**Schedule** **31 (Buyer Specific Terms)**

[**Insert**: relevant Buyer-specific terms]

***[Guidance note: MoD-specific terms and HMRC-specific terms provided below as an example only. Other government departments need not include these terms. Buyers should seek legal advice if they plan to use these terms with Schedule 33 (Scottish Law) or 34 (Northern Irish Law), as further amendments may be required]***

**MOD-SPECIFIC TERMS *[Guidance note: for MOD use only]***

# DEFCONS and DEFFORMS

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

## In the event of a conflict between any DEFCONs and DEFFORMS listed in Annex 1 and the other terms in this Contract, the DEFCONs and DEFFORMS shall prevail.

**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** |
|  |  |  |

**HMRC-SPECIFIC TERMS**

***[Guidance note: for HMRC use only]***

**HMRC’S MANDATORY TERMS**

1. For the avoidance of doubt, references to ‘this Contract’ mean this Contract between the Supplier and the Buyer.
2. References to ‘the Buyer’ (the Commissioners for His Majesty’s Revenue and Customs).
3. This Contract incorporates the Buyer’s mandatory terms set out in this Schedule 31.
4. In case of any ambiguity or conflict, the Buyer’s mandatory terms in this Schedule 31 will supersede any other terms in this Contract.
5. For the avoidance of doubt, the relevant definitions for the purposes of the defined terms set out in the Buyer’s mandatory terms in this Schedule 31 are the definitions set out at Paragraph 1 of this Schedule 31.
6. For the avoidance of doubt, the HMRC specific terms below are for HMRC use and should not be used by any other organisation.
7. **Definitions**
   1. In this Schedule, the following words shall have the following meanings and they shall supplement Schedule 1 (Definitions):

|  |  |
| --- | --- |
| **"Connected Company"** | means, in relation to a company, entity or other person, the Affiliates of that company, entity or other person or any other person associated with such company, entity or other person; |
| **"Documentary Deliverable"** | means any Deliverable that is in the form of a written document; |
| **"Prohibited Transactions"** | means any arrangement involving the use of offshore entities the main purpose of which, or one of the main purposes of which is to achieve a reduction in United Kingdom Tax of any description which would otherwise be payable by it or them, on or in connection with the payments made by or on behalf of the Buyer under or in connection with the payments made by or on behalf of the Buyer under or pursuant to this Contract, or in the case of any Key Sub-contractor and its Connected Companies, United Kingdom Tax which would be payable by it or them on or in connection with payments made by or on behalf of the Supplier under the relevant subcontract. Prohibited Transactions do not include transactions made between the Supplier and its Connected Companies on terms which are at arms-length and are entered into in the ordinary course of the transacting parties’ business; |
| **"Sanitised Personal Data"** | means data derived from Personal Data Processed by the Supplier in connection with this Contract which has had any designatory data identifiers removed so that an individual cannot be identified; |
| **"Tax"** | means |
|  | (a) all forms of tax whether direct or indirect; |
|  | (b) national insurance contributions in the United Kingdom and similar contributions or obligations in any other jurisdiction; |
|  | (c) all statutory, governmental, state, federal, provincial, local government or municipal charges, duties, imports, contributions, levies or liabilities (other than in return for goods or services supplied or performed or to be performed) and withholdings; and |
|  | (d) any penalty, fine, surcharge, interest, charges or costs relating to any of the above, |
|  | in each case wherever chargeable and whether of the United Kingdom and any other jurisdiction; and |
| **"Tax Revenue"** | means any Tax, levy or duty due to be collected by the Buyer and/or any reimbursement of Tax, levy or duty, correctly paid to the Buyer, as a result of a Default by the Supplier. |

1. **Compliance with Tax Laws**
   1. The Supplier represents and warrants that:

### in the three (3) years prior to the Effective Date, it has been in full compliance with all applicable securities and Tax Laws and regulations in the United Kingdom and in the jurisdiction in which it is established; and

