

**DEFENCE FIRE & RESCUE PROJECT (DFRP)**

**CONTRACT NUMBER ARMYHQ/DFRP003**

**SCHEDULE 21**

**Intellectual Property RIGHTS**

**{S21}**

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**1 Ownership of IPR {S21.1}**

1.1 The Contractor, and/or any Subcontractor, shall not by virtue of this Contract acquire title to or rights in any Authority Background IPR other than under the licences set out expressly in this Contract. The Authority shall not by virtue of this Contract acquire title to or rights in any Background IPR owned by the Contractor or any third party other than under the licences set out in this Contract.

1.2 Subject to Clause 1.3 the Party creating any IPR in the course of this Contract shall own that IPR.

1.3 Subject to Clause 1.1 all IPR in any materials comprising:

1.3.1 databases;

1.3.2 information, plans and process plans relating to the operation, repair and maintenance of Government Furnished Assets and Specified Assets;

1.3.3 modifications, updates and developments to Authority Background IPR;

1.3.4 Third Party IPR, and any modifications, updates and developments to third party IPR, supplied by the Authority to the Contractor for the purpose of this Contract or otherwise;

1.3.5 training material (including training syllabuses, lessons, records, course training plans and courseware) relating to the subject matter of Contract; and / or

1.3.6 records and information relating to the Authority and Authority-sponsored personnel created and/or modified by the Contractor and any Subcontractor under the Contract for use or otherwise created, in connection with the Services under the Contract; and

all other modifications updates and developments to Authority Background IPR or Third Party IPR supplied by the Authority to the Contractor, and/or to any Subcontractor, for the purpose of this Contract, shall be the property of the Authority (the **Authority Foreground IPR**).

1.4 The Contractor assigns, and shall procure that each Subcontractor creating or modifying Authority Foreground IPR assigns, all present and future Authority Foreground IPR to the Authority with full title guarantee.

1.5 The Contractor and any Subcontractor shall mark any copyright work comprising Authority Foreground IPR with the legend “© Crown-owned copyright [insert the year of generation of the work]”.

1.6 The Contractor and any Subcontractor shall procure the waiver by its employees of any moral rights that they might have in the Authority Foreground IPR.

1.7 Subject to Clause 1.3, the Contractor and any Subcontractor shall not assign, or otherwise transfer or sell, any Contractor Foreground IPR to any third party without the prior written consent of the Authority. Any such assignment, transfer or sale shall be subject to the licence granted under Clause 4 (Licence of Contractor Background IPR and Contractor Foreground IPR).

Interpretation of Schedule 21

1.7.1 For the purposes of this Schedule 21 “Subcontractor” shall mean a Subcontractor to the Contractor, a Subcontractor of a Subcontractor to the Contractor, and any other Subcontractor of whatever tier involved in Asset Provision and /or Service Provision.

Application of Schedule 21

1.7.2 The Provisions of Clause 2 and Clause 4.1 to Clause 8.1 (inclusive) shall apply only in relation to Service Provision.

1.7.3 The Provisions of clauses 8.2 to 16.15 (inclusive) shall apply only in relation to Asset Provision.

1.7.4 The Provisions of Clause 3 shall apply only in relation to Asset Provision and Service Provision.

**2 Licence of Authority Background IPR and Authority Foreground IPR {S21.2}**

2.1 Subject to Clauses 2.3, 2.4 and 2.6, the Authority grants to the Contractor a non-exclusive, non-sub-licensable, non-transferable, royalty-free licence for the Contract Period to use all Authority Foreground IPR that is and to the extent necessary for the purpose of the Contractor’s performance of the Contract for the Authority.

2.2 Subject to Clauses 2.3, 2.4 and 2.6, the Authority shall make available to the Contractor all Authority Background IPR the Authority believes, is relevant to the Contractor’s performance of the Contract. The Authority grants a licence to the Contractor for the Contract Period on a non-exclusive, non-sub-licensable, non-transferable, royalty-free basis to use the Authority Background IPR relevant to the Contractor’s performance of the Contract solely for the purpose of the Contractor’s performance of the Contract for the Authority.

2.3 The Authority may at its discretion, and by written notice to the Contractor impose restrictions and limits on the Contractor’s use of such Authority Background IPR and Authority Foreground IPR to specific purposes within the scope of this Contract.

2.4 The Contractor shall not use Authority Background IPR or Authority Foreground IPR for any purpose other than those specified in Clauses 2.1 and 2.2 without the prior written consent of the Authority’s Representative, which, if given, will include conditions attaching to such wider use.

2.5 The Authority gives no warranty as to the suitability for the Contractor’s purpose of any Authority Background IPR and/or any Authority Foreground IPR licensed under Clauses 2.1, 2.2 and / or following any consent under Clause 2.4. The Contractor shall not do anything or act in any way which will prejudice the rights of ownership by the Crown or the Authority of any Authority Background IPR and/or any Authority Foreground IPR.

2.6 The Contractor may sub-license the licences granted under Clauses 2.1 and 2.2 to Subcontractors engaged in the performance of any part of this Contract for the Contractor provided that such Subcontractors have entered into a confidentiality undertaking with the Authority in the same form as that set out in Schedule 21, Part A (Form of Confidentiality Undertaking). The licence rights set out in Clauses 2.1 and 2.2 are otherwise non-transferable and no other sub-licence may be granted by the Contractor.

**3 Sub-Licence of Third Party IPR provided by the Authority {S21.3}**

3.1 The Authority shall at its discretion, and where possible, make Third Party IPR that is the subject of a licence or other agreement between the third party and the Authority available to the Contractor, where the Authority has reason to believe that use by the Contractor of such Third Party IPR is necessary to the Contractor’s performance of the Contract.

3.2 Subject to Clauses 3.3. and 3.4., to the extent that the Contractor:

3.2.1 requests a sub-licence to use such Third Party IPR from the Authority for a specific purpose within its obligations to perform this Contract for the Authority; and

3.2.2 provides the Authority with a reasonable justification for its request with which the Authority agrees,

the Authority, so far as it is lawfully able to do so, grants a sub-licence to the Contractor on a non-exclusive, non-transferable, royalty-free basis, to use the Third Party IPR for that specific purpose with the right, upon written request to the Authority, for the Contractor to grant a sub-sub-licence to Subcontractors engaged in the performance of any part of this Contract for the Contractor to use the Third Party IPR on a non-exclusive, non-transferable, and royalty-free basis for that specific purpose.

3.3 The sub-licence or where relevant the sub-sub-licence, referred to in Clause 3.1 shall only be granted to the Contractor, or where relevant the Subcontractor, if the Authority has determined that:

3.3.1 it is encompassed by the Authority’s rights under such licence or other agreement with the third party concerned; and

3.3.2 the sub-licence, or sub-sub-licence, is necessary for the specific purpose notified to the Authority by the Contractor.

3.4 Any sub-licence or sub-sub-licence referred to in Clause 3.1 shall only be permitted to be granted to a Subcontractor who has entered into a confidentiality undertaking with the Authority in the same form as that set out in Schedule 21 Part A (Confidentiality Agreement).

**4 Licence of Contractor Background IPR and Contractor Foreground IPR {S21.4}**

4.1 The Contractor grants to the Authority for the Contract Period and for all times thereafter in respect of IPR it owns or controls a perpetual, non-exclusive, irrevocable, transferable, sub-licensable, royalty-free licence or sub-licence including, without limitation the right for the Authority as licensee or sub-licensee:

4.1.1 to copy, modify, disclose and use, with the right to grant sub-licences, the Contractor Background IPR and Contractor Foreground IPR in order for the Authority or the Authority’s sub-licensee to:

4.1.1.1 receive and use the Services and/or the benefit of this Contract and replacement, substitute or follow-on services and substantially similar assets; and

4.1.1.2 operate, perform, maintain, modify, update and develop the Services and replacement, substitute or follow-on services provided that no such act constitutes a material change to the Authority’s Requirements;

4.1.1.3 integrate the Services with the Authority’s procurement, operation and support of Authority assets with which the Services are reasonably associated at any time during or after the Contract Period;

4.1.1.4 conduct any UK Governmental purpose which may be connected with the use of the Services by the Authority provided always that such purpose does not extend to the commercial exploitation of such rights during or after the Contract Period;

4.1.1.5 re-compete and continue the provision of replacement, substitute or follow–on services or assets similar in addition to the provisions of Clause 4.1.1.2;

4.1.1.6 otherwise perform the Authority’s duties and obligations under the Contract;

4.1.1.7 carry out, or have carried out, any Required Action; and/or

4.1.1.8 perform any review, audit, or legal duty (statutory or otherwise).

4.2 The Contractor shall not assign, or otherwise transfer or sell any and shall procure that no Subcontractor shall assign, or otherwise transfer or sell, any Contractor Background IPR or Contractor Foreground IPR to any third party during or after the Contract Period without:

4.2.1 preserving for the Authority the rights granted to it under this Contract; and

4.2.2 providing prior written notice of such assignment, sale or transfer to the Authority.

**5 Licence and Sub-Licence of Third Party IPR provided by the Contractor {S21.5}**

5.1 The Contractor shall:

5.1.1 promptly notify the Authority’s Representative whenever the Contractor or any of its Subcontractors, including for the avoidance of doubt a Contractor Related Party, requires use of Third Party IPR and/or IPR owned by a Contractor Related Party, other than Third Party IPR provided by the Authority under Clause 3.1, for the purpose of meeting the Authority’s requirements; and

5.1.2 enter into, or procure the entering into of, a licence with such third parties and/or a Contractor Related Party for the right to use Third Party IPR and/or IPR owned by a Contractor Related Party notified in accordance with Clause 5.1.1.

5.2 The Contractor shall ensure that all licences entered into with third parties and/or a Contractor Related Party for the right to use Third Party IPR and/or IPR owned by a Contractor Related Party, including those notified in accordance with Clause 5.1, shall be held either in the Contractor’s name or that of its relevant Subcontractor as licensee.

