmitted using the Criminal Justice Secure Mail (CJSM) System to ensure that the data in transit is protected.</i></p>
Instructions for disposal of Personal Data	<p>The disposal instructions for the Personal Data to be processed under the Contract are as follows (where Disposal Instructions are available at the commencement of Contract):</p> <p><i>Data will be retained 7 years from case closure unless the claimant is a minor or suffers from a mental disability, in which event the 7 years only commences from the minor attaining majority or the end of the disability.</i></p>
Date from which Personal Data is to be processed	<p>Where the date from which the Personal Data will be processed is different from the Contract commencement date this should be specified here:</p> <p><i>From the date the Supplier is instructed to take conduct of the litigated claim by the Department or MODs contracted Claims Management Administrators.</i></p>

The capitalised terms used in this form shall have the same meanings as in the General Data Protection Regulations.

Call-Off Schedule 17 (MOD Terms)

Call-Off Ref: 709640450

Crown Copyright 2022

DEFFORM 539B**Edn 01/22****Publishable Performance Information - Key Performance Indicator Data Report**

KPI Description*	Rating Thresholds	Frequency of Measurement	Quarter and Year*	Average for Reporting Period	Rating*	Comment*
DELIVERY The Supplier shall meet the Service Levels (SLs), as listed within Call-Off Schedule 20, Annex A. Each of the SLs are to be scored in accordance with the target. Each SL target score is to be reported along with an overall average.	Good*: 90-100%	Quarterly				
	Approaching Target: 85-89.99%					
	Requires Improvement: 80-84.99%					
	Inadequate: <80%					
DELIVERY The Supplier shall provide Management Information on litigation case data to the Commercial Management Team monthly. This is to be provided by the 5th working day of each calendar month. The Management Information is to include for each litigation case, details of; case reference number, hourly	Good*: 95-100%	Quarterly				
	Approaching Target: 90-94.99%					
	Requires Improvement: 85-89.99%					
	Inadequate: <85%					

Framework Ref: RM6240 Public Sector Legal Services Framework

Project Version: v1.0

Model Version: v3.1

Call-Off Schedule 17 (MOD Terms)

Call-Off Ref: 709640450

Crown Copyright 2022

utilisation for each legal grade (including 2 hours free consultation/advice), the amount invoiced for legal fees, the amount invoiced for disbursements. Case hours worked and invoiced amounts are to be provided for the reporting month and as a running total. A status of each case is to be provided i.e., open, closed (or another status, where applicable).						
COMMERCIAL The Supplier must provide reporting information quarterly on disbursement payments to Subcontractors (e.g., specialists, experts, professionals, etc.), ensuring that valid invoices are paid to Subcontractors within thirty (30) days, in accordance with DEFCON 534 (Call-off Schedule 17 (MOD Terms)).	Good*: 98-100%	Quarterly				
	Approaching Target: 95-97.99%					
	Requires Improvement: 90-94.99%					
	Inadequate: <90%					

*Publishable fields. Please note, of the four Rating Thresholds, only the 'Good' threshold is published.

Framework Ref: RM6240 Public Sector Legal Services Framework

Project Version: v1.0

Model Version: v3.1

Call-Off Schedule 17 (MOD Terms)

Call-Off Ref: 709640450

Crown Copyright 2022

Guidance for Contractors submitting a KPI Data Report in the format of DEFFORM 539B.

1. The Contractor must insert the 'Quarter and Year', 'Average for Reporting Period', 'Rating' and 'Comment' fields, if required, at the frequency specified in the table.
2. The 'Average for Quarter' figure must be in the format of the 'Rating Thresholds' (e.g., if the KPI is measured using a percentage value, the average must be a percentage).
3. A Comment is only required if a rating of 'Requires Improvement' or 'Inadequate' applies. The Contractor must propose a high-level comment (for agreement with the MOD) which states why poor performance occurred and the steps being taken to rectify performance in future periods.
4. The Contractor must submit the completed KPI Data Report to the MOD for agreement in accordance with DEFCON 539.
5. An illustrative example is given on the next page. The example shows just one KPI however you must include three KPIs plus an additional Social Value KPI, as applicable, on the completed KPI Data Report.

Illustrative Example of a completed KPI Data Report (for a single KPI)

KPI Description*	Rating Thresholds	Frequency of Measurement	Quarter and Year*	Average for Reporting Period	Rating*	Comment*
Technical Help Desk service response time: calls answered within 20 seconds of a call becoming available.	Good*: >95%	Quarterly	Jul-Sept '22	86%	Requires Improvement	Performance hampered by 80% of staff on furlough during COVID-19.
	Approaching Target: 90-94.9%					
	Requires Improvement: 85-89.9%					
	Inadequate: <84.99%					

Framework Ref: RM6240 Public Sector Legal Services Framework

Project Version: v1.0

Model Version: v3.1

ANNEX 2 - ADDITIONAL CONDITIONS

1. Estimated Quantities

1.1. The Authority may order less than the estimated quantities and shall not be bound to place orders or tasks for any of the Contractor Deliverables referred to in the SOR. The Authority shall not be bound to accept or pay for any Contractor deliverables other than those actually ordered and / or authorised under the terms of this Call-Off Contract.

2. Conflict of Interest

2.1. In addition to the terms of DEFCON 540 and para 6.2.1 of Schedule 20 (Call-Off Specification), if the Supplier is instructed to advise or act for another body whose interests may conflict with the MOD this will be deemed as a Conflict of Interest. The MOD's Commercial Team must be advised immediately should this situation arise and will determine the appropriate action. Failure to notify MOD of a possible or realised Conflict of Interest or follow the action advised by MOD's Commercial Team, may lead to a Breach of Contract and possible Contract Termination.

3. Russian and Belarusian Exclusion

3.1. The Contractor shall, and shall procure that their Sub-contractors shall, notify the Authority in writing as soon as they become aware that:

- a. the Contractor Deliverables and / or Services contain any Russian/Belarusian products and / or services; or
- b. the Contractor or any part of the Contractor's supply chain is linked to entities who are constituted or organised under the law of Russia or Belarus, or under the control (full or partial) of a Russian / Belarusian person or entity. Please note that this does not include companies:
 - (1) registered in the UK or in a country with which the UK has a relevant international agreement providing reciprocal rights of access in the relevant field of public procurement; and / or
 - (2) which have significant business operations in the UK or in a country with which the UK has a relevant international agreement providing reciprocal rights of access in the relevant field of public procurement.

3.2. The Contractor shall, and shall procure that their Sub-contractors shall, include in such notification (or as soon as reasonably practicable following the notification) full details of the Russian products, services and / or entities and shall provide all reasonable assistance to the Authority to understand the nature, scope and impact of any such products, services and / or entities on the provision of the Contract Deliverables and / or Services.

