

Call-Off Schedule 17 (MOD Terms) for Call-Off Contract – 709069451.

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 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.

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- 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 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.

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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 A1-9)

ANNEX 2 - ADDITIONAL CONDITIONS (pages A2-1 to A2-2)

ANNEX 3 – TRANSFER UNDERTAKINGS (pages A3-1 to A3-20)

ANNEX 4 – SECURITY ASPECTS LETTER (pages A4-1 to A4-12)

ANNEX 5 – LIMITATION OF CONTRACTORS LIABILITY (pages A5-1 to A5-5)

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 No	Version	Description
5J	18/11/2016	Unique Identifiers
129J	18/11/2016	The Use of Electronic Business Delivery Form
501	10/2021	Definitions and Interpretations
503	06/2022	Formal Amendments to Contract
513	07/2024	Value Added Tax (VAT) and Other Taxes
514	08/2015	Material Breach
515	06/2021	Bankruptcy and Insolvency
516	04/2012	Equality
518	02/2017	Transfer
520	10/2023	Corrupt Gifts and Payments of Commission
522	11/2021	Payment and Recovery of Sums Due
526	08/2002	Notices
527	09/1997	Waiver
529	09/1997	Law [English]
530	12/2014	Dispute Resolution
531	09/2021	Disclosure of Information
532B	12/2022	Protection of Personal Data (where personal data is being processed on behalf of the Authority)
534	06/2021	Subcontracting and Prompt Payment
537	12/2021	Rights of Third Parties
538	06/2002	Severability
539	01/2022	Transparency
540	05/2023	Conflicts of Interest
550	02/2014	Child Labour and Employment Law
565	07/2023	Supply Chain Resilience and Risk Awareness
566	04/2024	Change of Control of Contractor

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602B	12/2006	Quality Assurance [without deliverable quality plan]
609	07/2021	Contractors Records
620	06/2022	Contract Change Control Procedure
632	11/2021	Third Party Intellectual Property - Rights and Restrictions
642	07/2021	Progress Meetings
656B	08/2016	Termination for Convenience – Over £5M
658	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	12/2015	Official-Sensitive Security Requirements
670	02/2017	Tax Compliance
671	10/2022	Plastic Packaging Tax

DEFFORMs (Ministry of Defence Forms)

DEFFORM No	Version	Description
47	07/2024	Invitation to Tender
532 At pages A1-1 to A1-3	10/2019	Personal Data Particulars
539A At page A1-6	01/2022	Tenderers Sensitive Information
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

DEFFORM 532
Edn 10/19

Redacted under FOIA Section 40, Personal Information

Tenderer's Sensitive Information

This list shall be agreed in consultation with the Authority and the Contractor and may be reviewed and amended by agreement. The Authority shall review the list before the publication of any information.

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Description of Tenderer's Sensitive Information:

Redacted on commercial sensitivity grounds.
Redacted on commercial sensitivity grounds.
Redacted on commercial sensitivity grounds.
Redacted on commercial sensitivity grounds.
Redacted on commercial sensitivity grounds.
Redacted on commercial sensitivity grounds.
Redacted on commercial sensitivity grounds.
Redacted on commercial sensitivity grounds.
Redacted on commercial sensitivity grounds.

Period of Confidence (if applicable):

Full Contract Term + 10 Years

Contact Details for Transparency / Freedom of Information matters:

Name: Redacted under FOIA Section 40, Personal Information

Position: Assistant General Counsel

Address: 5th Floor | 20 Gracechurch Street | London | EC3V 0BG

Telephone Number: Redacted under FOIA Section 40, Personal Information

Email Address: Redacted under FOIA Section 40, Personal Information

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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 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	Good* : 95-100%	Quarterly				
	Approaching Target: 90-94.99%					
	Requires Improvement: 85-89.99%					
	Inadequate: <85%					

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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.