5.3 Subject to Clause 5.4 which shall apply in respect of non-Contractor Related Parties only, in respect of all licences referred to in Clause 5.2, the Contractor and/or the relevant Subcontractor, as licensee, shall ensure that the licence either:

5.3.1 grants to the Contractor or Subcontractor the right to grant a perpetual irrevocable and transferable sub-license with the right to grant sub-sub licences of the Third Party IPR and/or IPR owned by a Contractor Related Party to the Authority or to any other party nominated by the Authority for the Contract Period and all times thereafter; or

5.3.2 grants to the Authority for the Contract Period and all times thereafter, a non-exclusive, perpetual and irrevocable right, with the right to grant sub-licences, in the Third Party IPR and/or IPR owned by a Contractor Related Party (including, in that limitation, the licence right to copy, disclose and use),

in both cases 5.3.1 and 5.3.2 to a substantially similar extent to that licensed to the Contractor or Subcontractor to enable the Authority, other party nominated by the Authority or sub-licensee of the Authority to:

5.3.2.1 receive and use the Services, and substantially similar services;

5.3.2.2 operate, perform, maintain, modify, update and develop the Services and substantially similar services provided that no such act constitutes a material change to the Authority’s Requirements;

5.3.2.3 benefit from all of the purposes set out in Clause 4.1.1.1 to 8; and

5.3.2.4 for the Authority to:

i otherwise perform the Authority’s duties and obligations under the Project Documents; and

ii perform any review, audit, or legal duty (statutory or otherwise); and

iii integrate the Services with the Authority’s procurement, operation and support of Authority assets and services falling outside the Contract with which the Services are reasonably associated at anytime during or after the Contract Period; and

iv conduct any UK Governmental purpose which may be connected with the use of the Services by the Authority provided always that such purposes do not extend to the commercial exploitation of such rights during or after the Contract Period;

5.3.3 and, in either case in Clauses 5.3.1 or 5.3.2, ensure that any such licence includes:

5.3.3.1 the right to sub-licence to the Authority or any other party nominated by the Authority; or

5.3.3.2 a direct licence to the Authority, and

5.3.3.3 the ability for the licence or sub-licence to be capable of assignment, novation or transfer to a public body and/or Follow-On Contractor subsequently responsible, or substantially responsible, for performing the obligations of the Authority.

5.4 If after the exercise by the Contractor and/or Subcontractor of reasonable endeavours, a licence as set out in Clause 5.3 or Clause 9.3, as the case may be, is not available, the Contractor and/or Subcontractor shall:

5.4.1 procure the grant to the Authority of a licence of that Third Party IPR or Contractor Related Party IPR on the best available terms closest to those set out in Clause 5.3; and

5.4.2 consult with the Authority’s Representative prior to the grant of that licence set out in Clause 5.4.1 on:

5.4.2.1 the terms of the licence; and

5.4.2.2 whether any such Third Party IPR or any equivalent Third Party IPR or Contractor Related Party IPR which:

i is acceptable to the Contractor on technical grounds; and

ii will not be detrimental to the Contractor’s ability to undertake Asset Provision and/or Service Provision in accordance with the terms of this Contract or disproportionately increase the Contractor’s costs,

is available on better terms in order to mitigate the effect of such a licence.

5.5 Subject to Clause 6.2, any royalties and/or other fees payable to the owners of Third Party IPR and/or IPR owned by a Contractor Related Party in obtaining or exercising any licence or sub-licence under this Clause 5 or any fees which are incurred using any right granted there under in accordance with the terms and conditions of this Contract during the Contract Period shall be for the account of the Contractor.

**6 Transfer of Licences in Third Party IPR on termination or expiry {S21.6}**

6.1 On the Termination Date or the Expiry Date, as applicable, the Contractor and/or Subcontractor shall procure the novation, free of charge, of all licences of Third Party IPR and/or IPR owned by a Contractor Related Party obtained by the Contractor in accordance with Clauses 5.1 to 5.4 to the Authority or, at the Authority’s request, to a Follow-on Contractor, in respect of which it has managed to secure novation rights.

6.2 On the expiry of the Contract Period, the Authority shall become responsible for the payment of royalties or other fees which may be payable under such licences of Third Party IPR and/or IPR owned by a Contractor Related Party for continued use after the end of the Contract Period.

**7 Collaboration {S21.7}**

7.1 Schedule 21 Part D (Collaboration Agreements) shall apply in respect of Collaboration Agreements.

**8 Subcontracting {S21.8}**

8.1 The Contractor shall ensure that the provisions of:

8.1.1 Clause 1 Ownership of IPR;

8.1.2 Clause 2 Licence of Authority Background IPR and Authority Foreground IPR;

8.1.3 Clause 3 Sub licence of Third Party IPR provided by the Authority;

8.1.4 Clause 4 Licence of Contractor Background IPR and Contractor Foreground IPR;

8.1.5 Clause 5 Licence and sub-licence of Third Party IPR provided by the Contractor;

8.1.6 Clause 6 Transfer of Licences in Third Party IPR on termination or expiry; and

8.1.7 Clause 7 Collaboration Agreement and Schedule 21 Part D (Collaboration Agreements);

are, in accordance with Clause 33.30 (Subcontractor IPR), flowed down as obligations on Subcontractors to the Subcontractor(s) of the Contractor. In accordance with Clause 33.30 (Subcontractor IPR), the Authority shall be entitled to directly enforce its contractual rights from the Subcontractors pursuant to its rights under the Contracts (Rights of Third Parties) Act 1999.

8.2 Where the Contractor is procuring products, inventions and/or designs whose ownership shall pass to the Authority as part of the delivery of the Service Provision, the Contractor shall ensure that the provisions of Clauses 9 to 16 are, in accordance with Clause 33.30 (Subcontractor IPR), additionally flowed down to Subcontractors of the Contractor. In accordance with Clause 33.30 (Subcontractor IPR), the Authority shall be entitled to directly enforce its contractual rights from the Subcontractors pursuant to its rights under the Contracts (Rights of Third Parties) Act 1999.

**9 Procurement of commercial off the shelf products {S21.9}**

9.1 The Contractor grants to the Authority, and/or shall procure from the Contractor’s suppliers for the benefit of the Authority; the rights set out in Clause 9.2 below, in respect of commercial off the shelf products and associated requirements as set out in Schedule 14 (Management Plans), Annex C (Procurement Plans).

9.2 The Contractor shall ensure that the Authority has the right to:

9.2.1 copy, amend, extend or have copied, amended or extended any technical documentation called for under the Authority’s Requirements, irrespective of whether in hard or soft format, or any part thereof including any such part when incorporated in any amended or extended version of such technical documentation; and

9.2.2 circulate, use or have used said technical documentation including any amended or extended version and any copies thereof for any United Kingdom Government purpose.

9.3 In respect of any separable software a licence as set out in Schedule 21 Part G (Head Agreement) direct with the Authority.

**10 Procurement of non-software products developed using Authority Funding {S21.10}**

10.1 The Contractor grants to the Authority and/or shall procure from the Contractor’s suppliers for the benefit of the Authority, the rights set out in Clause 10.4 in respect of non-software products developed or modified using Authority funding as set out in Schedule 14 (Management Plans), Annex C (Procurement Plans).

10.2 Clauses 10 (Procurement of non-Software Products Developed using Authority Funding) to 11 (Inventions and Designs) apply to deliverable Information relating to and necessary for the manufacture, operation, repair and maintenance of the Specified Assets.

10.3 All IPR generated in the performance of work under the Contract shall, subject to any rights of the Crown or any third party and to Clauses 1.3 and 10 (Procurement of non-Software Products Developed using Authority Funding) to 11 (Inventions and Designs), belong to the Contractor.

10.4 Subject to the provisions of Clauses 10 (Procurement of non-Software Products Developed using Authority Funding) to 11 (Inventions and Designs), and to the rights of third parties, the Authority and any other United Kingdom Government Department shall have, during the period of the Contract and at all times thereafter, the right, anywhere in the world for the services of and/or use by the United Kingdom Government, to:

10.4.1 copy, in whole or in part, and use any information to which Clauses 10 (Procurement of non-Software Products Developed using Authority Funding) to 11 (Inventions and Designs) apply to;

10.4.1.1 monitor work under the Contract and to inspect, test and evaluate the delivered information, articles and Specified Assets;

Xc z10.4.1.2 define the relevant interfaces to enable information, articles and Specified Assets to interface or cooperate with other equipment and to use the resultant interfaces for the purposes of designing, developing and manufacturing such other equipment;

10.4.1.3 design, develop and produce trainers and simulators relating to information, articles and Specified Assets;

10.4.1.4 design, develop and produce jigs, tools, and test equipment relating to information, articles and Specified Assets;

10.4.1.5 manufacture information, articles and Specified Assets or, where the development of a process or material was specifically called for in the Authority’s Requirements use that process or to produce that material;

10.4.1.6 modify the design of information, articles and Specified Assets, including the carrying out of design investigations, or where the development of a process or material was specifically called for in the Authority’s Requirements;

10.4.1.7 modify that process or material and to produce design, manufacturing, user and other documentation relating to the modifications or to the modified design;

10.4.1.8 dismantle, scrap or otherwise destroy any information, articles and Specified Assets;

10.4.1.9 carry out maintenance and repair of articles and Specified Assets owned or in use by the Authority;

10.4.1.10 design, develop and produce jigs, tools and test equipment for the in-service support of articles and Specified Assets; and

10.4.1.11 operate articles and Specified Assets.

10.5 The Authority shall also have the right to sell, hire, lease or otherwise dispose of anything manufactured in exercise of the rights granted under Clause 10.4, which is either outworn or surplus stock.

10.6 If the Authority sells, hires, leases or otherwise disposes of any information, articles and/or Specified Assets, pursuant to Clause 10.5, the Authority may supply relevant user handbooks and maintainer information supplied under the Contract (or copies thereof) to the recipient and permit the recipient to copy and use such information for operation and maintenance of any such information, articles and/or Specified Assets.

10.7 The rights set out in Clauses 10.4 to 10.6 may be exercised by:

10.7.1 the Authority;

10.7.2 any other United Kingdom Government Department; and/or

10.7.3 any agent acting on behalf of, or a contractor in pursuance of a contract with, the Authority or any such UK Government Department.

10.8 The rights granted to the Authority, and to any other United Kingdom Government Department or to any agent acting on behalf of, or a contractor in pursuance of a contract with, the Authority or any such UK Government Department, under this Contract are additional to any rights under any other contract. The rights include the right to copy and to issue any information, articles and/or Specified Assets the subject of Clauses 10 (Procurement of non-Software Products Developed using Authority Funding) to 11 (Inventions and Designs), as necessary to prospective tenderers for the purposes of establishing their interest in tendering and of preparing tenders for anything to be done or proposed to be done pursuant to Clauses 10.4 or 10.5.

10.9 Except as otherwise provided in the Contract, the Contractor shall not be entitled to receive any royalty or other payment in respect of the exercise of the rights granted under Clauses 10.4 to 10.8.

10.10 The Contractor shall not be entitled, otherwise than by express agreement between the Authority and the Contractor, to enforce any rights against the Authority or any other party in respect of any patented invention, registered design or unregistered design right owned or controlled by the Contractor and used in the exercise of the rights granted under Clauses 10.4 to 10.8.