Call-Off Schedule 17 (MOD Terms) – Annex 2

Call-Off Ref: 709640450

Crown Copyright 2022

3.3. The Authority shall consider the notification and information provided by the Contractor and advise the Contractor in writing of any concerns the Authority may have and / or any action which the Authority will require the Contractor to take. The Contractor shall be required to submit a response to the concerns raised by the Authority, including any plans to mitigate those concerns, within 14 business days of receipt of the Authority's written concerns, for the Authority's consideration.

3.4. The Contractor shall include provisions equivalent to those set out in this clause in all relevant Sub-contracts.

ANNEX 3 - TRANSFER REGULATIONS (TUPE)

EMPLOYEE TRANSFER ARRANGEMENTS ON EXIT

1. DEFINITIONS

1.1 In this Annex 3 to Call-Off Schedule 17 (MOD Terms), save where otherwise provided, words and terms defined in DEFCON 501 (Definitions and Interpretations) of the Contract shall have the meaning ascribed to them in DEFCON 501 (Definitions and Interpretations) of the Contract.

1.2 Without prejudice to DEFCON 501 (Definitions and Interpretations) of the Contract unless the context otherwise requires:

"Data protection legislation" means all applicable data protection and privacy legislation in force from time to time in the UK, including but not limited to:

(i) the General Data Protection 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 (the "UK General Data Protection Regulation" or "UK GDPR").

(ii) the Data Protection Act 2018.

(iii) the Privacy and Electronic Communications Directive 2002/58/EC (as updated by Directive 2009/136/EC) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended; and

(iv) all applicable legislation and regulatory requirements in force from time to time which apply to a party relating to the processing of personal data and privacy and the guidance and codes of practice issued by the Information Commissioner's Office which apply to a party.

"Employee Liability Information" has the same meaning as in Regulation 11(2) of the Transfer Regulations.

"Employing Sub-Contractor" means any sub-contractor of the Contractor providing all or any part of the Services who employs or engages any person in providing the Services.

"New Provider" means any replacement service provider or providers engaged to provide the Services (or part thereof) or substantially similar services or the Authority itself where the Services or substantially similar services or part thereof continue to be provided by the Authority after partial termination, termination, or expiry of this Contract.

"Relevant Transfer" means a transfer of the employment of Transferring Employees from the Contractor or any Employing Sub-Contractor to a New Provider or the Authority under the Transfer Regulations.

"Transfer Date" means the date on which the transfer of a Transferring Employee takes place under the Transfer Regulations.

"Transferring Employee" means an employee wholly or mainly employed or otherwise assigned to the Services (or in respect of partial termination, the relevant part of the Services) whose employment transfers under the Transfer Regulations from the Contractor or any Employing Sub-Contractor to a New Provider.

"Transfer Regulations" means the Transfer of Undertakings (Protection of Employment) Regulations 2006 as amended from time to time and/or the Service Provision Change (Protection of Employment) Regulations (Northern Ireland) 2006 (as amended from time to time), as appropriate.

2. EMPLOYMENT

2.1 Information on Re-tender, Partial Termination, Termination or Expiry

2.1.1 No earlier than [two years] preceding the termination, partial termination or Expiry of this Contract or a potential Transfer Date or at any time after the service of a notice to terminate this Contract or the provision of any of the Services (whether in whole or part) or on receipt of a written request by the Authority, the Contractor shall (and shall procure that any Employing Sub-Contractor shall):

- (a) supply to the Authority such information as the Authority may reasonably require in order to consider the application of the Transfer Regulations on the termination, partial termination, or expiry of this Contract.
- (b) supply to the Authority such full and accurate and up-to-date information as may be requested by the Authority including the information listed in Appendix 1 to this Annex 3 of Call-Off Schedule 17 (MOD Terms) relating to the employees who are wholly or mainly employed, assigned or engaged in providing the Services or part of the Services under this Contract who may be subject to a Relevant Transfer;
- (c) provide the information promptly and in any event not later than three months from the date when a request for such information is made and at no cost to the Authority.
- (d) acknowledge that the Authority will use the information for informing any prospective New Provider for any services which are substantially the same as the Services or part of the Services provided pursuant to this Contract.
- (e) inform the Authority of any changes to the information provided under paragraph 2.1.1(a) or 2.1.1(b) up to the Transfer Date as soon as reasonably practicable.

Call-Off Schedule 17 (MOD Terms) - Annex 3

Call-Off Ref: 709640450

Crown Copyright 2022

- 2.1.2 Three months preceding the termination, partial termination, or expiry of this Contract or on receipt of a written request from the Authority the Contractor shall:
- (a) ensure that Employee Liability Information and such information listed in Part A of Appendix 2 of this Annex 3 to Call-Off Schedule 17 (MOD Terms) (Personnel Information) relating to the Transferring Employees is provided to the Authority and/or any New Provider.
 - (b) inform the Authority and/or any New Provider of any changes to the information provided under this Paragraph 2.1.2 up to any Transfer Date as soon as reasonably practicable.
 - (c) enable and assist the Authority and/or any New Provider or any sub-contractor of a New Provider to communicate with and meet those employees and their trade union or other employee representatives.
- 2.1.3 No later than 28 days prior to the Transfer Date the Contractor shall provide the Authority and/or any New Provider with a final list of the Transferring Employees together with the information listed in Part B of Appendix 2 of this Annex 3 to Call-Off Schedule 17 (MOD Terms) (Personnel Information) relating to the Transferring Employees. The Contractor shall inform the Authority and/or New Provider of any changes to this list or information up to the Transfer Date.
- 2.1.4 Within 14 days following the relevant Transfer Date the Contractor shall provide to the Authority and/or any New Provider the information set out in Part C of Appendix 2 of this Annex 3 to Call-Off Schedule 17 (MOD Terms) in respect of Transferring Employees.
- 2.1.5 Paragraphs 2.1.1 and 2.1.2 of this Schedule are subject to the Contractor's obligations in respect of the Data Protection Legislation and the Contractor shall use its best endeavours to obtain the consent of its employees (and shall procure that its Sub-Contractors use their best endeavours to obtain the consent of their employees) to the extent necessary under the Data Protection Legislation or provide the data in an anonymous form in order to enable disclosure of the information required under paragraphs 2.1.1 and 2.1.2. Notwithstanding this paragraph 2.1.5, the Contractor acknowledges (and shall procure that its Sub-Contractors acknowledge) that they are required to provide sufficient information to the Authority to enable the Authority to determine the nature of the activities being undertaken by employees engaged in providing the Services, to assess whether there is an organised grouping for the purposes of the Transfer Regulations and to assess who is assigned to such organised grouping. To the extent

that anonymous data has been provided by the Contractor pursuant to its obligations under Paragraph 2.1.1 or 2.1.2 above, the Contractor shall provide full data to the Authority no later than 28 days prior to the Transfer Date.