* + 1. it has notified the Buyer in writing of any Occasions of Tax Non Compliance and any litigation, enquiry or investigation in which it or its Subcontractors are involved that is in connection with, or which may lead to, any Occasion of Tax Non Compliance.
  1. The Supplier shall at all times comply with all Laws relating to Tax and with the equivalent legal provisions of the country in which the Supplier is established.
  2. The Supplier shall provide to the Buyer the name and, as applicable, the Value Added Tax registration number, PAYE collection number and either the Corporation Tax or self-assessment reference of any agent, supplier or Subcontractor prior to the commencement of any work under this Contract by that agent, supplier or Subcontractor. Where requested by the Buyer, the Supplier will not employ or will cease to employ any agent, supplier or Subcontractor.
  3. Where an amount of Tax, including any assessed amount, is due from the Supplier an equivalent amount may be deducted by Buyer from the amount of any sum due to the Supplier under this Contract.
  4. The Supplier must indemnify the Buyer against costs or penalty levied or assessed on the Buyer resulting at any time in respect of the Supplier’s failure to account for or to pay any Tax relating to payments made to the Supplier under this Contract. Any amounts due under this Paragraph 2.5 must be paid to the Buyer not less than 5 Working Days before the date upon which the Tax or other liability is payable by the Buyer.
  5. The Supplier shall promptly provide all information which demonstrates how the Supplier complies with its Tax obligations.
  6. The Buyer can terminate this Contract immediately by giving notice to the Supplier if the Supplier fails to comply (or if the Buyer otherwise becomes aware that the Supplier has failed to comply) with any of the terms of this Paragraph 2.
  7. The Buyer may internally share any information which it receives under this Paragraph 2, for the purpose of the collection and management of revenue for which the Buyer is responsible.

1. **Use of Off-shore Tax Structures**
   1. The Supplier must not, and will ensure that its Connected Companies, Key Subcontractors (and their respective Connected Companies) will not, have or put in place (unless agreed with the Buyer) any arrangements involving the use of offshore companies other offshore entities the main purpose, or one of the main purposes, of which is to achieve a reduction in United Kingdom Tax of any description which would otherwise be payable by it or them on or in connection with the payments made by or on behalf of the Buyer under or pursuant to this Contract or, in the case of any Key Sub-contractor and its Connected Companies, United Kingdom Tax which would be payable by it or them on or in connection with payments made by or on behalf of the Supplier under to the relevant subcontract (“Prohibited Transactions”). Prohibited Transactions do not include transactions made between the Supplier and its Connected Companies or a Key Subcontractor and its Connected Companies on terms which are at arms-length and are entered into in the ordinary course of the transacting parties’ business.
   2. The Supplier must notify the Buyer in writing (with reasonable supporting detail) of any proposal for the Supplier or any of its Connected Companies, or for a Key Subcontractor (or any of its Connected Companies), to enter into any Prohibited Transaction. The Supplier must notify the Buyer within a reasonable time to allow the Buyer to consider the proposed Prohibited Transaction before it is due to be put in place.
   3. In the event of a Prohibited Transaction being entered into in breach of Paragraph 3.1 above, or if circumstances arise which may result in such a breach, the Supplier and/or the Key Subcontractor (as applicable) shall discuss the situation with the Buyer and, in order to ensure future compliance with Paragraphs 3.1 and 3.2, the Parties (and the Supplier shall procure that the Key Subcontractor, where applicable) shall agree (at no cost to the Buyer) timely and appropriate changes to any such arrangements by the undertakings concerned.
   4. The Buyer can terminate this Contract immediately by giving notice to the Supplier if the Supplier fails to comply (or if the Buyer otherwise becomes aware that the Supplier has failed to comply) with any of the terms of this Paragraph 3.
2. **Compliance with Tax and Finance Legislation**
   1. The Supplier will comply with, and ensure that all Subcontractors and Supplier Staff will comply with:
      1. the obligations set out in Section 182 of the Finance Act 1989 and Section 18 of the Commissioners for Revenue and Customs Act 2005 to maintain the confidentiality of Government Data. The Supplier acknowledges a breach of these obligations may lead to a prosecution under Section 182 of the Finance Act 1989 and/or Section 19 of the Commissioners for Revenue and Customs Act 2005; and
      2. Section 123 of the Social Security Administration Act 1992, which may apply to the fulfilment of some or all of the Deliverables. The Supplier acknowledges that a breach of its obligations under Section 123 of the Social Security Administration Act 1992 may lead to a prosecution under that Act.
   2. The Supplier must regularly (not less than once every 6 months) remind all Supplier Staff in writing of the obligations of Supplier Staff set out in Paragraph 4.1 above. The Supplier must monitor the Supplier Staff’s compliance with these obligations.
   3. The Supplier must ensure that all Supplier Staff who will have access to Government Data sign a declaration, in a form acceptable to the Buyer, acknowledging that they understand and have been informed about the application and effect of Section 18 and 19 of the Commissioners for Revenue and Customs Act 2005. The Supplier will provide a copy of each such signed declaration to the Buyer upon request.
3. **Supply Chain Protection**
   1. Unless otherwise agreed by the Buyer must ensure that each subcontract with a Key Subcontractor includes obligations on the Key Subcontractor which are no less onerous than those imposed on the Supplier under this Contract in respect of:
      1. the tax compliance requirements set out at Paragraph 2; and
      2. use of off-shore tax structures set out at Paragraph 3.
   2. In addition to its rights under the Core Terms and Schedule 27 (Key Subcontractor), at the Buyer’s request the Supplier must terminate any subcontract where the relevant subcontractor has failed to comply with the terms of its Subcontract equivalent to those set out in Paragraphs 3 and 4.
4. **Responsibility for Losses**
   1. In spite of Clause 19.1 of the Core Terms, the Supplier does not limit or exclude its liability for the indemnity given under Paragraph 2.6.
   2. In spite of Clause 19.2 of the Core Terms, the Supplier acknowledges that the Buyer may, amongst other things recover from the Supplier the following Losses to the extent that they arise as a result of a Default by the Supplier:
      1. the total amount of Tax Revenue which would have been collected and/or the total amount of any benefit or tax credit overpayment which would not have been made by or on behalf of the Buyer had the Default not occurred; and
      2. any operational and/or administrative costs and expenses incurred by the Buyer in connection with dealing with a loss of Tax Revenue and/or any overpayment of any benefit or tax credit made as a result of a Default.
5. **Invoicing**