10.11 Subject to Clause 1.3, nothing in Clauses 10.9 and 10.10 shall affect the rights of the Contractor in or grant to the Authority or any other United Kingdom Government Department any rights in, any IPR not covering the information, articles and Specified Assets.

10.12 Where information, articles and/or Specified Assets, to which Clauses 10 (Procurement of non-Software Products Developed using Authority Funding) to 11 (Inventions and Designs) apply, is used by or for the Authority otherwise than for the purpose for which the Information was supplied, the Contractor shall have no liability whatsoever for any direct or indirect consequences, including losses, damages or injuries caused to the Authority or any third party, arising from its use.

10.13 The Authority shall ensure that any and all release of information, articles and/or Specified Assets to any third party under Clauses 10 (Procurement of non-Software Products Developed using Authority Funding) to 11 (Inventions and Designs) is limited to that reasonably necessary for the task on which the third party is engaged.

10.14 All information, provided to the Authority subject to this Clause 10.1 to 10.26 (Procurement of non-Software Products Developed using Authority Funding) are disclosed in confidence and shall only be copied, disclosed and used in accordance with the provisions of Clauses 10 (Procurement of non-Software Products Developed using Authority Funding) to 11 (Inventions and Designs). The Authority shall ensure that all disclosures of information, to any third party shall be under conditions of confidentiality between the Authority and the third party or, at the Authority’s sole discretion, between the Contractor and the third party where the Authority has accepted use of the conditions concerned.

10.15 At the request of the Authority, or any other United Kingdom Government Department, at any time during the period for which the Contractor is required by this or any subsequent contract to retain the information, articles and/or Specified Assets, the Contractor shall, subject to the availability of resources and within the United Kingdom, provide assistance to the Authority, the other Department or their agents or contractors in exercising the rights granted under Clauses 10 (Procurement of non-Software Products Developed using Authority Funding) to 11 (Inventions and Designs). Such assistance shall be limited to that required to enable a third party of similar skill to the Contractor in the relevant area of technology to interpret any information, articles and/or Specified Assets supplied under the terms of Clauses 10.1 to 10.27 (Procurement of non-Software Products Developed using Authority Funding). The Contractor shall be entitled to payment by the Authority or other United Kingdom Government Department on fair and reasonable terms for any such assistance provided.

10.16 Any information supplied subject to Clauses 10 (Procurement of non-Software Products Developed using Authority Funding) to 11 (Inventions and Designs) may be marked by the Contractor with a copyright and/or other restrictive legend provided that the legend acknowledges the Authority’s rights under Clauses 10 (Procurement of non-Software Products Developed using Authority Funding) to 11 (Inventions and Designs). Any such marking shall be perpetuated in any copies of the information, articles and/or Specified Assets made by the Authority or any other United Kingdom Government Department or its agents or contractors.

10.17 The Contractor shall not:

10.17.1 sell any articles developed under the Contract, otherwise than for the purposes of and to the United Kingdom Government; or

10.17.2 grant any licence to manufacture such articles or any materials or processes the design or development of which was called for in the Schedule 2 (Statement of Requirement);

without first agreeing with the Authority the sum or sums (if any) which should reasonably be paid to the Authority by the Contractor in respect of such sale or grant having regard, among other things, to the amounts paid or payable to the Contractor by the Authority under the Contract.

10.18 During the Contract Period and thereafter for not less than three years, or such other period as may be specified in the Contract:

10.18.1 the Contractor shall maintain at least one copy (hereinafter called the Control Copy) of all deliverable information to which Clauses 10 (Procurement of non-Software Products Developed using Authority Funding) to 11 (Inventions and Designs) apply;

10.18.2 the Control Copy shall be maintained in media and formats agreed to by the Authority, and it shall not be altered by the Contractor in any way which changes the build standard except as authorised in writing by the Authority. The Control Copy shall be deemed to be the property of the Authority, and the Authority may take possession of it notwithstanding any administration, receivership, winding-up or liquidation of the Contractor or any transfer of its assets to any third party; and

10.18.3 copies of all or any information held on the Control Copy shall be supplied as required from time to time by the Authority at the Authority’s expense.

10.19 If the Contractor enters into another contract with the Authority regarding maintenance of the Control Copy, the Contractor’s obligation under Clause 10.18 shall be governed by that contract at the end of the period referred to in Clause 10.18. Otherwise he may destroy or amend the Control Copy as he sees fit, but before destroying the Control Copy he shall offer to supply it to the Authority and give the Authority 60 days to confirm such supply.

10.20 Clauses 1.3, 10.21 to 10.26. shall apply to all copyright works to include any works, data or other materials in which a database right subsists, which are generated pursuant to the Asset Provision Requirements, or Service Provision Requirements, other than those works encompassed by the provisions of Clauses 10.1 to 10.19.

10.21 Subject to Clause 1.3, the Contractor shall use all reasonable endeavours to ensure that such copyright in any work generated under the Contract shall be the property of and vest in the Contractor, subject to the rights of third parties in pre-existing works.

10.22 The Contractor agrees not to publish any such copyright work generated under the Contract without the consent in writing of the Authority. The Authority will not raise objection to publication unless delay or limited publication is considered by the Authority to be in the national interest. The Authority will review, upon request by the Contractor, any such restriction on publication.

10.23 Subject to Clause 1.3, the Authority shall have, in respect of any copyright work to which Clause 10.20 applies, a royalty-free, perpetual licence:

10.23.1 to copy the work and to circulate and use the work or any copy thereof within any United Kingdom Government Department (which term includes the United Kingdom Armed Forces) provided that no part of the work nor any copy thereof shall, except with the prior written permission of the Contractor or pursuant to Clauses 10.23.2 or 10.24.3, be made available to any third party;

10.23.2 to issue the work or any part of the work or any copy of the work or any part thereof to another supplier or potential supplier to the United Kingdom Government for the purpose of use only under a contract, or tendering for a proposed contract, for a United Kingdom Government purpose, provided that the supplier or potential supplier is placed under an obligation which restricts disclosure and use of such work to the said purposes;

10.23.3 to issue the work or any part of the work or any copy thereof to a foreign government(s) or inter-government organisation(s) in pursuance of information exchange arrangements for defence purposes, provided that the recipient is placed under an obligation not to use such work for other than information purposes or disclose it to a third party.

10.24 Subject to Clause 10.25, as soon as the Contractor becomes aware that any such copyright work or part thereof delivered or proposed to be delivered is a work subject to special conditions or any third party rights known to the Contractor, or is a work or part thereof not generated under the Contract, the Contractor shall:

10.24.1 inform the Authority;

10.24.2 upon delivery, appropriately mark such work or part thereof to identify the same and indicate the relevant conditions or rights; and

10.24.3 ensure that the Authority shall enjoy the rights as set out in Clause 10.23 in such appropriately-marked works.

10.25 The Contractor may mark or include in any copyright work to which Clause 10.24 applies a copyright notice provided that such copyright notice acknowledges the Authority’s rights under this contract. Any such notice shall be perpetuated in any copies of such work made by the Authority or any other United Kingdom Government Department or its agents or contractors.

10.26 Clauses 10 (Procurement of non-Software Products Developed using Authority Funding) to 11 (Inventions and Designs) shall constitute an agreement to the contrary for the purposes of Section 48(5) of the Copyright, Designs and Patents Act 1988.

**11 Inventions and Designs – Crown Rights and Ownership of Patents and Registered - Designs Design or invention made under or resulting from the Contract {S21.11}**

11.1 The provisions of Schedule 21 Part E (Contracts for Work Classified as Official or Higher) and/or Schedule 21 Part F (Invention & Designs), shall apply in relation to any invention or design made in the course of or resulting from work carried out by the Contractor under the Contract (hereinafter respectively referred to as the invention and the design).

**12 Procurement of software products developed using Authority funding {S21.12}**

12.1 For the purposes of this Clause 12:

12.1.1 **Software** shall mean all or any part of any:

12.1.1.1 Object Code (as defined below);

12.1.1.2 Source Material (as defined below);

12.1.1.3 associated user documentation; and

12.1.1.4 anything further specified as Software in the Authority’s Requirements;

12.1.2 **Deliverable Software** shall mean all or any of the Software delivered or to be delivered or which forms an integral part of any Article delivered or to be delivered by the Contractor to the Authority in accordance with the requirements of the Contract;

12.1.3 **Object Code** shall mean machine code executable by a data processing system;

12.1.4 **Source Material** shall mean that material, taken individually or in any combination thereof, which is:

12.1.4.1 Source Code, that is to say, a representation of Object Code in or readily translatable into a form suitable for human understanding and transformable into the Object Code;

12.1.4.2 a representation or identification of the data processing system configuration, computer programs, procedures, rules and associated documentation generated by or for the Contractor under the Contract;

12.1.4.3 a representation or identification of the data processing system configuration, computer programs, procedures, rules and associated documentation used to generate the Object Code, but not generated by or for the Contractor under the Contract, when in sufficient detail and suitable form, subject to sub-clause 12.4.2, to permit replication of such data processing system configuration, computer programs, procedures, rules and associated documentation independently of the Contractor;

12.1.4.4 subject to Clause 12.4.2, and to the extent necessary to enable modification and testing of the Object Code independently of the Contractor, documentation on the specification, design rules, design, testing, analysis, function, usage and capabilities of the Object Code and of the material at Sub-Clause 12.1.4.1, 12.1.4.2 and 12.1.4.3;

12.1.5 **to modify** shall mean to change or alter whether by means of adaptation, translation, extension, reduction by means of merging with other material, or by any other means, and the words ‘modified’ and ‘modification’ shall be construed accordingly;

12.1.6 **the Relevant Period** shall mean

12.1.6.1 the currency of the Contract plus a period of six years from the completion of the Contract or such other period as may be specified in the Contract. Completion of the contract shall be deemed to occur on the date when all work under the Contract is completed;

12.1.6.2 The Contractor shall ensure that the relevant period in any Subcontract shall expire on the same date as that applicable under Clause 12.1.6.1.

12.1.7 **IPR** means Intellectual Property Rights;

12.2 Subject to Clause 16 (The Authority’s rights to have access to interface information), the Contractor shall ensure that all IPR in any Software generated under the Contract shall be the property of and vest in the Contractor, subject to any pre-existing rights of the Crown or of third parties.

12.3 The following user rights and related terms apply:

12.3.1 the Contractor grants to the Authority and all other United Kingdom Government Departments to the extent that he has the right to do so, a royalty free, perpetual and irrevocable licence:

12.3.1.1 to copy, modify and use any Deliverable Software for the services of the Authority and/or the United Kingdom Government, whether by themselves, their agents or their contractors;

12.3.1.2 to issue any Deliverable Software or copies of any Deliverable Software, in whole or in part, to any supplier or potential supplier of the Authority and/or to the United Kingdom Government for the purpose of use only in connection with a contract or the tendering for a proposed contract for a United Kingdom Government purpose.