2.1.6 On notification to the Contractor by the Authority of a New Provider or within the period of six months prior to the Termination Date or after service of a notice to terminate this Contract (whether in whole or in part), whichever is earlier and in any event on receipt of a written request by the Authority, the Contractor shall not and shall procure that an Employing Sub-Contractor shall not:

- (a) materially amend or promise to amend the rates of remuneration or other terms and conditions of employment of any person wholly or mainly employed or engaged in providing the Services under this Contract; or
- (b) replace or re-deploy from the Services any person wholly or mainly employed or engaged in providing the Services, or materially increase or decrease the number of persons performing the Services under this Contract or the working time spent on the Services (or any part thereof); or
- (c) reorganise any working methods or assign to any person wholly or mainly employed or engaged in providing the Services (or any part thereof) any duties unconnected with the Services (or any part thereof) under this Contract; or
- (d) terminate or give notice to terminate the employment of any person wholly or mainly employed or engaged in providing the Services (or any part thereof) under this Contract other than in the case of serious misconduct or for poor performance,

save in the ordinary course of business and with the prior written consent of the Authority (not to be unreasonably withheld or delayed) and the Contractor shall indemnify and keep indemnified the Authority in respect of any reasonable costs (including reasonable legal costs), losses and expenses and all damages, compensation, fines and liabilities arising out of or in connection with any breach of paragraphs 2.1.1, 2.1.2, 2.1.3, 2.1.4 or 2.1.6 of this Annex 3 to Call-Off Schedule 17 (MOD Terms).

2.1.7 The Authority may at any time prior to the period set out in paragraph 2.1.5 of this Annex 3 to Call-Off Schedule 17 (MOD Terms) request from the Contractor any of the information in sections 1(a) to (d) of Appendix 1 and the Contractor shall and shall procure any Sub-Contractor will provide the information requested within 28 days of receipt of that request.

2.2 Obligations in Respect of Transferring Employees

2.2.1 To the extent that the Transfer Regulations apply on expiry, termination or partial termination of this contract, the Contractor shall and shall procure any Employing Sub-Contractor shall and the Authority shall and shall procure that a New Provider shall in such circumstances:

- (a) before and in relation to the Transfer Date liaise with each other and shall co-operate with each other in order to implement effectively the smooth transfer of the Transferring Employees to the Authority and/or a New Provider; and
- (b) comply with their respective obligations under the Transfer Regulations including their obligations to inform and consult under Regulation 13 of the Transfer Regulations.

2.3 Unexpected Transferring Employees

2.3.1 If a claim or allegation is made by an employee or former employee of the Contractor or any Employing Sub-Contractor who is not named on the list of Transferring Employees provided under paragraph 2.1.3 (an "**Unexpected Transferring Employee**") that he has or should have transferred to the Authority and/or New Provider by virtue of the Transfer Regulations, the Party receiving the claim or allegation shall notify the other Party (or the Contractor shall notify the Authority on the Sub-Contractor's behalf and the Authority shall notify the Contractor on the New Provider's behalf) in writing as soon as reasonably practicable and no later than ten Business Days after receiving notification of the Unexpected Transferring Employee's claim or allegation, whereupon:

- (a) the Contractor shall (or shall procure that the Employing Sub-Contractor shall), as soon as reasonably practicable, offer and/or confirm continued employment to the Unexpected Transferring Employee or take such other steps so as to effect a written withdrawal of the claim or allegation; and
- (b) if the Unexpected Transferring Employee's claim or allegation is not withdrawn or resolved the Contractor shall notify the Authority (who will notify any New Provider who is a party to such claim or allegation), and the Authority (insofar as it is permitted) and/or New Provider (as appropriate) shall employ the Unexpected Transferring Employee or as soon as reasonably practicable, (subject to compliance with its obligations at paragraph 2.3.1(c)(iii)), serve notice to terminate

the Unexpected Transferring Employee's employment in accordance with his contract of employment; and

- (c) the Contractor shall indemnify the Authority against all reasonable costs (including reasonable legal costs) losses and expenses and all damages, compensation, fines, and liabilities arising out of or in connection with any of the following liabilities incurred by the Authority or New Provider in dealing with or disposing of the Unexpected Transferring Employee's claim or allegation:
 - (i) any additional costs of employing the Unexpected Transferring Employee up to the date of dismissal where the Unexpected Transferring Employee has been dismissed in accordance with paragraph 2.3.1(b).
 - (ii) any liabilities acquired by virtue of the Transfer Regulations in relation to the Unexpected Transferring Employee.
 - (iii) any liabilities relating to the termination of the Unexpected Transferring Employee's employment but excluding such proportion or amount of any liability for unfair dismissal, breach of contract or discrimination attributable:
 - (A) to a failure by the Authority or a New Provider to act reasonably to mitigate the costs of dismissing such person).
 - (B) directly or indirectly to the procedure followed by the Authority or a New Provider in dismissing the Unexpected Transferee; or
 - (C) to the acts/omissions of the Authority or a New Provider not wholly connected to the dismissal of that person.
 - (iv) any liabilities incurred under a settlement of the Unexpected Transferring Employee's claim which was reached with the express permission of the Contractor (not to be unreasonably withheld or delayed).
 - (v) reasonable administrative costs incurred by the Authority or New Provider in dealing with the Unexpected Transferring Employee's claim or allegation, subject to a cap per Unexpected Transferring Employee of £5,000; and
 - (vi) legal and other professional costs reasonably incurred.

- 2.3.2 the Authority shall be deemed to have waived its right to an indemnity under paragraph 2.3.1(c) if it fails without reasonable cause to take, or fails to procure any New Provider takes, any action in accordance with any of the timescales referred to in this paragraph 2.3.

2.4 Indemnities on transfer under the Transfer Regulations on Partial Termination, Termination or Expiry of the Contract

- 2.4.1 If on the expiry, termination or partial termination of the Contract there is a Relevant Transfer, the Contractor shall indemnify the Authority and any New Provider against all reasonable costs (including reasonable legal costs) losses and expenses and all damages, compensation, fines and liabilities arising out of or in connection with any claim by any employee or trade union representative or employee representative arising whether before or after the Transfer Date out of any failure by the Contractor or any Sub-Contractor to comply with their obligations under Regulation 13 of the Transfer Regulations in relation to any Transferring Employee or any other employee of the Contractor or any Sub-Contractor affected by the Relevant Transfer (as defined by Regulation 13 of the Transfer Regulations), save to the extent that all reasonable costs (including reasonable legal costs), losses and expenses and all damages, compensation, fines and liabilities are a result of the act or omission of the Authority or the New Provider.
- 2.4.2 If there is a Relevant Transfer, the Authority shall indemnify the Contractor against all reasonable costs (including reasonable legal costs) losses and expenses and all damages, compensation, fines, and liabilities arising out of, or in connection with:
- (a) any claim or claims by a Transferring Employee at any time on or after the Transfer Date which arise as a result of an act or omission of the Authority or a New Provider or a sub-contractor of a New Provider during the period from and including the Transfer Date.
 - (b) subject to paragraph 2.4.1 any claim by any employee or trade union representative or employee representative arising whether before or after the Transfer Date out of any failure by the Authority or a New Provider or a sub-contractor of a New Provider to comply with their obligations under Regulation 13 of the Transfer Regulations in relation to any Transferring Employee or any other employee engaged wholly or mainly in connection with the Services by the New Provider or any other employee of the Authority or any New Provider affected by the Relevant Transfer effected by this Contract (as defined by Regulation 13 of the Transfer Regulations),

save to the extent that all reasonable costs (including reasonable legal costs), losses and expenses and all damages, compensation, fines, and liabilities are a result of the act or omission of the Contractor or any Employing Sub-Contractor.