In addition to the invoicing requirements set out in the Core Terms, the Supplier must ensure that it receives a purchase order number from the Buyer prior to providing any Deliverables. The Supplier acknowledges that if it does provide Deliverables prior to obtaining a purchase order number then the Supplier does so at its own risk and the Buyer is not required to pay any Charges without a valid purchase order number having been provided.

1. **Non-solicitation**

The Supplier must not, and must ensure that no Subcontractor will, during the Contract Period and for 12 months following the termination or expiry of this Contract either directly or indirectly solicit (or seek to attempt to solicit) from the employment of the Buyer or from the employment of any Service Recipient and/or Revenue and Customs Digital Technology Services (RCDTS) any person employed by the Buyer, Service Recipient and/or RCDTS in the receipt and/or administration of the Deliverables.

1. **Protection of Buyer Personal Data** 
   1. In addition to the data protection responsibilities set out in the Core Terms and Schedule 20 (Processing Data):
      1. insofar as the Processes Sanitised Personal Data, the Supplier must not reverse engineer or unencrypt such Sanitised Personal Data or use any data matching techniques to reconstitute the Personal Data from which the Sanitised Personal Data is derived; and
      2. the Supplier must not without the prior written consent of the Buyer convert any Personal Data for “big data” analysis or purposes or match or compare any Personal Data with or against any other Personal Data (whether the Supplier’s or any third party’s). Where the Buyer consents to the Supplier’s use of Personal Data for the steps described in this Paragraph 9.1.2, the Supplier must only do so strictly to the degree necessary to fulfil its obligations under this Contract.
2. **Service Levels *[Guidance Note: This paragraph 10 should be deleted if Schedule 10 (Service Levels) is not used]***

***[Guidance Note: The Service Level regime within the Mid-Tier can be tailored on a procurement-by-procurement basis to meet HMRC requirements]***