12.3.2 The Contractor shall as soon as he becomes aware:

12.3.2.1 notify the Authority of any limitations as to the use of any Deliverable Software, the IPR in which are owned by the Contractor or a third party; and

12.3.2.2 give to the Authority full details of the provisions of such limitations and any associated cost.

12.3.3 Except as provided for by Clause 12.5.1.2, the Authority shall have a right to exercise any of the rights referred to at Clause 12.3.1 in respect of Deliverable Software notified to the Authority in accordance with Clause 12.3.2 the IPR in which are owned by the Contractor, subject to fair and reasonable terms. The exercising of any such right shall not be conditional upon prior agreement on the need for, the amount of or the making of any payment therefor.

12.3.4 The Contractor shall, if requested to do so by the Authority, endeavour to secure for the Authority those rights listed at Clause 12.3.1 in Deliverable Software notifiable to the Authority in accordance with Clause 12.3.2 the IPR in which are owned by a third party on terms and conditions to be agreed with or approved by the Authority.

12.3.5 Subject to the provisions of Clause 12.3.2 but notwithstanding the provisions of clause 12.6.2, the Contractor grants to the Authority the right to issue the Deliverable Software, in whole or in part, or a copy thereof, only to the government(s) of the nation(s) prescribed in the Contract, for information only, in pursuance of information exchange arrangements for defence purposes, provided that:

12.3.5.1 the recipient government is placed under an obligation not to:

i use the released Deliverable Software other than for information purposes; and

ii disclose the Deliverable Software to a third party;

12.3.5.2 where the supply of Source Code is contemplated, and subject to any pre-existing rights of the Authority, this Clause 12.3.5 shall only apply to the work or any part of the work or any copy of the work or any part thereof if such work or part thereof is generated under the Contract.

12.4 In respect of Software, other than Deliverable Software, generated under the Contract:

12.4.1 if, during the Relevant Period, the Authority requests the Contractor to deliver to the Authority any Software generated under the Contract which is not Deliverable Software, then:

12.4.1.1 such Software shall be delivered by the Contractor to the Authority at a reasonable charge based on the cost of providing such Software as a minimum as it exists at the date on which the Authority makes its request to the Contractor; and

12.4.1.2 from that date of delivery by the Contractor, such Software shall be deemed to be Deliverable Software (except for the purposes of Clause 12.10 provided always that the Authority shall not be liable to pay more than once for the supply of Software required by the Authority); and

12.4.1.3 delivery to the Authority shall not be conditional upon prior agreement on the need for, the amount of, or the making of any payment.

12.4.2 Notwithstanding anything to the contrary herein, other than in respect of any actual or alleged infringement of copyright, breach of confidence or IPR-related breach of contract, the Contractor shall have no liability whatsoever in respect of any consequence arising from the possession or use by or on behalf of the Authority of any such Software which is deemed to be Deliverable Software pursuant to Clause 12.4.1.

12.5 In respect of subsequent deliveries of Software:

12.5.1 Subject to Clause 12.5.3, during the Relevant Period, the Contractor shall at the request and to the requirements of the Authority and to the extent it is able to do so in relation to third party software:

12.5.1.1 deliver further copies of the Deliverable Software to the Authority at a reasonable charge based on the cost of providing such copies;

12.5.1.2 where the Contractor is unable or unwilling to support, maintain or modify the Deliverable Software, deliver all Software, including such records as are specified in Clause 12.5.3, necessary for the Authority, its contractors or agents to independently support, maintain or modify the Deliverable Software for the services of the United Kingdom Government. All such Software shall be supplied on fair and reasonable terms, but delivery shall not be conditional upon prior agreement on the need for, the amount of or the making of any payment therefor.

12.5.2 The Contractor shall retain for the Relevant Period a copy of such Software as is required for the performance of his obligations under Clause 12 (Procurement of software products developed using Authority funding).

12.5.3 If the Software generated under the Contract is subsequently modified by or on behalf of the Contractor for the Authority, the Software to be retained under Clause 12.5.2 shall be the latest modified version and any other version that may be specified by the Authority no later than the time of delivery of the succeeding modified version. The Contractor shall additionally maintain sufficient records to enable the changes introduced by each such modification to be identified so as to provide traceability back to the version originally accepted by or for the Authority.

12.6 The Authority undertakes to:

12.6.1 receive and hold in confidence all Deliverable Software;

12.6.2 enforce all reasonable regulations and precautions in relation to confidentiality upon the officers, agents, contractors and employees of the Authority and of all other United Kingdom Government Departments in order to preserve the confidential nature of the Deliverable Software;

12.6.3 not disclose the Deliverable Software outside United Kingdom Government Departments and establishments, except as expressly permitted by any other provision of this Contract or otherwise expressly agreed in writing by the Contractor.

12.7 Before disclosing any Deliverable Software outside United Kingdom Government Departments and establishments, the Authority shall, subject to:

12.7.1 Clauses 12.8 and 12.9;

12.7.2 the provisions of Schedule 21 Part D (Collaboration Agreements) (called up by clause 7.1) and/or

12.7.3 agreement in writing by the Contractor stating that this Clause 12.7 shall not apply:

12.7.3.1 ensure that the recipient enters into a confidentiality agreement with the Contractor under which the recipient’s use of the Deliverable Software is limited to use for the services of the United Kingdom Government. A confidentiality agreement shall be concluded within 30 days, or whatever other period as may be mutually agreed by the Authority and the Contractor, of the Authority giving written notice to the Contractor of his intention to make the disclosure. If a confidentiality agreement is not concluded within that period then, notwithstanding the absence of a confidentiality agreement, the Authority shall have the right to make the disclosure on condition that in making the disclosure, the Authority shall place upon the recipient an obligation of confidence and a limitation of use as aforesaid. In these circumstances the Authority shall:

i consult with the Contractor on the measures to be employed to protect any trade secrets, know-how or other information in the Deliverable Software;

ii have regard to any representation made by the Contractor at any time before disclosure takes place as to the protection of any trade secrets, know-how or other information in the Deliverable Software; and

iii give consideration to any proposals the Contractor may make for:

a the preparation of a special version of the Deliverable Software;

b the disclosure of the Deliverable Software in parts or stages; and

c restrictions on the circulation, copying or use of the Deliverable Software to be disclosed.

12.8 The obligations imposed by Clauses 12.6 and 12.7 of this Clause shall not apply to Deliverable Software that:

12.8.1 is, or becomes, rightfully in the possession of the Authority without relevant restrictions;

12.8.2 is in or enters the public domain without breach of the Contract and is available for unrestricted use;

12.8.3 is received by the Authority from a third party who himself has the right to disclose without relevant restrictions;

12.8.4 is or was independently developed by the Authority;

12.8.5 can be disclosed by the Authority under Clause 12.9;

12.8.6 is approved by the Contractor, in writing, for unrestricted release by the Authority;

12.8.7 is required to be disclosed by Legislation.

12.9 Subject to Clause 12.10, notwithstanding the provisions of this Contract relating to the disclosure of the Deliverable Software, the Authority is entitled to disclose the Deliverable Software immediately where:

12.9.1 it considers that it is in the national interest to disclose the Deliverable Software; and

12.9.2 after notification in writing to the Contractor by a senior civil servant at One Star Level of the Authority in person holding a commercial delegation.

12.10 Unless the Authority considers immediate disclosure is in the national interest, the Authority will endeavour to give the Contractor a reasonable opportunity to make representations about such disclosure. However, the Authority’s decision shall be final and conclusive. In making disclosure in this circumstance the Authority shall place upon the recipient an obligation of confidence and a limitation of use as set out in Clauses 12.6 and 12.7.

12.11 In respect of output from the Deliverable Software:

12.11.1 subject to the rights of the Contractor and third parties, the Authority shall have the right, free of charge, to use in any manner and for any purpose anything which has been produced by or for the Authority with the aid of any Deliverable Software provided that if the result so produced reproduces or discloses the whole or a significant part of any of the Software used or generated in the performance of this Contract then such shall be deemed to be Deliverable Software and subject to the provisions of the Contract. If, however, the material produced contains other information, the IPR in which are owned by the Contractor or a third party and in which the Authority has no user rights, then the conditions under which that information has been made available to the Authority shall prevail in respect of such other information; and

12.11.2 if Deliverable Software is required by the Authority under the Contract for the purpose of producing an output for incorporation in a data processing system, then, notwithstanding Clause 12.11.1 of this contract or any other provision of the Contract, the Authority shall have the right to use to have used, free of charge, such output for the services of the United Kingdom Government.

12.12 The Contractor may make or include in any Deliverable Software to which this Clause applies a copyright notice provided that such copyright notice acknowledges the Authority’s rights under this contract. Any such notice shall be perpetuated in any copies of the Deliverable Software made by the Authority or any other United Kingdom Government Department or its agents or contractors.

12.13 The Contractor shall agree with the Authority the sum or sums (if any) which shall be paid to the Authority in respect of Software generated under the Contract having regard to the amounts paid or payable to the Contractor by the Authority under the Contract before:

12.13.1 assigning, selling or otherwise disposing of any IPR subsisting in such Software;

12.13.2 disclosing, licensing or selling any material reproducing such Software;

12.13.3 using any such Software for the purpose of generating any Software for disclosure, licensing or sale to a third party.

12.14 Should Software and/or Deliverable Software generated under the Contract be modified at any time, then each party shall enjoy the same rights and be bound by the same obligations provided by this Clause in respect of any of those parts of the modified Software which were present in the Software prior to modification.

12.15 This Clause shall constitute an ‘agreement to the contrary’ for the purposes of Section 48(5) of the Copyright, Design and Patents Act 1988.

**13 Procurement of non-separable pre-existing software products {S21.13}**

13.1 In respect of any non-separable software delivered but not deemed developed under the Contract:

13.1.1 in consideration of the Authority placing the Contract with the Contractor, the Contractor grants to the Authority a royalty-free, non-exclusive, non-transferable, perpetual licence to:

13.1.1.1 copy, modify (to the extent modifications may occur during normal use of the delivered software through the configuration features contained therein), use; and

13.1.1.2 have copied, modified, or used, the delivered software (but excluding source code) and associated information in respect of products with which it was supplied for the services of the United Kingdom Government; and

13.1.1.3 issue any such delivered software and associated information to any contractor or potential contractor in connection with a contract or the tendering for a proposed contract for any United Kingdom Government purpose, but only when the Contractor or potential Contractor has entered into a non disclosure agreement with the Contractor in the form of Schedule 21 Part A, (Form of Confidentiality Undertaking).