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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%					

ANNEX 2 - ADDITIONAL CONDITIONS

1. Estimated Quantities

- 1.1. The quantities referred to in the Pricing Evaluation are estimates only which have been used to calculate an estimated Total Contract Value. 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.
- 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

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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)

PART 1 - EMPLOYEE TRANSFER ARRANGEMENTS ON ENTRY

1 DEFINITIONS

- 1.1** In this Annex 3 to Call-Off Schedule 17 (MOD Terms) Part 1, save where otherwise provided, words and terms defined in DEFCON 501 (Definitions and Interpretations) 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), in this Annex 3 to Call-Off Schedule 17 (MOD Terms) Part 1 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;

"Employing Sub-Contractor" means any sub-contractor of the Contractor providing any part of the Services who is or is to be the employer of a Previous Contractor Employee;

"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;

"Previous Contractor" means Clyde & Co LLP;

"Previous Contractor Employee" means an employee of a Previous Contractor who immediately before the Relevant Transfer Date is assigned to carry out the services to be carried out by the Contractor or Sub-Contractor under this Contract and who has not been dismissed, resigned, been reassigned or objected to the Relevant Transfer;

"Relevant Transfer" means a transfer to the Contractor or an Employing Sub-Contractor of a Previous Contractor Employee pursuant to this Contract and the Transfer Regulations;

"Relevant Transfer Date" means the date on which a Relevant Transfer is effected for Previous Contractor Employees;

"Relevant Statutory Scheme" has the same meaning as in Regulation 8 of the Transfer Regulations;

"Services" shall have the meaning specified in [project team to complete];

"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 PREVIOUS CONTRACTOR EMPLOYEES

2.1 Employee Information

2.1.1 No later than three months prior to the Relevant Transfer Date the Authority shall provide to the Contractor the information listed in Appendix 1 of Part 1 of this Annex 3 to Call-Off Schedule 17 (MOD Terms) Part 1 in respect of Previous Contractor Employees to the extent that such information has been provided to the Authority by the Previous Contractor.

2.1.2 The Authority shall provide the Contractor with any update to the information provided under paragraph 2.1.1 as soon as is reasonably practicable, to the extent that such information has been provided to the Authority by the Previous Contractor.

2.1.3 The Contractor shall provide any information provided to it by the Authority pursuant to paragraph 2.1.1 to an Employing Sub-Contractor within seven Business Days of receipt to the extent that such Previous Contractor Employees are to transfer to an Employing Sub-Contractor under a Relevant Transfer on the Relevant Transfer Date.

2.1.4 Paragraph 2.1.1 is subject to the Authority and any Previous Contractor's obligations in respect of the Data Protection Legislation and any data provided by the Authority in accordance with paragraph 2.1.1 shall be provided in anonymous form in order to enable its disclosure. To the extent anonymous data has been provided by the Authority pursuant to its obligations under Paragraph 2.1.1 above, the Authority shall provide full data no later than 28 days prior to the Relevant Transfer.

2.1.5 The Authority does not warrant the accuracy of the information provided under paragraph 2.1.1.

2.2 Obligations in respect of Previous Contractor Employees

2.2.1 The Contractor and the Authority acknowledge (and the Contractor shall procure that the Employing Sub-Contractor acknowledges) that the provision of the Services under this Contract will constitute a Relevant Transfer.

2.2.2 The Contractor agrees (and will procure that the Employing Sub-Contractor agrees) that from the Relevant Transfer Date the contracts of employment of any Previous Contractor Employees together with any collective agreements (save insofar as such contracts and such agreements relate to benefits for old age, invalidity or survivors under any occupational pension scheme or otherwise do not transfer pursuant to regulation 4A of the Transfer Regulations) will take effect as if originally made between the Contractor or an

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Employing Sub-Contractor and the Previous Contractor Employees (or the relevant trade union, as the case may be) subject to any variations to such contracts of employment made pursuant to Regulation 9 of the Transfer Regulations, where applicable.

2.2.3 The Contractor agrees that it will comply with its obligations under sections 257 and 258 of the Pensions Act 2004 and the Transfer of Employment (Pension Protection) Regulations 2005.

2.2.4 Save for any liabilities in respect of Previous Contractor Employees under a Relevant Statutory Scheme or Schemes, the Contractor or Employing Sub-Contractor (as the case may be) shall have responsibility for all emoluments and outgoings (including without limitation all wages, bonuses, commissions, payments in respect of holiday taken after the Relevant Transfer Date as appropriate, PAYE, national insurance contributions and contributions to retirement benefit schemes) in relation to the Previous Contractor Employees with effect from and including the Relevant Transfer Date and shall indemnify the Authority and the Previous Contractor in respect of the same.