- 2.4.3 In the event of a Relevant Transfer, the Authority shall indemnify the Contractor in respect of all reasonable costs (including reasonable legal costs), losses and expenses and all damages, compensation, fines and other liabilities arising out of or in connection with or as a result of a substantial change by the Authority [or a New Provider or any sub-contractor of a New Provider] on or after the Transfer Date to the working conditions of any Transferring Employee to the material detriment of any such Transferring Employee. For the purposes of this paragraph 2.4.3, the expressions "substantial change" and "material detriment" shall have the meanings as are ascribed to them for the purposes of Regulation 4(9) of the Transfer Regulations.

2.5 Contracts (Rights of Third Parties) Act 1999

- 2.5.1 A New Provider may enforce the terms of paragraph 2.3 and 2.4 against the Contractor in accordance with the Contracts (Rights of Third Parties) Act 1999.
- 2.5.2 The consent of a New Provider (save where the New Provider is the Authority) is not required to rescind, vary, or terminate this Contract.
- 2.5.3 Nothing in this paragraph 2.5 shall affect the accrued rights of the New Provider prior to the rescission, variation, expiry, or termination of this Contract.

2.6 General

- 2.6.1 The Contractor shall not recover any Costs and/or other losses under this Annex 3 to Call-Off Schedule 17 (MOD Terms) where such Costs and/or losses are recoverable by the Contractor elsewhere in this Contract and/or are recoverable under the Transfer Regulations or otherwise.

Appendix 1

CONTRACTOR PERSONNEL-RELATED INFORMATION TO BE RELEASED UPON RE-TENDERING WHERE THE TRANSFER REGULATIONS APPLIES

1. Pursuant to paragraph 2.1.1(b) of this Annex 3 to Call-Off Schedule 17 (MOD Terms), the following information will be provided:

Call-Off Schedule 17 (MOD Terms) - Annex 3

Call-Off Ref: 709640450

Crown Copyright 2022

- a) The total number of individual employees (including any employees of Sub-Contractors) that are currently engaged, assigned, or employed in providing the Services and who may therefore be transferred. Alternatively, the Contractor should provide information why any of their employees or those of their Sub-Contractors will not transfer.
 - b) The total number of posts or proportion of posts expressed as a full-time equivalent value that currently undertakes the work that is to transfer.
 - c) The preceding 12 months total pay costs – (Pay, benefits employee/employer national insurance contributions and overtime).
 - d) Total redundancy liability including any enhanced contractual payments.
2. In respect of those employees included in the total at 1(a), the following information:
 - a) Age (not date of Birth).
 - b) Employment Status (i.e., Fixed Term, Casual, Permanent).
 - c) Length of current period of continuous employment (in years, months) and notice entitlement.
 - d) Weekly conditioned hours of attendance (gross).
 - e) Standard Annual Holiday Entitlement (not "in year" holiday entitlement that may contain carry over or deficit from previous leave years).
 - f) Pension Scheme Membership:
 - g) Pension and redundancy liability information.
 - h) Annual Salary.
 - i) Details of any regular overtime commitments (these may be weekly, monthly, or annual commitments for which staff may receive an overtime payment).
 - j) Details of attendance patterns that attract enhanced rates of pay or allowances.
 - k) Regular/recurring allowances.
 - l) Outstanding financial claims arising from employment (i.e., season ticket loans, transfer grants).
3. The information to be provided under this Appendix 1 should not identify an individual employee by name or other unique personal identifier unless such information is being provided 28 days prior to the Transfer Date.

4. The Contractor will provide (and will procure that the Sub-Contractors provide) the Authority/tenderers with access to the Contractor's and Sub-Contractor's general employment terms and conditions applicable to those employees identified at paragraph 1(a) of this Appendix 1.

Appendix 2

PERSONNEL INFORMATION TO BE RELEASED PURSUANT TO THIS CONTRACT

Part A

1. Pursuant to paragraph 2.1.2 of this Annex 3 to Call-Off Schedule 17 (MOD Terms), the written statement of employment particulars as required by section 1 of the Employment Rights Act 1996 together with the following information (save where that information is included within that statement) which will be provided to the extent it is not included within the written statement of employment particulars:
 - 1.1 **Personal, Employment and Career**
 - a) Age.
 - b) Security Vetting Clearance.
 - c) Job title.
 - d) Work location.
 - e) Conditioned hours of work.
 - f) Employment Status.
 - g) Details of training and operating licensing required for Statutory and Health and Safety reasons.
 - h) Details of training or sponsorship commitments.
 - i) Standard Annual leave entitlement and current leave year entitlement and record.
 - j) Annual leave reckonable service date.
 - k) Details of disciplinary or grievance proceedings taken by or against transferring employees in the last two years.
 - l) Information of any legal proceedings between employees and their employer within the previous two years or such proceedings that the transferor has reasonable grounds to believe that an employee may bring against the transferee arising out of their employment with the transferor.

- m) Issue of Uniform/Protective Clothing.
- n) Working Time Directive opt-out forms; and
- o) Date from which the latest period of continuous employment began.

1.2 Superannuation and Pay

- a) Maternity leave or other long-term leave of absence (meaning more than 4 weeks) planned or taken during the last two years.
- b) Annual salary and rates of pay band/grade.
- c) Shifts, unsociable hours or other premium rates of pay.
- d) Overtime history for the preceding twelve-month period.
- e) Allowances and bonuses for the preceding twelve-month period.
- f) Details of outstanding loan, advances on salary or debts.
- g) Pension Scheme Membership.
- h) For pension purposes, the notional reckonable service date.
- i) Pensionable pay history for three years to date of transfer.
- j) Percentage of any pay currently contributed under additional voluntary contribution arrangements; and
- k) Percentage of pay currently contributed under any added years arrangements.

1.3 Medical

- a) Details of any period of sickness absence of 3 months or more in the preceding period of 12 months; and
- b) Details of any active restoring efficiency case for health purposes.

1.4 Disciplinary

- a) Details of any active restoring efficiency case for reasons of performance; and
- b) Details of any active disciplinary cases where corrective action is on going.

1.5 Further information

- a) Information about specific adjustments that have been made for an individual under the Equality Act 2010.
- b) Short term variations to attendance hours to accommodate a domestic situation.