13.2 Subject to Clause 13.3, the licence granted to the Authority under Clause 13.1.1:

13.2.1 is limited to the operation of the products supplied and for using the articles that include embedded deliverable software in other systems as required from time to time by the Authority; and

13.2.2 does not extend to using the delivered software on a stand-alone basis and/or disembodied from the hardware.

13.3 The Contractor agrees that where the Authority requires a licence in relation to the delivered software for use on terms outside of the scope of the licence granted under Clause 13.1.1, this will be licensed to the Authority on fair and reasonable terms.

**14 NOT USED {S21.14}**

**15 Copyright Clause – technical support contractors {S21.15}**

15.1 Subject to Clause 1.3 and notwithstanding any restrictions which may otherwise apply under the Contract, subject to the rights of third parties, the Contractor grants to the Authority in respect of any copyright work to which this Contract applies, a royalty-free, perpetual, irrevocable, licence to copy and use, or have used, by the Authority and its technical support contractors, the work or any copy thereof for the purposes of:

15.1.1 any Required Action;

15.1.2 monitoring work under this Contract and/or any follow-on contract(s) which the Authority places with the Contractor for the performance of further work towards the development of systems and equipments supplied or to be supplied by the Contractor pursuant to this Contract or any follow-on contract(s);

15.1.3 the supply and/or support of that system and equipment;

15.1.4 inspecting, testing and evaluating information and articles delivered under the Contract; and/or

15.1.5 evaluating the information contained in the work, information and articles delivered under the Contract with a view to procuring equipment for use with the systems and equipments supplied or to be supplied by the Contractor pursuant to this Contract and/or any follow-on contract(s), (hereinafter called Permitted Purposes), provided that the Authority shall ensure that:

15.1.5.1 access to the information contained in the work is confined to those employees of its technical support contractors who require access for the Permitted Purposes;

15.1.5.2 access by an employee of a technical support contractor shall not be permitted until the technical support contractor has entered into a non-disclosure agreement with the Authority; and

15.1.5.3 no part of the work or any copy thereof shall otherwise be made available to any third party, without prior written notice to the owner of the information.

**16 The Authority’s rights to have access and use of Interface Information {S21.16}**

16.1 Notwithstanding those rights under Clause 10 (Procurement of non-software products developed using Authority Funding), the Authority’s right to use Interface Information contained within deliverable documentation is governed by Clauses 16.1 to 16.15.

16.2 For the purposes of this Clause 16 the following terms shall have the following meanings:

16.2.1 Article means part or the whole of any article which the Contractor is required under the Contract to supply;

16.2.2 Information means for the purposes of this Clause 16 (The Authority’s rights to have access and use of Interface Information), technical information or other information relating to Articles, processes or materials whether in human readable form or in machine readable form, or in any other form;

16.2.3 Interface means those tangible or intangible features of a system, equipment, module or application—including those outlined in ISO 7498 (Basic reference Model for Open Systems Interconnection) which must be compatible with those tangible or intangible features of one or more other systems, equipments, modules or applications in order to enable their successful integration and interoperation;

16.2.4 Interface Information means the Information which is necessary and sufficient to describe, define and implement an Interface, including its operating and physical features.

16.3 The Contractor shall make Interface Information available to the Authority as it relates to a production standard Article.

16.4 Subject to Clause 16.5, at the request of the Authority, the Contractor shall, in respect of any Interfaces, provide, free of charge:

16.4.1 the Interface Information in paper form; and

16.4.2 the relevant API object code implementation, to the Authority in order to assist:

16.4.2.1 the Authority with any Required Action; and

16.4.2.2 a third party (receiving Interface Information in accordance with Clauses 16.) in the designing, developing, integration and manufacture of applications and equipment which are intended to make use of the Interface Information in order to enable the Articles to interface or cooperate with other equipment.

16.5 The API object code shall be provided under Clause 16.4 at no charge in the first instance. The Contractor shall be reimbursed for the reasonable costs of compilation and delivery for any subsequent requests for the same API object code to be provided. Subject to the rights of third parties and to the provisions of Clause 16, the Authority shall have the following rights to copy and use, and have copied and used, the Interface Information.

16.6 Subject to Clause 16.7, the Authority shall have a royalty-free licence to copy Interface Information and to circulate, use, or have used the copies for any UK Governmental Purpose. Subject to any pre-existing rights, the Contractor shall use all reasonable endeavours to ensure that it owns the rights in any Interface Information.

16.7 Interface Information shall only be passed to and used by third parties, where the third party is a tenderer or contractor, under conditions of confidentiality being Schedule 21 Part A (Form of Confidentiality Undertaking), or an applicable narrative provision as the case may be or under appropriate confidentiality conditions where the recipient is a foreign government or NATO.

16.8 Where the Authority has no right to release Interface Information to other than its technical support contractors, or no right to receive Interface Information at all, then the Contractor will co-operate with the Authority’s contractors by supplying Articles or accepting directed Subcontracts, on fair and reasonable terms for work in relation to the provision of Articles or modified Articles.

16.9 The rights of the Authority under Clauses 16.9 to 16.15 shall be available for as long as the Articles remain in service with the UK Armed Forces or any UK Government Department, and shall extend solely to activities pursuant to a UK Government requirement (which includes provision to NATO or a foreign government) but specifically excluding overseas sales by the UK Government.

16.10 The grant of rights to the Authority under Clauses 16.6 shall be subject to the Authority, ensuring that Information released to any third party is limited to that necessary for the purpose for which the third party is engaged or in the case of NATO or a foreign government limited to that for interoperability between the UK and those organisations.

16.11 The Contractor shall provide to the Authority one copy of all Interface Information promptly upon the request of the Authority.

16.12 The Contractor shall retain a copy of all Interface Information (including API Object code) which copy shall be owned by the Authority and shall only be amended with the prior written consent of the Authority.

16.13 Subject to Clause 16.14, if the Authority or a third party on its behalf requires any of the Interface Information (except for a first request for specific API Object Code which shall be free) from the Contractor beyond the copy provided pursuant to Clause 16.11, then the Contractor shall provide such Interface Information to the Authority or the third party promptly.

16.14 Where the Authority requests Interface Information pursuant to Clause 16.13, the Contractor shall be reimbursed for the costs of compilation and delivery of that Interface Information. The provision and rights to use Interface Information shall be in accord with Clause 16.

16.15 Notwithstanding the free right for the Authority to modify or have modified Interface Information in accord with Clause 16.6, where the Authority requires and requests that the Contractor modifies the Articles for the purposes of integration and interoperation, then to the extent that the Contractor owns or controls the relevant Information the Contractor shall promptly provide the modification on fair and reasonable terms which are consistent with the Authority’s standard pricing conditions.

**17 Reciprocal IPR Indemnity {S21.17}**

17.1 The Contractor shall fully and effectually indemnify and hold harmless the Authority on demand from all claims made against the Authority relating to:

17.1.1 any actual or alleged infringement by the Contractor or Contractor Related Parties of IPR arising:

17.1.1.1 from the Contractor’s performance of the Contract and the Authority’s receipt and use of the Services and exercise of its rights granted under the Contract; or

17.1.1.2 in respect of any item supplied under the Contract or otherwise in the performance of the Contract;

17.1.2 misuse of any Confidential Information by the Contractor in performing the Contract; and

17.1.3 provision to the Authority or Authority Related Parties of any information or material which the Contractor or Contractor Related Parties does not have the right to provide for the purpose of the Contract.

17.2 The Authority shall fully and effectively indemnify and hold harmless the Contractor on demand from all claims relating to:

17.2.1 infringement or alleged infringement by the Contractor or Contractor Related Parties of any IPR in respect of any item provided by the Authority for the purpose of the Contract but only to the extent that the item is used for the purpose of the Contract; and

17.2.2 alleged misuse of any Third Party Confidential Information by the Contractor as a result of use of information provided by the Authority for the purposes of the Contract, but only to the extent that Contractor’s use of that information is for the purposes intended when it was disclosed by the Authority.

17.3 The Indemnity at Clauses 17.1 and 17.2 shall not apply in respect of a claim:

17.3.1 that arises from any use by or for the Indemnified Party of Third Party IPR in combination with any item not supplied or approved by the Indemnifying Party where, were it not for that use in combination, a claim would not have arisen; or

17.3.2 that arises from the use of Background IPR or Foreground IPR or Third Party IPR by the Indemnified Party otherwise than in accordance with the terms of this Contract and any applicable licence or sub-licence conditions provided that these have been notified to the Indemnified Party’s Representative on the grant of the applicable licences or sub-licence; or

17.3.3 that arises from any modification, updating or development carried out by or for the Party to any item supplied by a Party under this Contract, where such modification, updating or development is not authorised or approved by the supplying Party.

**Schedule 21**

Intellectual Property, Information and Disclosure

**Part A**

**Form of Confidentiality Undertaking**

**Ministry of Defence**

**Confidentiality Agreement**

THIS AGREEMENT is made the ………………………………. day of ………………………………….. 200.

BETWEEN

[hereinafter called “the Holder”] of the one part, AND

[hereinafter called “the Recipient”] of the other part.