1. **Standards**
   1. In addition to the Standards set out in the Core Terms and elsewhere within this Contract, the Supplier must comply with:
      1. and feed into the Buyer’s incident and problem management processes and procedures;
      2. the security requirements in Schedule 16 (Security) which will, as a minimum, be ISO27001 and the government-sponsored cyber essentials[.][; and]
      3. [other HMRC-specific standards requirements to be **inserted**].
2. **Security** ***[Guidance Note: This paragraph 12 can be deleted if there are no additional security requirements over and above those contained within the Core Terms and Schedule 16 (Security) (if used)]***
   1. In addition to the security requirements set out in the Core Terms and elsewhere within this Contract, the Supplier must comply with:
      1. [other HMRC-specific security requirements to be **inserted**].
3. **Insurance Requirements**
   1. In addition to the insurance requirements set out in Schedule 22 (Insurance Requirements), where any of the insurances are stated to have a minimum limit “in the aggregate”:
      1. if a claim which does not relate to this Contract is notified to the insurers which, given the nature of the allegations and/or the quantum claimed by the third party(ies), is likely to result in a claim being paid by the insurers which could reduce the level of cover available below that minimum, the Supplier must immediately provide to the Buyer:
         1. details of that policy; and
         2. its proposed solution for maintaining the minimum limit of indemnity specified; and
         3. if the level of insurance cover available falls below that minimum because a claim which does not relate to this Contract are paid by insurers, the Supplier must:
            1. ensure that the insurance cover is reinstated to maintain the minimum limit of indemnity specified for claims relating to this Contract; or
            2. if the Supplier is unable to ensure that insurance cover is reinstated to maintain at all times the minimum limit of indemnity specified, immediately provide the Buyer with details of the relevant policy and its proposed solution for maintaining the minimum limit of indemnity specified.
4. **Testing *[Guidance Note: This paragraph 14 should be deleted if Schedule 8 (Implementation Plan and Testing) is not used]***
   1. In addition to the testing requirements set out in Schedule 8 (Implementation Plan and Testing), the Supplier must:
      1. set out all Documentary Deliverables in the Test Plan or Implementation Plan (as applicable);
      2. comply with the HMRC Test Principles as described in the HMRC Organisational Test Strategy set out in Annex 1 (or as updated by the Buyer and notified to the Supplier from time to time) when developing the Test Strategy (as defined in Schedule 8 (Implementation Plan and Testing)); and
      3. cooperate with the Buyer’s third party test provider which carries out end-to-end test management and system integration on behalf of the Buyer in accordance with Annex 2.
      4. The Supplier must provide the Documentary Deliverable for review by the Buyer in accordance with the timescales set out in the Test Plan or Implementation Plan (as applicable).
      5. The Buyer will then notify the Supplier within 10 Working Days of receiving the relevant Documentary Deliverable whether it has been approved or rejected. If the Buyer rejects the Documentary Deliverable, it will give the Supplier its reasons for doing so and the Supplier must then revise the Documentary Deliverable accordingly and resubmit to the Buyer within ten **(**10) Working Days of the Buyer's rejection.
      6. The Supplier must notify the Buyer immediately if it is unable to submit a Documentary Deliverable by the date specified in the Test Plan or Implementation Plan (as applicable). If the Buyer is not able to approve a Documentary Deliverable by that specified date, the Buyer can, without limiting its other rights, request that the Supplier provide a Rectification Plan.
5. **Benchmarking *[Guidance Note: This paragraph 15 should be deleted if Schedule 12 (Benchmarking) is not used]***

In addition to the benchmarking requirements set out in Schedule 12 (Benchmarking), the Buyer is entitled to initiate a Benchmark Review (as defined in Schedule 12 (Benchmarking)) to help the Buyer to determine whether or not extend the Contract Period for the Extension Period.