2.3 Indemnities

2.3.1 The Contractor shall indemnify and hold harmless the Authority and any Previous Contractor against all demands, claims, liabilities, losses and damages, costs and expenses (including all interest, penalties, legal and other costs and expenses) together with any applicable Value Added and similar taxes or liability for deduction of PAYE tax properly incurred by the Authority or any Previous Contractor arising out of or in connection with:

- (a) any breach by the Contractor and/or any Employing Sub-Contractor of their obligations under Regulation 13 of the Transfer Regulations;
- (b) any act or proposal by the Contractor or any Employing Sub-Contractor prior to or following the Relevant Transfer Date which amounts to a repudiatory breach of contract as referred to in Regulation 4(11) of the Transfer Regulations and/or to make a substantial change in working conditions of any Previous Contractor Employee to the material detriment of that employee. For the purposes of this sub-clause the expressions “repudiatory breach”, “substantial change” and “material detriment” shall have the same meanings as for the purposes of Regulation 4(9) and 4(11) of the Transfer Regulations; and
- (c) any collective agreement or any arrangement with any trade union or staff association after the Relevant Transfer Date.

Any variations or proposed variations to any Previous Contractor Employee’s terms and conditions of employment pursuant to regulations 4(5) and 4(5B).

3 GENERAL PROVISIONS APPLICABLE TO PREVIOUS CONTRACTOR EMPLOYEES AND CONTRACTOR PERSONNEL

3.1 Contractor Indemnity

3.1.1 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 the employment or termination of employment by the Contractor or any Employing Sub-Contractor of any person (including the Previous

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Contractor Employees) engaged in connection with the provision of the Services during the term of this Agreement.

3.2 Post Transfer Reporting

3.2.1 The Contractor shall upon request by the Authority provide (or shall procure that an Employing Sub-Contractor shall provide) the Authority with the following information in respect of the employees who are wholly or mainly employed, assigned or engaged in providing the Services:

- (a) any proposed, agreed or imposed changes to terms and conditions of service;
- (b) disputes relating to compliance with the Transfer Regulations which are regarded as unresolved by a recognised Trade Union;
- (c) any court action or tribunal proceedings relating to compliance with the Transfer Regulations;
- (d) completed court action or tribunal proceedings relating to compliance with the Transfer Regulations; and
- (e) out of court settlements relating to compliance with the Transfer Regulations if possible having regard to the wording of the settlement.

Appendix 1 of Part 1

PERSONNEL INFORMATION TO BE RELEASED PURSUANT TO THIS AGREEMENT

PART A

1. Pursuant to paragraph 2.1.1 of this Annex 3 to Call-Off Schedule 17 (MOD Terms) Part 1, 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) 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 any 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 Performance Appraisal

- a) The current year's Performance Appraisal;
- b) Current year's training plan (if it exists); and

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- c) Performance Pay Recommendations (PPR) forms completed in the current reporting year, or where relevant, any bonus entitlements;

1.3 Superannuation and Pay

- a) Maternity leave or other long-term leave of absence (meaning more than 4 weeks) planned or taken within 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) Cumulative pay for tax and pension purposes;
- h) Cumulative tax paid;
- i) National Insurance Number;
- j) National Insurance contribution rate;
- k) Other payments or deductions being made for statutory reasons;
- l) Any other voluntary deductions from pay;
- m) Pension Scheme Membership;
- n) For pension purposes, the notional reckonable service date;
- o) Pensionable pay history for three years to date of transfer;
- p) Percentage of any pay currently contributed under additional voluntary contribution arrangements; and
- q) Percentage of pay currently contributed under any added years arrangements.

1.4 Medical

- a) Sickness and absence records for the immediately preceding four-year period; and
- b) Details of any active restoring efficiency case for health purposes.

1.5 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.

1.6 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;
- 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

1.7 Information to be provided 28 days prior to the Relevant 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 2 – STAFF TRANSFER ARRANGEMENTS ON EXIT

1. Definitions

1.1 In this Annex 3 to Call-Off Schedule 17 (MOD Terms) Part 2, save where otherwise provided, words and terms defined in DEFCON 501 (Definitions and Interpretations) or Annex 3 to Call-Off Schedule 17 (MOD Terms) Part 1 of the Contract shall have the meaning ascribed to them in DEFCON 501 (Definitions and Interpretations) or Annex 3 to Call-Off Schedule 17 (MOD Terms) Part 1 of the Contract.