WHEREAS

1. The Holder is in possession of certain valuable Proprietary Information relating to the delivery of the design, procurement and installation of military air traffic management capability and the provision of certain services in support thereof (the “Purpose”).
2. The Recipient is willing to receive and hold the above mentioned Proprietary Information subject to the terms of this Agreement;

NOW the parties to this Agreement agree that in consideration of the disclosure of Proprietary Information by the Holder to the Recipient:

1. *As used in this Agreement the term “Proprietary Information” shall mean any information, whether in writing or other documentary form, in oral or visual or machine readable form, or in the form of samples or models, disclosed by one Party (the “Holder”) to the other Party (the “Recipient”), provided that:*

*1.1 where such information is in writing or other documentary form, it is clearly and conspicuously marked at the time of disclosure as proprietary or commercially sensitive (for example with a marking such as “Proprietary” or “Commercial-in-Confidence”) and disclosed under the aegis of this Agreement; or*

* 1. *where such information is disclosed in oral or visual or machine readable form, or in the form of samples or models, it is designated proprietary or commercially sensitive at the time of disclosure and is confirmed by the Holder as such in documentary form within thirty (30) days from its being disclosed, in which event all the protections and restrictions in this Agreement as to the use and disclosure of said information shall apply retrospectively during the said period of thirty days.*

*Proprietary Information shall also include any information which can be obtained by examination, testing or analysis of any hardware, software or material samples provided by the Holder, notwithstanding that the requirements for marking and designation referred to above shall not have been fulfilled.*

1. The Recipient shall, subject to the provisions of this Agreement, hold the Proprietary Information under conditions of strict confidence and shall not use, copy, or disclose to other than the Holder the Proprietary Information in whole or in part in any manner or form for other than the defined ‘Purpose’.
2. The Recipient may disclose the Proprietary Information only to those of its officers and employees as need to know the information for the Purpose. The Recipient shall take all reasonable precautions necessary to ensure that all Proprietary Information disclosed to the Recipient by or on behalf of the Holder under or in connection with the Purpose is treated in the strictest confidence, including ensuring that it:
   1. is disclosed to its employees only to the extent necessary for the performance of a Contract or work directly related to the Purpose; and
   2. is treated in confidence by its employees and not disclosed except with prior written consent of the Holder or used otherwise than for the purpose of performing work or having work performed for the Holder for defined the Purpose.
3. The Recipient shall ensure that its employees are aware of its obligations under this Agreement and its arrangements for discharging those obligations before they receive Proprietary Information and take such steps as may be reasonably practical to enforce such arrangements.
4. The Recipient undertakes to respect and observe all regulations and restrictions relating to any security classification called up in the Proprietary Information.
5. The Recipient shall not disclose the Proprietary Information to any third party without the Holder’s prior written approval. Where such approval is granted, the Recipient shall before passing the Proprietary Information to the third party, obtain from the third party an agreement on behalf of the Holder in the same form as this Agreement, and forward it promptly to the Holder.
6. The restrictions and obligations in this Agreement as to the use and disclosure of Proprietary Information shall not apply to any information which the Recipient can show:
   1. is already known to the Recipient (without restrictions on disclosure or use) prior to its disclosure to the Recipient directly or indirectly from the Holder; or
   2. is received by the Recipient without any obligation of confidence from a third party having a right to disclose it; or
   3. has been generated independently by the Recipient; or
   4. is in or enters the public domain otherwise than by breach of this or another undertaking (e.g. already published or otherwise publicly available);

provided the relationship to the remainder of the Proprietary Information is not revealed.

1. Nothing contained in this Agreement shall be construed as:
   1. diminishing obligation of confidence, whether arising under contract or otherwise, between the Recipient and the Holder in respect of the Proprietary Information; or
   2. constituting or implying any transfer, assignment or licence or rights in any Proprietary Information, whether or not identified in Appendix 1, owned by the Holder, other than that specified in paragraph 2; or
   3. diminishing the rights either the Recipient or the Holder has under Statue; or
   4. implying that a further contractual arrangement will be concluded between the Recipient and the Holder; or
   5. overriding or prejudicing any Government security classification or export control regulations applicable to any part of the Proprietary Information.
2. The Recipient hereby acknowledges that the Proprietary Information is disclosed to the Recipient by the Holder on the basis that the disclosure does not constitute a warranty as to the accuracy of the Proprietary Information or the suitability thereof for any purpose whatsoever and the Recipient will bring no claim against the Holder in relation to the Information or any use of it.
3. All Proprietary Information disclosed hereunder, and any copies thereof made by the Recipient, shall be returned promptly by the Recipient to the Holder on receipt of the Holder’s written request therefore. The same applies on completion or termination of the Purpose and the related contracts.
4. If the Recipient is in breach of the terms of this Agreement the Recipient shall indemnify and keep indemnified the Holder from and against any claims, demands, liabilities, expenses, damages or losses incurred or suffered by the Holder by reason of or in connection with any such breach.
5. Neither party shall be in breach of this Agreement where it can show that any disclosure of Information was made solely and to the extent necessary to comply with a statutory, judicial or parliamentary obligation. Where such a disclosure is made, the party making the disclosure shall ensure that the recipient of the Proprietary Information is made aware of and asked to respect its confidentiality. Such disclosure shall in no way diminish the obligations of the parties under this Agreement.
6. The Authority shall not be in breach of this Agreement where it can show that any disclosure of Information is made solely and to the extent necessary to comply with the Freedom of Information Act 2000 (“the Act”) or the Environmental Information Regulations 2004 (“the Regulations”). To the extent permitted by the time for compliance under the Act or the Regulations, the Authority shall consult the other party where the Authority is considering the disclosure of Information under the Act or the Regulations and, in any event, shall provide prior notification to the other party of any decision to disclose the Information. The other party acknowledges and accepts that its representations on disclosure during consultation may not be determinative and that the decision whether to disclose Information in order to comply with the Act or the Regulations is a matter in which the Authority shall exercise its own discretion, subject always to the provisions of the Act or the Regulations.
7. This Agreement is personal to the Holder and the Recipient and shall not be assigned by either one of them without the prior written consent of the other which shall not be unreasonably withheld or delayed; provided that in all cases of assignment the assignee effectively undertakes to perform all the obligations of the assignor as though the assignee had been an original party to this Agreement.
8. This Agreement (including Appendix 1) sets out the entire agreement between the Holder and the Recipient in connection with the subject matter of this Agreement. However, nothing in this Agreement shall affect the rights or obligations of either party in relation to the Holder in respect of the Information.
9. This Agreement shall remain in force for the duration of the DFRP contract and any extensions thereof after which it will terminate except to the extent that it is superseded by another relevant agreement or contract between the Parties. The obligations and restrictions relating to the disclosure and use of Proprietary Information shall survive the termination of this Agreement for a period of seven (7) years.
10. Neither this Agreement nor any of its provisions shall be amended or waived unless agreed to in writing by duly authorised representatives of the Holder and the Recipient. No waiver of any provision of this Agreement shall constitute a waiver of any other provision(s) or of the same provision on another occasion.
11. A person who is not a party to this Agreement shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement. This clause does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.
12. This Agreement is made subject to English law and to the exclusive jurisdiction of the English courts, and shall be effective as from the date of the lattermost signature.

Signed on behalf of Signed on behalf of

the Recipient by: the Holder by:

In the capacity of: In the capacity of:

Date: Date:

**INFORMATION TO BE PROTECTED UNDER THIS CONTRACT**

*[To be completed before the relevant agreement is executed]*

**Part B**

**Commercially Sensitive Information**

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| --- | --- | --- | --- |
|  | **Column 1**  **Details of Commercially Sensitive or Confidential Information not be disclosed in the event of request under the Freedom of Information Act 2000** | **Column 2**  **Duration of exemption from disclosure under the Freedom of Information Act 2000 FOIA** | **Column 3**  **Contractor's explanation of why Commercially Sensitive or Confidential Information should be exempt from disclosure under the Freedom of Information Act 2000 FOIA** |
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**Part C**

**Deliverable Documents**

In accordance with Clause 16, the Contractor shall provide each of the documents below for any Specified Asset delivered as part of the relevant Service Level. Following Full Operating Capability the Contractor shall review and update these documents at least annually or as a result of a change to any aspect of the support arrangement, including, to incorporate any Specified Assets provided in the Second Price Period, Third Price Period and Fourth Price Period.

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| **Document** | **Clarification Notes** |
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**Part D**

**Collaboration Agreements**

* 1. Subject to the rights of third parties arising otherwise than from work performed under the Contract and subject to the provisions of paragraphs 1.1 to 1.11 of this Part D, the Authority shall have the right under this Part D to:
     1. copy any copyright work and/or other IPR furnished by the Contractor and/or Sub-contractor under the Contract, the copyright in which belongs to the Contractor or Sub-contractor; and
     2. issue and/or disclose for information only such IPR, copyright work or copy,

in both cases, for the purpose of promoting the establishment of a Collaboration Agreement and for the purpose of technical oversight of a Collaboration Agreement.

* 1. The Contractor shall, if requested by the Authority within the period prescribed in the Contract, provide the Authority with such assistance and further information as the Authority may reasonably require for issue, disclosure, promotion and/or technical oversight set out in paragraph 1.1 a reasonable charge for this service, based on the documented cost of providing it, will be borne by the Authority.
  2. If the Authority agrees that any results produced under the Contract shall be utilised in work undertaken or shared by or on behalf of another party to a Collaboration Agreement then, to the extent of the Contractor’s right to do so and on fair and reasonable terms approved by the Authority, the Contractor shall, if requested by the Authority, within the period prescribed in the Contract, make available under licence to that other party to the Collaboration Agreement or his nominee, for use for the purpose provided in the Collaboration Agreement only:
     1. any information which the Authority is entitled to receive under the Contract; and
     2. any technical assistance and background information necessary for the effective application of such information.
  3. If disclosure by the Authority under paragraph 1.1 of any copyright work would affect any rights of the Contractor or third parties arising otherwise than from work performed for the purposes of the Contract, the Contractor shall have the right to place on such copyright work a notice stating that the work;
     1. is supplied under contract to the Authority; and
     2. may not be issued outside United Kingdom Government Departments except in accordance with the conditions of the Contract.
  4. Before the Authority exercises its rights under paragraph 1.1 in respect of any work bearing the notice set out in paragraph 1.4, the Authority shall:
     1. give to the Contractor fifteen days prior written notice (or such other shorter period as may be agreed) of his intention to do so;
     2. have regard to any representations or proposals made by the Contractor at any time before issue takes place as to the protection of any separately identifiable trade secrets, know-how, or similar proprietary information arising otherwise than from work performed under the Contract;
  5. The Contractor shall be free under the terms of clause 1.5 above to make any proposals for the protection of the information referred to herein In particular the Authority shall:
     1. give full consideration to any proposals the Contractor may make for the preparation of a special Collaboration Report, for the release of information in stages, or for restrictions on the circulation of the information to be released; and
     2. be entitled to make issue contrary to such representations and proposals fifteen days after notifying the Contractor in writing that he considers it in the national interest to do so.
  6. The Authority shall not have the right and the Contractor shall not be obliged under this Condition to disclose to a third party, directly or indirectly, manufacturing or design information with respect to units, sub-units or components not developed or designed under the Contract.

Provided that if:

* + 1. the Contractor has not granted and does not wish to grant a licence to a manufacturer in the country of the other party to the Collaboration Agreement; and
    2. there is no reasonable substitute article available in that other country;

the Contractor shall be obliged to:

* + 1. make the disclosure referred to in paragraphs 1.1 and 1.6;
    2. grant a licence directly to at least one manufacturer in the country of the other party to the Collaboration Agreement, to be approved by the Contractor; and
    3. on request, supply the identification and shape, size and function of such units, sub-units and components to that same manufacturer.
  1. The Contractor shall on request, insofar as he may be able to do so, supply or procure the supply of such of the units, sub-units and components referred to in paragraph 1.7 as may be required to such other party within a reasonable timescale and on reasonable commercial, non-discriminatory terms.
  2. If the Authority makes issue of information contrary to the Contractor’s representations under paragraph 1.1 as to the protection of trade secrets, know-how and similar proprietary information, the Contractor shall be entitled to such compensation, if any, as is fair and reasonable in the circumstances.
  3. If the Contractor is party to a licence or other agreement relating to the use of inventions, designs or technical information which restricts his freedom to supply or authorise the disclosure or use of information for the purposes of this Part D the Contractor shall, when tendering, quoting a price for the Contract, or offering to perform it (or, if at these times the restriction is not apparent, as soon thereafter as it is):

1.10.1 notify the Authority; and

1.10.2 at the Authority’s request use all reasonable efforts with the assistance and at the expense of the Authority to abate the restrictions to the extent required.