1. **Confidentiality, Transparency and Publicity**
   1. In addition to the confidentiality requirements set out in Clause 19 of the Core Terms (Confidentiality), the Supplier shall not, and shall take reasonable steps to ensure that Supplier Staff shall not:
      1. make any press announcement or publicise this Contract or any part of this Contract in any way, or
      2. use the Buyer’s name or brand in any promotion or marketing or announcement of orders, except with the prior written consent of the Buyer.
   2. Each Party acknowledges to the other that nothing in this Contract either expressly or by implication constitutes an endorsement of any products or services of the other Party and each Party agrees not to conduct itself in such a way as to imply or express any such approval or endorsement.
   3. The Parties acknowledge that, except for any information which his exempt from disclosure in accordance with the provisions of the FOIA, the content of this Contract is not Confidential Information. The Buyer shall be responsible for determining in its absolute discretion whether any of the content of this Contract is exempt from disclosure in accordance with the provisions of the FOIA. Notwithstanding any other terms of this Contract, the Supplier hereby gives his consent for the Buyer to publish the Agreement in its entirety, (but with any information which is exempt from disclosure in accordance with the provisions of the FOIA redacted) including from time to time agreed changes to this Contract, to the general public. The Buyer may consult with the Supplier to inform its decision regarding any redactions but the Buyer shall have the final decision at its absolute discretion.
   4. The Supplier shall assist and co-operate with the Buyer to enable the Buyer to publish this Contract.

**ANNEX 1 - HMRC TEST PRINCIPLES**

***[Guidance Note: This Annex can be deleted if paragraph 14 above (Testing) is deleted/not used]***

**HMRC’s Test Principles from HMRC Organisational Test Strategy Document Version 2.1 Dated 1 January 2018**

|  |  |
| --- | --- |
| Ref | Test Principle (TP) |
| TP1 | Agile By Default - HMRC will use Agile techniques as the preferred delivery approach and take on board GSDM concepts of building quality in, everyone is responsible for quality, fast feedback, tests are an asset of the product, faster delivery into production, clear and consistent view of testing and optimise value. Further details can be found at Section 6. |
| TP2 | Greatly reduce our reliance on end to end testing - HMRC’s ambition is for components/services to become independently testable and deployable over time, where possible. To support that ambition each component/service must understand its interactions with dependent systems and run thorough discrete integration tests (system integration in the small) on these interactions. System integration in the large tests (sometimes called end to end testing) should only be used to validate end to end connectivity and/or data flows, where integration in the small tests cannot cover. This should result in components/services having better contracts with their dependencies, enabling us to move ever closer to independent testing and deployment of releases. |
| TP3 | Risk Based Testing - focus testing on the highest risk areas according to a documented testing risk assessment. Predictive testing and Failure Mode & Effects Analysis (FMEA) will support the Risk Based Testing approach through historical project data relating to defect trends. The risk based testing approach must be a joint sign-off between the HMRC change owner and the CDIO IT service owner. |
| TP4 | Test Early - testing representatives need early sight of IT change to ensure they are properly assessed for testing requirements in terms of scope, timescales and budget, as well as for ensuring clear and unambiguous acceptance criteria. |
| TP5 | Allow sufficient time for testing - give due consideration to the risks associated with a test, ensuring sufficient iterations/cycles are planned and that there is time for defect detection, defect resolution and retest. |
| TP6 | Defect Prevention - HMRC expect the test process to evolve and improve through post implementation analysis, root cause analysis and test process improvement. By doing this, improved defect prevention can be achieved. |
| TP7 | Test Automation - automate as much as possible to allow early testing of both functional and non-functional requirements. Automated testing will be at the forefront of our drive to make substantial cost savings by implementing an automation first policy. |
| TP8 | Test Stage containment - fix defects within iteration/ test stage where they are detected wherever possible rather than defer the risk until a later iteration/test stage. |
| TP9 | Definition of Done, Test Entry Reviews & Test Exit Reviews – For Agile “Definition of Done” has been assessed and agreed for all Epics, Features and User Stories in scope and has been accepted by the Product Owner. For other deliveries all tests under the control of a formal test plan must be subjected to a test entry review to ensure the entry criteria have been met i.e. testing starts when the entry criteria have been met so if the scheduled start date is missed, management action is needed to maintain the test schedule or slippage will occur; all tests must be subjected to a test exit review to ensure that the exit criteria have been met and the test can be formally declared as complete. The Team delivering the outcome should provide evidence of Definition of Done/Exit Criteria at Review. |
| TP10 | Suspension & resumption of testing - under circumstances set out in a test plan, testing may be suspended and then later resumed; such actions will be recorded and may result in project risks and/or issues being raised, depending on the nature of the interruption to testing. |
| TP11 | Test Completion - every test will have an associated test completion condition to formally close the test activity. Test Completion Reports should be produced as required. |
| TP12 | Re-testing and Regression testing - when defects are fixed they will be subjected to re-test to confirm that the fix is effective; consideration must also be given to the need to administer regression tests, based on the balance of risk for the underlying changes made for the fix and any other changes made in the release. |
| TP13 | Consider the timing of non-functional testing - should not always be left until the end as there could be cases where critical components should be tested early to de-risk the overall solution. Virtualisation can be an effective way of quickly standing up a test environment to carry out non-functional testing early in the lifecycle. |
| TP14 | Re-use of test artefacts - to maintain value in testing the management of test assets for re-use is key. |
| TP15 | User Centred Testing - HMRC puts the user at the forefront of all products it delivers. User testing must be integrated into the Test Lifecycle to ensure that the system satisfies the needs of the customer as specified in the Business and functional requirements (for Agile User Stories and Epics) and provides confidence in its use. There is no separate user acceptance test stage in the HMRC test lifecycle, we need to test functions and Business processes and Business products that our customers and colleagues will use in their daily work throughout the IT lifecycle to ensure we are focused on delivery that quality in use. |
| TP16 | Defect Management Process - incidents that occur during any testing process need to be managed properly. It is expected that robust Defect Management Procedures will be applied during test execution. |
| TP17 | Test Environments/Virtualisation - HMRC expect appropriate test environments to be available in a timely fashion to allow testing to be completed. HMRC has a strategic drive towards Virtualised Environments but recognises other environments may be used in the interim. |
| TP18 | Use of test management tools - all categories of test tools will be considered for use by each project/service team. |
| TP19 | Testing must be measurable – this ensures the value of testing can be established in terms of time, cost and quality. |
| TP20 | Adoption of standards - wherever possible use existing corporate, national and international standards, as well as tracking emerging standards to ensure on-going use of industry best practice. Any deviation from standards must be justified and documented. |