Call-Off Schedule 17 (MOD Terms) - Annex 3

Call-Off Ref: 709640450

Crown Copyright 2022

- c) Individuals that are members of the Reserves, or staff that may have been granted special leave for public duties such as a School Governor, and.
- d) Information about any current or expected maternity or other statutory leave or other absence from work.

Part B

1.6 Information to be provided 28 days prior to the Transfer Date:

- a) Employee's full name.
- b) Date of Birth
- c) Home address.
- d) Bank/building society account details for payroll purposes Tax Code.

PART C

1.7 Information to be provided within 14 days following a Transfer Date:

1.7.1 Performance Appraisal

- a) The current year's Performance Appraisal.
- b) Current year's training plan (if it exists); and
- c) Performance Pay Recommendations (PPR) forms completed in the current reporting year, or where relevant, any bonus entitlements.

1.7.2 Superannuation and Pay

- a) Cumulative pay for tax and pension purposes.
- b) Cumulative tax paid.
- c) National Insurance Number.
- d) National Insurance contribution rate.
- e) Other payments or deductions being made for statutory reasons.
- f) Any other voluntary deductions from pay.

ANNEX 4 – SECURITY ASPECTS LETTER



Redacted Under FOIA
Section 40, Personal
Information

MOD Main Building
Whitehall
London
SW1A 2HB

Redacted Under FOIA
Section 40, Personal
Information

File reference: 709640450

20/08/2024

Morton Fraser MacRoberts LLP
Quartermile Two
2 Lister Square
Edinburgh
EH3 9GL

CONTRACT NUMBER: 709640450, LEGAL SERVICES FOR LITIGATED
CLAIMS IN SCOTLAND

- 1. On behalf of the Secretary of State for Defence, I hereby give you notice of the information or assets connected with, or arising from, the referenced Contract that constitute classified material.
- 2. Aspects that constitute up to OFFICIAL-SENSITIVE classification for the purpose of DEFCON 660 are specified below. These aspects must be fully safeguarded. The enclosed Security Condition at Annex A to this Security Aspects Letter, outlines the minimum measures required to safeguard OFFICIAL-SENSITIVE assets and information.

ASPECTS (Personal file)	CLASSIFICATION
Claimant Job Description	O

Call-Off Schedule 17 (MOD Terms) - Annex 4

Call-Off Ref: 709640450

Crown Copyright 2022

Claimant Employment Status (Dependant, Military, Civil Servant, Locally Employed Civilian (LEC)/DEL (Germany))	O
Local Records	O
Snow and Ice Plans	O
Accident/Incident Reports	OS-P (When Completed)
Unit Reports/Assessments of Incident	O
On or Off Duty Incident	O
Copy of On Duty Certificate	O
Personal Training Records (Manual Handling etc)	O
RAF personnel records: E-dossier, DPA (Data Protection Act) record, JPA Data Protection Profile Report, appraisals	OS-P
Risk Assessments - old/new, generic and task specific	O
Local policies User Guides Programme/Training Schedules Duty Rosters Names of witnesses to accident/policies Maintenance records Architect/Engineering Report Inspection records Building Technical Inspection Reports Relevant correspondence – letters/emails Briefing notes/ PowerPoint slides of training Stores Holding Personnel Report 1157 (Kit Lists) at the time of the incident/reporting Exercise Action & Safety Plan (EASP) Range Action & Safety Plan (RASP) Instructions for weapons handling	OS-P
Health and Safety Regs, reviews/audits Safe Working Practices (particular to the role of the Claimant) JSP references (where appropriate)	O
For Disease Claims (e.g. Asbestos related illnesses):	OS-P

Call-Off Schedule 17 (MOD Terms) - Annex 4

Call-Off Ref: 709640450

Crown Copyright 2022

Weather Reports/Forecasts	O
Aspects (Medical records)	Classification
Medical Records (to be provided by relevant Med Centre or APC if service person is discharged)	
Occupational Health Records	OS-P
F Med 10 – assessments	OS-P
F Med 4 – Paper medical record held by unit specifically to include any Appendix 9 (medical restrictions) and Appendix 26 (deployment medical risk assessment form)	OS-P
Electronic Medical Record	OS-P
F Med 23 – medical board record – relevant for medically discharged personnel	OS-P
F Med 24 – personal statement	OS-P
PULHEEMS Administration Pamphlet Appendix 18 – Occupational report on an individual for occupational health purposes	OS-P
DMICP (Defence Medical Information Capability Programme) records	OS-P
Appraisals AFCS details Salary information	OS-P

3. Your attention is drawn to the provisions of the Official Secrets Act 1989 and the National Security Act 2023. In particular you should take all reasonable steps to make sure that all individuals employed on any work in connection with this Contract have notice of the above specified aspects and that the aforementioned statutory provisions apply to them and will continue to apply after completion or earlier termination of the contract.
4. Will you please confirm that:
 - a. This definition of the classified aspects of the referenced Contract has been brought to the attention of the person directly responsible for security of classified material.

Call-Off Schedule 17 (MOD Terms) - Annex 4

Call-Off Ref: 709640450

Crown Copyright 2022

- b. The definition is fully understood.
 - c. Measures can, and will, be taken to safeguard the classified aspects identified herein in accordance with applicable national laws and regulations. [The requirement and obligations set out above and in any contractual document can and will be met and that the classified material shall be protected in accordance with applicable national laws and regulations.]
 - d. All employees of the company who will have access to classified material have either signed an OSA/NSA Declaration Form in duplicate and one copy is retained by the Company Security Officer or have otherwise been informed that the provisions of the OSA/NSA apply to all classified information and assets associated with this contract.
- 5. If you have any difficulty either in interpreting this definition of the classified aspects or in safeguarding them, will you please let me know immediately.
 - 6. Classified Information associated with this Contract must not be published or communicated to anyone without the approval of the MOD Contracting Authority.
 - 7. Any access to classified information or assets on MOD premises that may be needed will be subject to MOD security regulations under the direction of the MOD Project Security Officer (PSyO) in accordance with DEFCON 76.
 - 8. Contact details for the MOD Project Security Officer (PSyO) (responsible for the coordination of effective security measures throughout the Project/Programme) are included below:

Yours faithfully

Redacted Under FOIA Section 40, Personal Information

Copy via email to:

[ISAC-Group \(MULTIUSER\)](#)

[COO-DSR-IIPCSy \(MULTIUSER\)](#)

[UKStratComDD-CyDR-CySAAS-021](#)

Annex A to Annex 4

UK OFFICIAL AND UK OFFICIAL-SENSITIVE CONTRACTUAL SECURITY CONDITIONS

Purpose

1. This document provides guidance for Defence Suppliers where classified material provided to or generated by the Defence Supplier is graded UK OFFICIAL or UK OFFICIAL-SENSITIVE. Where the measures requested below cannot be achieved or are not fully understood, further advice should be sought from the UK Designated Security Authority (Email: COO-DSRIIPCSy@mod.gov.uk).