1.2 Without prejudice to DEFCON 501 (Definitions and Interpretations) of the Contract or Annex 3 to Call-Off Schedule 17 (MOD Terms)], Part 1, in this Annex 3 to Call-Off Schedule 17 (MOD Terms) Part 2 unless the context otherwise requires:

"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;

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

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

"Subsequent 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 Subsequent 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;

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- (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 of Part 2 to this Annex 3 to Call-Off Schedule 17 (MOD Terms) Part 2 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 Subsequent 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 Subsequent Transfer Date as soon as reasonably practicable.
- 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 Part 2 of this Annex 3 to Call-Off Schedule 17 (MOD Terms) (Personnel Information) relating to the Subsequent 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 Subsequent 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 Subsequent Transfer Date the Contractor shall provide the Authority and/or any New Provider with a final list of the Subsequent Transferring Employees together with the information listed in Part B of Appendix 2 of Part 2 of this Annex 3 to Call-Off Schedule 17 (MOD Terms) (Personnel Information) relating to the Subsequent Transferring Employees. The Contractor shall inform the Authority and/or New Provider of any changes to this list or information up to the Subsequent Transfer Date.
- 2.1.4 Within 14 days following the relevant Subsequent 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 Subsequent Transferring Employees.
- 2.1.5 Paragraphs 2.1.1 and 2.1.2 of this Annex 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

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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 Subsequent 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 0 of this Annex 3 to Call-Off Schedule 17 (MOD Terms) Part 2.

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) Part 2 request from the Contractor any of the information in sections 1(a) to (d) of Appendix 1 of Part 2 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 Subsequent 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 Subsequent Transfer Date liaise with each other and shall co-operate with each other in order to implement effectively the smooth transfer of the Subsequent 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 Subsequent 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 Subsequent Transferring Employees provided under paragraph 2.1.3 (an "**Unexpected Subsequent 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 Subsequent 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 Subsequent Transferring Employee or take such other steps so as to effect a written withdrawal of the claim or allegation; and
- (b) if the Unexpected Subsequent 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 Subsequent 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 Subsequent 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 Subsequent Transferring Employee's claim or allegation:
 - (i) any additional costs of employing the Unexpected Subsequent Transferring Employee up to the date of dismissal where the Unexpected Subsequent 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 Subsequent Transferring Employee;

(iii) any liabilities relating to the termination of the Unexpected Subsequent 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 Subsequent 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 Subsequent Transferring Employee's claim or allegation, subject to a cap per Unexpected Subsequent 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 (b) 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 Subsequent 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 Subsequent 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 Subsequent 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 Subsequent Transferring Employee or any other employee of the Contractor or any Sub-Contractor affected by the Subsequent 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 Subsequent 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:

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- (a) any claim or claims by a Subsequent Transferring Employee at any time on or after the Subsequent 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 Subsequent 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 Subsequent 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 Subsequent 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 Subsequent 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 Subsequent 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 Subsequent Transfer Date to the working conditions of any Subsequent Transferring Employee to the material detriment of any such Subsequent Transferring Employee. For the purposes of this paragraph 0, 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 Pursuant to the terms of DEFCON 537, 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 of Part 2

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

1. Pursuant to paragraph 2.1.1(b) of Part 2 of this Annex 3 to Call-Off Schedule 17 (MOD Terms) the following information will be provided:
 - 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 ERNIC 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;

Annual Salary;

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- h) Details of any regular overtime commitments (these may be weekly, monthly or annual commitments for which staff may receive an overtime payment);
 - i) Details of attendance patterns that attract enhanced rates of pay or allowances;
 - j) Regular/recurring allowances;
 - k) 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 Subsequent 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) part 2, 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;
- 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

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 Subsequent 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 Subsequent 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 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;

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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:

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1.4.1.1. in respect of DEFCON 514 five million 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], whether in contract, in tort (including negligence), arising under warranty, under statute or otherwise under or in connection with this Contract shall be eight million, three hundred and thirty thousand pounds (£8,330,000.00) 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;

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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, repurchase 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:

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.