**Call-Off Schedule 17 (MOD Additional and Data Processing Terms)**

1. **Definitions**
   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; and |
| **"Officer in charge"** | shall include Officers Commanding Service Stations, Ships' Masters or Senior Officers, and Officers superintending Government Establishments. |

1. **Access to MOD sites**
   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. 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 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.
   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.
   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.
   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.
   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.
   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.
   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.

# DEFCONS and DEFFORMS

## The DEFCONS and DEFORMS listed in Annex 1 to this Schedule are incorporated into this Contract.

## Where a DEFCON or DEFORM is updated or replaced the reference shall be taken as referring to the updated or replacement DEFCON or DEFORM from time to time.

## 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.

* 1. Where references to DEFCONs are made within the DEFCONs at Annex 1, if the referenced DEFCON is not also referenced at Annex 1 then the applicable core terms under the framework shall take precedence.

# Authorisation by the Crown for use of third party intellectual property rights

## 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.

# Data Processing

## For the purposes of Joint Schedule 11 (Data Processing), the Supplier is the Processor and the Buyer is the Controller. The only Processing that the Supplier (as Processor) is authorised to do is listed in Annex 2 (Processing Personal Data) of this Call-Off Schedule and Annex 2 (Processing Personal Data) of this Call-Off Schedule shall be deemed to be incorporated into Annex 1 (Call-Off Contract Processing Personal Data) of Joint Schedule 11 (Processing Data).

# Variation of the Charges

## For purposes of this Paragraph 6, the Parties agree and acknowledge that Paragraph 4.1.2 of Framework Schedule 3 (Framework Prices) shall not apply to this Call-Off Contract. In the alternative, the Charges payable by the Buyer under this Contract may only be varied in accordance with Annex 3 (Condition for Output price index based VOP Arrangement) of this Call-Off Schedule 17 (MOD Additional and Data Processing Terms).

**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

|  |  |  |
| --- | --- | --- |
| **DEFCON No** | **Version** | **Description** |
|  |  |  |

DEFFORMs (Ministry of Defence Forms)

|  |  |  |
| --- | --- | --- |
| **DEFFORM No** | **Version** | **Description** |
|  |  |  |

DEFSTANs (Defence Standards)

|  |  |  |
| --- | --- | --- |
| **DEFSTAN No** | **Version** | **Description** |
| **DEFSTAN 05-138** | **Issue 2** | **cyber security for defence suppliers** |

**ANNEX 2 - Processing Personal Data**

This Annex shall be completed by the Buyer, who may take account of the view of the Processors, however the final decision as to the content of this Annex 2 shall be with the Buyer at its absolute discretion.

* + - 1. The contact details of the Buyer’s Data Protection Officer are: **[Insert** Contact details]
      2. The contact details of the Supplier’s Data Protection Officer are: **[Insert** Contact details]
      3. The Processor shall comply with any further written instructions with respect to Processing by the Controller.
      4. Any such further instructions shall be incorporated into this Annex.

|  |  |
| --- | --- |
| **Description** | **Details** |
| Identity of Controller for each Category of Personal Data | **The Buyer is Controller and the Supplier is Processor**  The Parties acknowledge that in accordance with Paragraph 3 to Paragraph 16 of Joint Schedule 11 (Processing Data) and for the purposes of the Data Protection Legislation, the Buyer is the Controller and the Supplier is the Processor. |
| Duration of the Processing | The term of this Contract, unless specified otherwise in that Party’s privacy notice and/or retention schedule, as notified to the other parties in writing. |
| Nature and purposes of the Processing | The nature of the Processing means any operation such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction of data (whether or not by automated means) etc.  The Processing of Personal Data is for the purposes of managing the contractual relationship between the Parties and to evidence compliance with legal, professional and/or regulatory obligations on each Party, and is undertaken on the following purposes, as set out in Article 6 of the GDPR, including where the Processing is necessary for:   * Compliance with a legal obligation to which that Party is subject; * The performance of a task carried out in the public interest or in the exercise of official authority vested in that Party; * The purposes of the legitimate interests pursued by that or any other third party, except where such interests are overridden by the interests or fundamental rights and freedoms of the data subject which require protection of personal data, in particular, where the data subject is a child (and in respect of the Relevant Authority, where no other grounds set out above are applicable); or * Where the data subject has consented to the Processing of their personal data for one or more specified purposes.   The Processing of Personal Data relating to or revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, or trade union membership, and the Processing of genetic data, biometric data for the purpose of uniquely identifying a natural person, data concerning health or data concerning a natural person’s sex life or sexual orientation, where necessary for the purposes of providing the Services authorised by the Buyer to Travellers, shall only be undertaken where it falls under:   1. One or more of the purposes set out above; and 2. One or more of the following purposes:    1. Processing is necessary for the purposes of carrying out the obligations and exercising specific rights of the controller or of the data subject in the field of employment and social security and social protection law in so far as it is authorised by Union or Member State law    2. Processing is necessary to protect the vital interests of the data subject or of another natural person where the data subject is physically or legally incapable of giving consent;    3. Processing is necessary for the establishment, exercise or defence of legal claims or whenever courts are acting in their judicial capacity; or    4. Processing is necessary for reasons of substantial public interest, on the basis of Union or Member State law which shall be proportionate to the aim pursued, respect the essence of the right to data protection and provide for suitable and specific measures to safeguard the fundamental rights and the interests of the data subject; or 3. Where the Data Subject has given their explicit consent to the Processing of his or her Personal Data for one or more specific purposes. |
| Type of Personal Data | * Name * Date of Birth * Passport Number * Telephone Number * Email Address * Traveller address * Staff Number * Dates and times of travel * Locations and periods at a location * Home Address * NI number * Next of kin details * Photo * Place of birth * Any other personal data volunteered by the data subject |
| Special Category Date | * Any medical condition; * Dietary requirements; * Religion or Philosophical beliefs; * Sexual orientation; * Relationship with any other Travellers. |
| Categories of Data Subject | Travellers.  Employees of the Buyer, British and foreign nationals in the event that the UK Government is supporting them as part of a crisis management response. |
| Plan for return and destruction of the data once the Processing is complete  UNLESS requirement under Union or Member State law to preserve that type of data | Personal Data will be retained in accordance with each Party’s retention schedule or privacy notice, unless required by law or retain this information for longer, and then securely and irretrievably deleted. |