1.11 Without the prior consent in writing of the Authority, the Contractor shall not:

1.11.1 make use in the performance of the Contract of inventions, designs or technical information which are the subject of any agreement made after the date of the Contract; or

1.11.2 make any grant of rights in the results of work under the Contract which he knows would restrict his freedom as aforesaid.

1.12 The Authority undertakes that he will consult with the Contractor as early, as frequently and as fully as is reasonably practicable in the consideration of any International Collaboration Agreement into which he may wish to enter and will pay due regard to any representations of the Contractor

1.13 Notwithstanding any provision in this Part D, the Authority shall have the right, without restriction, to loan any products delivered under this Contract to be operated and maintained for a period not exceeding 6 months to a United Kingdom statutory body or government of another country for the purposes of support to the local community in the event of a civil emergency.

**Part E**

**Contracts for Work Classified as Official or Higher**

* 1. The Contractor shall ensure that he and any patent agent and/or legal adviser and/or attorney engaged by him shall treat the invention or design as bearing a security classification at least as high as the work to which it relates pending formal determination of its appropriate classification.
  2. The preparation and filing of applications to which this Part E relates shall be handled by the Contractor’s own patent department under the conditions of security applicable under the Contract. If the Contractor does not have his own patent department he shall, before initiating the preparation of any application, obtain the prior written agreement of the Authority as to the patent agent or attorney that he proposes to employ for the preparation and filing of the application.

The agreement of the Authority in relation to this paragraph is to be sought from:

Security Unit

DIPR

MOD Abbey Wood South #2214

BRISTOL

BS34 8JH

UNITED KINGDOM

* 1. Each and every application to which this Part E relates, whether filed by the Contractor or by a patent agent and/or legal adviser and/or attorney engaged by him, shall be filed directly to the Security Section of the UK Patent Office. The filed application must include:
     1. a notification that the invention or design forming the subject of the application is related to classified Government work;
     2. the number of the Contract; and
     3. the name and address of the Authority.

**Part F**

**Invention and Designs**

**All Contracts**

* 1. The Contractor shall ensure, to the extent he is legally able to do so, that:
     1. any invention:
        1. to which this Contract relates; and
        2. made by an employee of the Contractor in the course of normal duties of the employee, or in the course of duties specifically assigned to the employee or in the course of duties of the employee who due to the nature of those duties has a special obligation to further the employer’s undertaking, in each case as defined in Section 39(1)(a) and (b) of the Patents Act 1977; and
     2. any design:
        1. to which this Contract relates; and
        2. made by an employee of the Contractor,

shall vest in the Contractor.

* 1. Subject to paragraph 1.4 of this Part F, the Contractor shall, within 60 days of filing:
     1. a first patent application;
     2. any subsequent patent application claiming priority from a first patent application and directed towards obtaining protection in the UK (including a European Patent Application or an International Patent Application designating the UK) for the invention; and/or
     3. any application for registration of the design,

provide the Authority with a copy of that application together with the number of the Contract. The information and copy should be addressed to:

Formalities Manager

DIPR

MOD Abbey Wood North #6228

BRISTOL

BS34 8JH

UNITED KINGDOM

* 1. The Contractor shall promptly notify the Authority if he becomes aware of any application(s) as set out in paragraph 1.2 of this Part F by any person who is, or has been, an employee or agent of the Contractor or a Sub-contractor and provide the Authority with relevant particulars of such application(s).
  2. Where the Contractor or patent agent or legal adviser or attorney:
     1. provides an extra copy of the patent application, subsequent patent application or application for registration of the design to the Patent Office for onward transmission to the Authority;
     2. indicates the number of the Contract on the application; and
     3. indicates on the relevant application form that the extra copy sent to the Patent Office is for onward transmission by the Patent Office to the Authority;

that extra copy shall be regarded as having been provided for the purpose of this paragraph 1.2.

* 1. If:
     1. an employee of the Crown is a joint inventor of the invention or part author of the design to which any application referred to in paragraph 1.2 of this Part F relates; and
     2. the portion of or share in the invention or design made by that employee belongs to the Crown and neither the Crown nor that employee is the person, or one of the persons, making the application,

the Contractor shall, upon request by the Authority, take all such steps and do all such things as may be necessary to ensure either:

* + 1. that the Authority or the employee joins in the application; or
    2. at the option of the Contractor, and if the application is in relation to a patent, that it is either withdrawn or amended by the deletion from the application of any reference to that part of the invention made by the employee of the Crown, or,
    3. if the application is for registration of a design, that it is withdrawn.

**Collaboration Contracts**

* 1. Subject to paragraph 1.7, if an employee of the Crown is a party to any application referred to in paragraph 1.2, 1.3 and 1.5 above of this Part F and the Authority so requests, the Contractor, shall at the expense of the Authority,
     1. take such reasonable steps as are necessary to ensure that the Authority is substituted for the employee of the Crown as co-applicant; and
     2. give all such consents and do all such things as may from time to time be necessary to enable the employee of the Crown to assign to the Authority his interest in the application and in any patent or registered design granted pursuant thereto.
  2. The Contractor is not required to consent to any assignment in relation to application referred to in paragraph 1.2, 1.3 and 1.5 above of this Part F other than that specifically referred to in Clause 1.6.
  3. Subject to the provisions of paragraph 1.5 and 1.6 above and to the rights of the Authority as set out in paragraph 1.9 below the invention or design shall belong to the Contractor.
  4. Any Government Department and any person authorised by a Government Department may in any part of the world:
     1. do in relation to the invention and or granted patent, any act as defined in Section 55(1)(a) to (e) of the Patents Act 1977; and/or
     2. use the design, and/or registered design, for the services of the Government of the United Kingdom

on a royalty-free basis.

* 1. Subject to paragraph 1.16, the Contractor shall not be entitled to any payment whatsoever in respect of anything done in accordance with paragraph 1.9 above (whether by the Authority, a Government Department or any person whomsoever) and if any directions relating to the invention are given under Section 22(1) or 22(2) of the Patents Act 1977 the Contractor shall not have any claim for any compensation as set out in Section 22(7)(b) of the Patents Act 1977.
  2. If any question under this Part F shall arise between the Contractor and the Authority as to whether:
     1. an employee of the Crown is a joint inventor of the invention or a part author of the design; or
     2. the invention or design was made in the course of or resulted from work carried out by the Contractor under the Contract,

that question shall be referred for decision to such person as may be agreed upon between the Contractor and the Authority or, in default of such agreement, such person as may be appointed by the President for the time being of the Chartered Institute of Patent Attorneys, and the decision of any such person on that question shall be final and conclusive.

* 1. The Contractor shall, at the request and expense of the Authority, take all such reasonable steps as are within his power and may from time to time be necessary to enable the Authority to register in the UK Patent Office or elsewhere its interest in the invention or design.
  2. The rights conferred by this Clause shall be in addition to and not in derogation of the rights exercisable by virtue of Sections 55 to 59 of the Patents Act 1977 and Section 12 of the Registered Designs Act 1949.
  3. The foregoing provisions of this Condition shall have effect both during the period the Contractor is carrying out the other provisions of the Contract and at all times thereafter.
  4. The Contractor shall, in relation to any Sub-contract for the carrying out of any work for research, design or development under the Contract:
     1. include, in any Sub-contract which he may enter into for the purpose of the Contract, the provisions of this Part F, but with the substitution therein of references to the Sub-contractor for references to the Contractor, and of references to the Sub-contract for references to the Contract; and
     2. at all times use all reasonable endeavours to:
        1. secure the full and effectual observance by the Sub-contractor of those provisions; and
        2. ensure that the Authority and all Government Departments obtain the benefit thereof; and
     3. advise the Authority if he becomes aware of any breach of the provisions.
     4. Provided that this Clause shall only apply to any subcontract for the carrying out of any work for research, design or development under the Contract
  5. Nothing herein shall prejudice the rights of either party arising otherwise than by virtue of this Clause.

**Part G**

**Head Agreement**

**HEAD AGREEMENT FOR LICENCE TERMS FOR COMMERCIAL SOFTWARE PURCHASED BY THE SECRETARY OF STATE FOR DEFENCE**

This Agreement is made this ………………………. day of …………………………. in the year ………………

BETWEEN

The Secretary of State for Defence, a corporation sole, (afterwards referred to as the AUTHORITY) as represented by the Directorate of Intellectual Property Rights, Poplar 2a #2218, MOD Abbey Wood, Bristol BS34 8JH

AND

*[Insert company’s name, registration number and corporate address]* (afterwards referred to as the COMPANY);

each being referred to as a “Party” and collectively as the “Parties”.

BACKGROUND

I The AUTHORITY wishes to agree standard terms of licence with the COMPANY which will apply to “Commercial Software” products it procures from the COMPANY in order to avoid the need to negotiate individual terms each time those products are purchased; and

II The COMPANY is prepared to agree standard terms of licence with the AUTHORITY in order to facilitate sales of Commercial Software to the AUTHORITY.

**For the purpose of this Agreement “Commercial Software” means software available commercially including that software modified on sale to suit the requirements of a customer.**

THE HEAD AGREEMENT

1. The Parties agree that they will adopt the terms of licence set out in the Annex to this Head Agreement (the “Annex”), as the standard terms of licence for the procurement of Commercial Software by the AUTHORITY from the COMPANY and from any of its wholly owned subsidiaries for which the COMPANY is entitled to make this Head Agreement. This shall not imply that either Party may not propose other conditions for any particular licence or that either Party shall be bound to accept any particular licence in the terms set out in the Annex.
2. Each software licence which is to be procured subject to the standard terms of licence set out in the Annex, shall be established by a schedule (the “Schedule”) which incorporates those terms by making reference to this Head Agreement and the Annex. Each licence so concluded shall be legally separate from this Head Agreement.
3. Each Schedule will take the format provided in the Attachment to the Annex. Individual Schedules may include special conditions adding to, varying, or setting aside any condition set out in the Annex and in the event of any conflict between the terms of the Annex and the special conditions of a Schedule the latter shall prevail.
4. Either Party shall be entitled to terminate this Head Agreement at any time on written notice to the other Party but the termination shall not vary the conditions of or terminate any extant Licences.
5. This Head Agreement shall be subject to and construed and interpreted in accordance with the Laws of England and shall be subject to the jurisdiction of the Courts of England. Other jurisdictions may apply solely for the purpose of giving effect to this Agreement and for the enforcement of any judgement, order or award given under English jurisdiction.