Definitions

2. The term "Authority" for the purposes of this Annex means the UK MOD Contracting Authority.
3. The term "Classified Material" for the purposes of this Annex means classified information and assets.

Security Grading

4. The SENSITIVE marking is used to denote UK OFFICIAL material that is of a particular sensitivity and where there is a need to reinforce the 'need to know.' The Security Aspects Letter, issued by the Authority shall define the UK OFFICIAL-SENSITIVE material that is provided to the Defence Supplier, or which is to be developed by it, under this Contract. The Defence Supplier shall mark all UK OFFICIAL-SENSITIVE documents which it originates or copies during the Contract with the applicable security grading. The Defence Supplier is not required to mark documents graded UK OFFICIAL unless they are transmitted overseas or generated by a Defence Supplier based outside the UK in a third-party country.

Security Conditions

5. The Defence Supplier shall take all reasonable steps to adhere to the provisions specified in the Contract or listed in this Annex. The Defence Supplier shall make sure that all individuals employed on any work in connection with the Contract have notice that these provisions apply to them and shall continue so to apply after the completion or earlier termination of the Contract.

6. Where a Defence Supplier is based outside the UK in a third-party country the national rules and regulations of the third-party country take precedence over these conditions only if the thirdparty country has an extant bilateral security agreement or arrangement with the UK.

7. The Authority shall state the data retention periods to allow the Defence Supplier to produce a data management policy.

8. If you are a Defence Supplier located in the UK, your attention is also drawn to the provisions of the Official Secrets Act 1989 and the National Security Act 2023.

Protection of UK OFFICIAL and UK OFFICIAL-SENSITIVE Classified Material

9. The Defence Supplier shall protect UK OFFICIAL and UK OFFICIAL-SENSITIVE material provided to or generated by it in accordance with the requirements detailed in this Security Condition and any other conditions that may be specified by the Authority. The Defence Supplier shall take all reasonable steps to prevent the loss or compromise of classified material whether accidentally or from deliberate or opportunist attack.

10. Once the Contract has been awarded, where the Defence Supplier is required to store or process UK MOD classified information electronically, they shall comply with the requirements specified in ISNs, Defence Condition 658 and Defence Standard 05-138. Details can be found at the links below:

<https://www.gov.uk/government/publications/industry-security-notice-isns>.

<https://www.dstan.mod.uk/toolset/05/138/000003000.pdf>

<https://www.gov.uk/government/publications/defence-condition-658-cyber-flow-down>

11. All UK classified material including documents, media and other assets shall be physically secured to prevent unauthorised access. When not in use UK classified material shall be handled with care to prevent loss or inappropriate access. As a minimum UK OFFICIAL-SENSITIVE material shall be stored under lock and key and shall be placed in a lockable room, cabinets, drawers or safe and the keys/combinations shall be controlled.

12. Disclosure of UK classified material shall be strictly controlled in accordance with the *"need to know"* principle. Except with the written consent of the Authority, the Defence Supplier shall not disclose the Contract or any provision thereof to any person other than to a person directly employed by the Defence Supplier or Subcontractor.

13. Except with the consent in writing of the Authority the Defence Supplier shall not make use of the Contract or any classified material issued or provided by or on behalf of the Authority otherwise than for the purpose of the Contract, and, same as provided for in paragraph 9 above, the Defence Supplier shall not make use of any article or part thereof similar to the articles for any other purpose.

14. Subject to any intellectual property rights of third parties, nothing in this Security Condition shall restrict the Defence Supplier from using any specifications, plans, drawings, and other documents generated outside of this Contract.

15. Any samples, patterns, specifications, plans, drawings, or any other documents issued by or on behalf of the Authority for the purposes of the Contract remain the property of the Authority and shall be returned on completion of the Contract or, if directed by the Authority, destroyed in accordance with paragraph 37.

Access

16. Access to UK classified material shall be confined to those individuals who have a “*need-to-know*,” have been made aware of the requirement to protect the material and whose access is essential for the purpose of their duties.

17. The Defence Supplier shall ensure that all individuals requiring access to UK OFFICIAL and UK OFFICIAL-SENSITIVE material have undergone basic recruitment checks. This should include establishing proof of identity; confirming that they satisfy all legal requirements for employment by the Defence Supplier; and verification of their employment record. Criminal record checks should also be undertaken where permissible under national/local laws and regulations. This is in keeping with the core principles set out in the UK Government (HMG) Baseline Personnel Security Standard (BPSS) which can be found at:

18. <https://www.gov.uk/government/publications/government-baseline-personnel-securitystandard>

Hard Copy Distribution

19. UK OFFICIAL and UK OFFICIAL-SENSITIVE documents may be distributed internally and externally of Defence Supplier premises. To maintain confidentiality, integrity and availability, distribution shall be controlled such that access to documents is only by authorised personnel. They may be sent by ordinary post in a single envelope. The words UK OFFICIAL or UK OFFICIAL-SENSITIVE must not appear on the envelope. The envelope must bear a stamp or marking that clearly indicates the full address of the office from which it was sent. Commercial Couriers may be used.

20. Advice on the distribution of UK OFFICIAL-SENSITIVE documents abroad or any other general advice including the distribution of UK OFFICIAL-SENSITIVE shall be sought from the Authority.

Electronic Communication and Telephony and Facsimile Services

21. UK OFFICIAL information may be emailed unencrypted over the internet. UK OFFICIALSENSITIVE information shall normally only be transmitted over the internet encrypted using either a National Cyber Security Centre (NCSC) Commercial Product Assurance (CPA) cryptographic product or a UK MOD approved cryptographic technique such as Transmission Layer Security (TLS). In the case of

TLS both the sender and recipient organisations must have TLS enabled. Details of the required TLS implementation and CPA scheme are available at:

<https://www.ncsc.gov.uk/guidance/tls-external-facing-services>

<https://www.ncsc.gov.uk/scheme/commercial-product-assurance-cpa>

22. Exceptionally, in urgent cases UK OFFICIAL-SENSITIVE information may be emailed unencrypted over the internet where there is a strong business need to do so, but only with the prior approval of the Authority. However, it shall only be sent when it is known that the recipient has been made aware of and can comply with the requirements of these Security Conditions and subject to any explicit limitations that the Authority require. Such limitations including any regarding publication, further circulation or other handling instructions shall be clearly identified in the email sent with the information.

23. UK OFFICIAL and UK OFFICIAL-SENSITIVE information may be discussed verbally on corporate telephones and other corporate electronic devices with persons located both within the country of the Defence Supplier and overseas. UK OFFICIAL-SENSITIVE information should only be discussed where there is a strong business need to do so.

24. UK OFFICIAL information may be faxed to recipients located both within the country of the Defence Supplier and overseas, however UK OFFICIAL-SENSITIVE information may be transmitted only where there is a strong business case to do so and only with the prior approval of the Authority.