**ANNEX** **2 – TEST SERVICE REQUIREMENTS**

***[Guidance Note: This Annex can be deleted if paragraph 14 above (Testing) is deleted/not used]***

## The Supplier must:

* + 1. provide sufficient, appropriate and empowered resource to review and approve the Buyer's end to end test strategy ("**E2E Test Strategy**") and/or end to end test plan ("**E2E Test Plan**");
    2. confirm its agreement to the Buyer's E2E Test Strategy and/or E2E Test Plan within the timelines set by the E2E Test Provider;
    3. provide to the E2E Test Provider the Test Strategy and Test Plan (based on the E2E Test Strategy and/or Plan) detailing the testing they will deliver and how it will be executed;
    4. provide sufficient, appropriate and empowered resource to input to test workshops and discussions;
    5. provide appropriate live service resource to input to decisions in relation to operational acceptance testing (OAT) and system integration testing (SIT) requirements;
    6. provide test progress and test completion metrics to the E2E Test Provider's test manager on a weekly basis;
    7. supply details of any defects in Testing to the E2E Test Provider and provide sufficient, appropriate and empowered resource to input to both the Buyer's and the E2E Test Provider's problem review forums, at the same complying with the defect management process as defined in the E2E Test Strategy and/or Plan;
    8. complete their delivery activities on time and in accordance with the E2E Test Strategy and/or Plan including meeting the exit criteria for system testing;
    9. carry out any operational testing which has been sub-contracted to the Supplier by the Buyer;
    10. carry out performance and volume testing;
    11. carry out component testing, component integration testing and system testing;
    12. provide and maintain the test environments in a timely manner as defined in the E2E Test Strategy and/or Plan;
    13. provide test data to be used in SIT; and
    14. provide sufficient, appropriate and empowered resource to provide technical support for the resolution of defects during SIT.

**ANNEX** **3 – PERFORMANCE LEVELS**

***[Guidance Note: HMRC-specific Service Level regime to be inserted if required. This Annex should be deleted if the Service Level regime envisaged by Schedule 10 is sufficient or if there are no applicable Service Levels]***