**ANNEX 3 - (Condition for Output price index based VOP Arrangement)**

**Variation of the Charges**

1. The Charges stated in the Order Form are FIXED as at the Start Date. The Charges do not include provision beyond the Start Date for increases or decreases in the market price of the Deliverables being purchased. Any such variation shall be calculated in accordance with the following formula:

V = P (a+b (Oi/O0)) - P

*Where:*

V represents the variation of price

P represents the FIXED price as stated in the Schedule of Requirements

O represents the index HQTI - Top Level SPPI, Sections H to U excl. Section K

O0 represents the average OUTPUT Price Index figure for the base period from the date which is three years from the Start Date to the End Date

Oi represents the average OUTPUT Price Index figure for the period from the date which is three years from the Start Date to the End Date

a represents the Non- Variable Element (NVE)

b represents the Variable Element

a+b=1

2. The Index referred to in Paragraph 1 above shall be taken from the following Tables:

OUTPUT Price Index - e.g. ONS Publication MM22 Table 2 'Price Indices of UK OUTPUT: All Manufacturing and Selected Industries', or, Table 4 'Price Indices of Products Manufactured in the UK'.

3. Indices published with a ‘B’ or ‘F’ marker, or a suppressed value, in the last 3 years are not valid for Variation of Price clauses and shall not be used. Where the price index has an ‘F’ marker or suppression applied to it during the Contract Period, the Buyer and the Supplier shall agree an appropriate replacement index or indices. The replacement index or indices shall cover, to the maximum extent possible, the same economic activities as the original index or indices.

4. In the event that any material changes are made to the indices (e.g. a revised statistical base date) during the Contract Period and before final adjustment of the final contract price, then the re-basing methodology outlined by the Office for National Statistics (ONS, the series providers) to match the original index to the new series shall be applied.

5. In the event the agreed index or indices cease to be published (e.g. because of a change in the Standard Industrial Classification) the Buyer and the Supplier shall agree an appropriate replacement index or indices, which shall cover to the maximum extent possible the same economic activities as the original index or indices. The methodology outlined by the Office for National Statistics used for rebasing indices (as in Paragraph 4 above) shall then be applied.

6. Notwithstanding the above, any extant index / indices agreed in this Contract shall continue to be used as long as it is / they are available and subject to ONS revisions policy. Charges calculated using the extant index / indices during its / their currency shall not be amended retrospectively as a result of any change to the index or indices.

7. The Supplier shall notify the Buyer of any significant changes in the purchasing / manufacturing plan on the basis of which these provisions were drawn up and agreed, or of any other factor having a material bearing on the operation of these provisions such as to cause a significant divergence from their intended purpose, in order that both Parties may consider whether any change in this provision would be appropriate.

8. Charges shall be adjusted taking into account the effect of the above formula as soon as possible after publication of the relevant indices or at a later date if so agreed between the Buyer and the Supplier. Where an index value is subsequently amended, the Buyer and the Supplier shall agree a fair and reasonable adjustment to the Charges, as necessary.

9. Claims under this Annex 3 shall be submitted to the Bill Paying Branch, certified to the effect that the “*requirements of Annex 3 of Call-Off Schedule 17 (MOD Additional and Data Processing Terms*” have been met.