Use of Information Systems

25. The detailed functions that must be provided by an IT system to satisfy the minimum requirements cannot all be described here in specific detail; it is for the implementers to identify possible means of attack and ensure proportionate security mitigations are applied to prevent a successful attack.

26. The Defence Supplier should ensure **10 Steps to Cyber Security** (Link below) is applied in a proportionate manner for each IT and communications system storing, processing, or generating UK OFFICIAL or UK OFFICIAL-SENSITIVE information.

<https://www.ncsc.gov.uk/guidance/10-steps-cyber-security>

27. As a general rule, any communication path between an unauthorised user and the data can be used to carry out an attack on the system or be used to compromise or ex-filtrate data. Within the framework of the 10 Steps to Cyber Security, the following describes the minimum-security requirements for processing and accessing UK OFFICIAL and UK OFFICIAL-SENSITIVE information on IT systems.

Call-Off Schedule 17 (MOD Terms) - Annex 4

Call-Off Ref: 709640450

Crown Copyright 2022

- a. Access. Physical access to all hardware elements of the IT system is to be strictly controlled. The principle of “*least privilege*” will be applied to System Administrators. Users of the IT System (Administrators) should not conduct ‘standard’ User functions using their privileged accounts.
- b. Identification and Authentication (ID&A). All systems are to have the following functionality:
 - (1) Up-to-date lists of authorised users.
 - (2) Positive identification of all users at the start of each processing session
- c. Passwords. Passwords are part of most ID&A security measures. Passwords are to be “strong” using an appropriate method to achieve this, e.g., including numeric and “special” characters (if permitted by the system) as well as alphabetic characters.
- d. Internal Access Control. All systems are to have internal Access Controls to prevent unauthorised users from accessing or modifying the data.
- e. Data Transmission. Unless the Authority authorises otherwise, UK OFFICIALSENSITIVE information may only be transmitted or accessed electronically (e.g., point to point computer links) via a public network like the Internet, using a CPA product or equivalent as described in paragraph 20 above.
- f. Security Accounting and Audit. Security relevant events fall into two categories, namely legitimate events, and violations.
 - (1) The following events shall always be recorded:
 - (a) All log on attempts whether successful or failed,
 - (b) Log off (including time out where applicable),
 - (c) The creation, deletion or alteration of access rights and privileges,
 - (d) The creation, deletion, or alteration of passwords.
 - (2) For each of the events listed above, the following information is to be recorded:
 - (a) Type of event,
 - (b) User ID,

(c) Date & Time,

(d) Device ID.

- (3) The accounting records are to have a facility to provide the System Manager with a hard copy of all or selected activity. There also must be a facility for the records to be printed in an easily readable form. All security records are to be inaccessible to users without a need to know. If the operating system is unable to provide this, then the equipment must be protected by physical means when not in use i.e., locked away or the hard drive removed and locked away.

g. Integrity & Availability. The following supporting measures are to be implemented:

- (1) Provide general protection against normally foreseeable accidents/mishaps and known recurrent problems (e.g., viruses and power supply variations),
- (2) Defined Business Contingency Plan,
- (3) Data backup with local storage,
- (4) Anti-Virus Software (Implementation, with updates, of an acceptable industry standard Anti-virus software),
- (5) Operating systems, applications and firmware should be supported,
- (6) Patching of Operating Systems and Applications used are to be in line with the manufacturers recommended schedule. If patches cannot be applied an understanding of the resulting risk will be documented.

h. Logon Banners. Wherever possible, a “Logon Banner” will be provided to summarise the requirements for access to a system which may be needed to institute legal action in case of any breach occurring. A suggested format for the text (depending on national legal requirements) could be: *“Unauthorised access to this computer system may constitute a criminal offence.”*

i. Unattended Terminals. Users are to be automatically logged off the system if their terminals have been inactive for some predetermined period of time, or systems must activate a password protected screen saver after 15 minutes of inactivity, to prevent an attacker making use of an unattended terminal.

- j. Internet Connections. Computer systems must not be connected direct to the Internet or “un-trusted” systems unless protected by a firewall (a software based personal firewall is the minimum, but risk assessment and management must be used to identify whether this is sufficient).
- k. Disposal. Before IT storage media (e.g., disks) are disposed of, an erasure product must be used to overwrite the data. This is a more thorough process than deletion of files, which does not remove the data.

Portable Electronic Devices

28. Portable Electronic Devices holding any UK OFFICIAL-SENSITIVE information shall be encrypted using a CPA product or equivalent as described in paragraph 20 above.

29. Unencrypted Portable Electronic Device and drives containing personal data are not to be taken outside of secure sites¹. For the avoidance of doubt the term “drives” includes all removable, recordable media e.g., memory sticks, compact flash, recordable optical media (CDs and DVDs), floppy discs and external hard drives.

30. Any token, touch memory device or password(s) associated with the encryption package is to be kept separate from the machine whenever the machine is not in use, left unattended or in transit.

31. Portable Electronic Devices holding the Authorities’ data are not to be left unattended in any public location. They are not to be left unattended in any motor vehicles either in view or in the boot or luggage compartment at any time. When the vehicle is being driven the Portable Electronic Device is to be secured out of sight in the glove compartment, boot, or luggage compartment as appropriate to deter opportunist theft.

Loss and Incident Reporting

32. The Defence Supplier shall immediately report any loss or otherwise compromise of any Defence Related Classified Material to the Authority. The term Defence Related Classified Material includes any information or asset that has been given a security classification by the UK MOD. The term also includes classified information and assets held by UK Defence Suppliers which are owned by a third party e.g., NATO or another country for which the UK MOD is responsible.

33. In addition, any loss or otherwise compromise of Defence Related Classified Material is to be immediately reported to the UK MOD Defence Industry Warning, Advice and Reporting Point (WARP). This will assist the UK MOD in formulating a

¹ Secure Sites are defined as either Government premises or a secured office on the Defence Supplier premises.

Call-Off Schedule 17 (MOD Terms) - Annex 4

Call-Off Ref: 709640450

Crown Copyright 2022

formal information security reporting process and the management of any associated risks, impact analysis and upward reporting to the UK MOD's Chief Information Officer (CIO) and, as appropriate, the Defence Supplier concerned. The UK MOD Defence Industry WARP will also advise the Defence Supplier what further action is required to be undertaken.

UK MOD Defence Industry WARP Contact Details

Email: DefenceWARP@mod.gov.uk (OFFICIAL with no NTK restrictions)

RLI Email: defencewarp@modnet.r.mil.uk (MULTIUSER)

Telephone (Office hours): +44 (0) 3001 583 640

Mail: Defence Industry WARP, DE&S PSyA Office

MOD Abbey Wood, NH2 Poplar-1 #2004, Bristol, BS34 8JH

34. Reporting instructions for any security incidents involving Defence Related Classified Material can be found in the Incident Reporting Industry Security Notice at:

<https://www.gov.uk/government/publications/industry-security-notices-isns>

Subcontracts

35. Where the Defence Supplier wishes to subcontract any elements of a Contract to Subcontractors within its own country or to Subcontractors located in the UK such subcontracts will be notified to the Authority. The Defence Supplier shall ensure that these Security Conditions are incorporated within the subcontract document.

36. The prior approval of the Authority shall be obtained should the Defence Supplier wish to subcontract any UK OFFICIAL-SENSITIVE elements of the Contract to a Subcontractor facility located in another (third party) country. The first page of MOD Form 1686 (F1686) is to be used for seeking such approval. The MOD Form 1686 can be found in the "Subcontracting or Collaborating on Classified MOD Programmes ISN" at the link below:

<https://www.gov.uk/government/publications/industry-security-notices-isns>

37. If the subcontract is approved, the Defence Supplier shall flow down the Security Conditions in line with paragraph 34 above to the Subcontractor. Defence Suppliers located overseas may seek further advice and/or assistance from the Authority with regards the completion of F1686.

Physical Destruction

38. As soon as no longer required, UK OFFICIAL and UK OFFICIAL-SENSITIVE material shall be destroyed in such a way as to make reconstitution very difficult or

impossible, for example, by burning, shredding, or tearing into small pieces. Advice shall be sought from the Authority when the classified material cannot be destroyed or, unless already authorised by the Authority, when its retention is considered by the Defence Supplier to be necessary or desirable. Unwanted UK OFFICIAL-SENSITIVE classified material which cannot be destroyed in such a way shall be returned to the Authority.

Private Venture Activities

39. Private Venture (PV) funded (i.e., non-MOD funded) defence related projects and technology fall within one of the following three categories:

- a. Variants. Variants of standard defence equipment under research, development or in production, e.g., aircraft, military vehicles, or ships, etc. with non-standard equipment or fitments, offered to meet special customer requirements or to avoid security or commercial difficulties associated with the sale of an item in-Service with UK Armed Forces.
- b. Derivatives. Equipment for military or civil use that is not based on standard Service designs but is dependent upon expertise or technology acquired in the course of defence contracts.
- c. Freelance. Equipment of defence importance that is in no way based on information gained from defence contracts.

40. UK Defence Suppliers shall ensure that any PV activity that falls into one of the above categories has been formally security graded by the MOD Directorate of Security and Resilience.

Please see PV guidance on the following website further information:

<https://www.gov.uk/government/publications/private-venture-pv-grading-and-exhibitionclearance-information-sheets>

Publicity Material

41. Defence Suppliers wishing to release any publicity material or display assets that arises from a Contract to which these Security Conditions apply must seek the prior approval of the Authority. Publicity material includes open publication in the Defence Supplier's publicity literature or website or through the media; displays at exhibitions in any country; lectures or symposia; scientific or technical papers, or any other occasion where members of the general public may have access to the information even if organised or sponsored by the UK Government.

42. For UK Defence Suppliers where the exhibition assets relate to multiple Delivery Teams or for Private Venture defence related classified material where there

is no defined Delivery Team, the Defence Supplier shall request clearance for exhibition from the Directorate of Security and Resilience. See the MOD Exhibition Guidance on the following website for further information:

<https://www.gov.uk/government/publications/private-venture-pv-grading-and-exhibitionclearance-information-sheets>

Export sales/promotion

43. The Form 680 (F680) security procedure enables MOD to control when, how, and if defence related classified material is released by UK Defence Suppliers to foreign entities for the purposes of promotion or sales of equipment or services. Before undertaking any targeted promotion or demonstration or entering into any contractual commitments involving the sale or release of defence equipment, information or technology classified UK OFFICIAL-SENSITIVE or above to a foreign entity, a UK Defence Supplier shall obtain F680 approval from the Export Control Joint Unit (ECJU) MOD Team. This includes assets classified UK OFFICIAL-SENSITIVE or above either developed to meet a UK MOD requirement or Private Venture (PV) equipment, as formally advised in a Security Aspects Letter (SAL) issued by the relevant Authority, or PV Security Grading issued by the MOD Directorate of Security and Resilience. Guidance regarding the F680 procedure can be found at:

<https://www.gov.uk/government/publications/ministry-of-defence-form-680-procedure-guidance>

44. If a Defence Supplier has received an approval to subcontract, under an MOD Form 1686 (F1686), for development/production of parts of an equipment, that approval also permits the production of additional quantities for supply to an export customer, when the Defence Supplier has MOD Form 680 approval for supply of the complete equipment, as long as:

- a. they are identical, except for component obsolescence, to items produced under the UK programme that the approval to subcontract relates to; and
- b. no additional OFFICIAL-SENSITIVE or above material is required to be released to the overseas Subcontractor.

Interpretation/Guidance

45. Advice regarding the interpretation of the above requirements should be sought from the Authority.

Call-Off Schedule 17 (MOD Terms) - Annex 4

Call-Off Ref: 709640450

Crown Copyright 2022

46. Further requirements, advice, and guidance for the protection of UK classified material at the level of UK OFFICIAL and UK OFFICIAL-SENSITIVE may be found in Industry Security Notices at:

<https://www.gov.uk/government/publications/industry-security-notices-isns>

Audit

47. Where considered necessary by the Authority the Defence Supplier shall provide evidence of compliance with this Security Condition and/or permit the inspection of the Defence Supplier's processes and facilities by representatives of the Defence Supplier's National/Designated Security Authorities or the Authority to ensure compliance with these requirements.

ANNEX 5 – LIMITATION OF CONTRACTORS LIABILITY

1. LIMITATIONS ON LIABILITY

Definitions

1.1. 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 **NOT APPLICABLE TO THIS CALL-OFF CONTRACT**.

“Term” means the period commencing on the commencement and ending the expiry 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

1.2. 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.

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

- 1.3.1. for any indemnity given by the Contractor to the Authority under this Contract, including but not limited to:
 - 1.3.1.1. the Contractor's indemnity in relation to DEFCON 91 (Intellectual Property in Software) and DEFCON 632 (Third Party IP - Rights and Restrictions).
 - 1.3.1.2. the Contractor's indemnity in relation to TUPE at Annex 3.
- 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 relation to TUPE under Schedule at Annex 3.

1.3.3. breach by the Contractor of **DEFCON 532B** 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

1.4. 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 514 two million pounds (£2,000,000.00) 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, whether in contract, in tort (including negligence), arising under warranty, under statute or otherwise under or in connection with this Contract shall be two million pounds (£2,000,000.00) 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.

1.5. 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.

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

Consequential loss

- 1.7. 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); or

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.

- 1.8. 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 other deliverables that are reliant on the Contractor Deliverables; and

1.8.1.3. 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, 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

- 1.9. 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

- 1.10. 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:

Call-Off Schedule 17 (MOD Terms) - Annex 5

Call-Off Ref: 709640450

Crown Copyright 2022

- 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

- 1.11. 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.