Signed for and on behalf of the Secretary of State for Defence

…………………………………………………………………………………………………..

*[Print name]* .. .. … .. .. .. .. .. .. .. .. .. .. .. ..

In the capacity of ………………………………………………………………….. *[insert capacity of signatory]*

Signed for and on behalf of the COMPANY *[Insert name of company]*

………………………………………………………………………………………………….

*[Print name]* .. .. … .. .. .. .. .. .. .. .. .. .. .. ..

In the capacity of ………………………………………………………………….. *[insert capacity of signatory]*

**ANNEX TO THE HEAD AGREEMENT FOR LICENCE TERMS FOR COMMERCIAL SOFTWARE BETWEEN THE SECRETARY OF STATE FOR DEFENCE AND …………………………. DATED ………….**

**AGREED STANDARD CONDITIONS**

1. **DEFINITIONS**
   1. “AUTHORITY” shall mean the Secretary of State for Defence.
   2. “LICENSOR” shall mean the Company identified in the Head Agreement or the wholly owned subsidiary of the Company identified in the Schedule as being the Party granting the Licence to the AUTHORITY.
   3. “Licensed Software” means the computer programs listed in Part I of the Schedule together with any user documentation, update programs and anything else furnished to the AUTHORITY by the LICENSOR under the Licence in connection with those listed programs, and any portion and copy of any of them.
   4. “Use” (or “to Use”) in relation to the Licensed Software means copying the software from a store unit or medium into equipment, customising it within its existing functionality and consistent with the user documentation, running or processing it, operating upon it, all of these acts either alone or with other programs, and producing copies including, where appropriate, in eye-readable form.
   5. “Designated Equipment” means that equipment in respect of which Use of the Licensed Software is licensed. It shall be the equipment specified in Part II of the Schedule unless changed to alternative equipment in accordance with the provisions of Clauses 2.3 or 2.4.
   6. “Designated Site” means that site for which the Licensed Software is licensed. It shall be the site specified at Part III of the Schedule unless changed to an alternative site in accordance with the provisions of Clause 2.3.
   7. “Licence” means the rights granted by the LICENSOR to the AUTHORITY in respect of the Licensed Software and all the conditions associated with it, as set out in the Standard Conditions in combination with a relevant Schedule.
   8. “Schedule” means a schedule to the Head Agreement (in the format provided in the Attachment to this Annex) established by signature of the AUTHORITY and the LICENSOR, under which the LICENSOR undertakes to supply the Licensed Software for Use by the AUTHORITY under the conditions of the Licence. Each Schedule, in combination with these Standard Conditions, constitutes a distinct Licence independent of any other Licence existing by operation of the Head Agreement.
   9. “Standard Conditions” means the conditions set out in this Annex to the Head Agreement, comprising Clauses 1 to 15.
   10. “Special Conditions” means those conditions (if any) specified in Part VIII of the Schedule.
2. **LICENCE GRANT**
   1. The AUTHORITY may Use the Licensed Software on the Designated Equipment at the Designated Site in accordance with the Licence from the date of receipt of the Licensed Software by the AUTHORITY.
   2. The AUTHORITY may allow contractors of the AUTHORITY and their sub-contractors to Use the Licensed Software on the Designated Equipment at the Designated Site on AUTHORITY contracts only, provided that the AUTHORITY ensures or procures that those contractors and sub-contractors are bound by the conditions of the Licence and that, unless prevented by security considerations, the AUTHORITY shall notify the LICENSOR of the identity of those contractors or sub-contractors as soon as is reasonably practical. The AUTHORITY shall not charge for that Use.
   3. The AUTHORITY may specify alternative Designated Equipment or an alternative Designated Site by notification to the LICENSOR, in which case Clause 2.1 shall apply only to the alternative Designated Equipment or Designated Site as notified. However, in the event that the alternative Designated Equipment shall be equipment of a greater processing capacity or capability or a different operating system outside the parameters of the original Designated Equipment the LICENSOR may require the AUTHORITY to pay a fair and reasonable additional fee which will not exceed the difference between the corresponding fees shown in respect of Use of the Licensed Software on the existing and alternative Designated Equipment respectively in the LICENSOR’s price list current at the time when the AUTHORITY has specified the alternative Designated Equipment.
   4. The AUTHORITY may Use the Licensed Software on alternative equipment if the Designated Equipment is temporarily inoperative until the Designated Equipment is again operative without notification or additional payment to the LICENSOR.
   5. Notwithstanding the above, the AUTHORITY may copy the Licensed Software in machine-readable form for back-up purposes for Use of the Licensed Software. The AUTHORITY may also create eye readable copies of documentation solely for utilisation by operating personnel of the Licensed Software. All copyright in such copies shall remain the property of the LICENSOR.
3. **DELIVERY AND ACCEPTANCE**
   1. The LICENSOR shall deliver the Licensed Software at a time and to a place agreed with the AUTHORITY.
   2. The LICENSOR or the AUTHORITY as mutually agreed shall install each program of the Licensed Software on the Designated Equipment and test it against acceptance tests if agreed between the LICENSOR and the AUTHORITY.
   3. The AUTHORITY may reject the Licensed Software within the acceptance period specified in Part IV of the Schedule only (which period starts on receipt of the Licensed Software by the AUTHORITY) if it fails an agreed acceptance test or if it does not perform on the Designated Equipment in accordance with the functionality set out in an agreed statement or user document provided by the LICENSOR. The AUTHORITY shall be understood to have accepted the Licensed Software if it has not been validly rejected before the expiry of the acceptance period.
   4. If the AUTHORITY rejects the Licensed Software in accordance with Clause 3.3 the Licence for it shall terminate and the AUTHORITY shall be entitled to reimbursement of any fees paid in respect of the Licensed Software.
   5. The AUTHORITY and the LICENSOR may mutually agree to extend the acceptance period, or to amend the Schedule appropriately, for any Licensed Software that would otherwise have been rejected under Clause 3.3.
4. **PAYMENT**
   1. The LICENSOR will invoice the AUTHORITY for the agreed licence fees in the amount and in accordance with the invoice arrangements set out respectively in Parts V and VI of the Schedule on or after receipt by the AUTHORITY of the Licensed Software.
   2. The AUTHORITY shall pay the invoice value within 30 days from the later of delivery of the Licensed Software or the date of receipt of a valid invoice related to that Licensed Software. Payment does not constitute acceptance of the Licensed Software.
5. **CONFIDENTIALITY**
   1. Subject to Clause 5.2 and except as otherwise agreed in writing, the AUTHORITY and the LICENSOR shall each hold in confidence and shall not use, disclose or otherwise make available, except in accordance with the Licence, all the following information received from the other under or in connection with the Licence:
      1. the Licensed Software;
      2. details of the AUTHORITY’s use and application of the Licensed Software;
      3. any other information which is identified as being disclosed in confidence at the time of disclosure

provided that:

the obligation for (b) and (c) relates only to information received in writing or other material form; and

if such information is disclosed orally, the obligation shall apply for 30 days unless the discloser confirms such information in writing or other material form within 30 days when the obligation of confidence shall apply thereafter.

* 1. The obligations under Clause 5.1 shall not require the receiving Party to maintain confidence in, or refrain from using, any part of the information to the extent that the receiving Party can show that such part of the information:
     1. was already known to that Party, without restraint on use or disclosure, prior to the date of receipt or acquisition under or in connection with the Licence; or
     2. has been received by that Party, without restraint on use or disclosure, from a third party having the right to disclose it; or
     3. has entered the public domain otherwise than in breach of the Licence or any other agreement between the Parties; or
     4. was generated by that Party independently of the information which is subject to Clause 5.1;

provided that the relationship of such part of the information to the remainder of the information which is subject to Clause 5.1 is not revealed.

* 1. The obligations under Clause 5.1 shall be perpetual.
  2. The AUTHORITY shall ensure or procure that any individual to whom the Licensed Software is made available is made aware of, and complies with, the obligations as to confidentiality and other relevant conditions of the Licence.
  3. The AUTHORITY shall reproduce and maintain any copyright notices and trade marks on or in any of the copies of the Licensed Software made in accordance with the Licence, including partial copies, and on any software changed under the terms of the Licence.

1. **IPR ACTIONS AND LIABILITIES FOR IPR INFRINGEMENT**
   1. The LICENSOR declares that he is entitled as either owner or licensee to provide the Licensed Software to the AUTHORITY on the terms and conditions of the Licence.
   2. Subject to the limitations imposed in Clauses 6.3 and 6.4, the LICENSOR shall assume all liability and indemnify the AUTHORITY against all costs or liabilities arising under any valid claim or action brought by a third party against either Party, or against any of its contractors (which expression shall include any sub-contractor) engaged in tasks relevant to the provision of the Licensed Software or to the AUTHORITY’s exercise of the Licence, in respect of any third party intellectual property right, including a patent registered or unregistered design right, trade mark, copyright, trade secret or confidential information, which relates to the supply of the Licensed Software or the Use of the Licensed Software in accordance with the Licence by the AUTHORITY or its contractor, then:
      1. If the claim or action is brought against the LICENSOR he shall take full responsibility for dealing with settling or defending the claim or action;
      2. If any claim is made against the AUTHORITY or its contractors the LICENSOR shall be given full responsibility for dealing with settling or defending the claim as appropriate in his judgement;
      3. If legal action is taken against the AUTHORITY or its contractor that Party shall be entitled to join the LICENSOR in the action.
   3. Clause 6.2 shall not apply, and the AUTHORITY shall assume all liability for and indemnify the LICENSOR and its contractors, against all costs and liabilities under the claim or action in the event that it arises as a consequence of any of:
      1. Use of the Licensed Software by the AUTHORITY, or by a contractor permitted to use the Licensed Software pursuant to Clause 2.2, outside the LICENSOR’s specification or user documentation on the Designated Equipment or in a manner outside the reasonable knowledge or expectation of the LICENSOR or in circumstances particular to the AUTHORITY as distinct from other customers for the equivalent Licensed Software;
      2. Use of modifications to the Licensed Software not provided or not approved in writing by the LICENSOR;
      3. infringement by the LICENSOR of any third party intellectual property right by reason only of use of any material provided by the AUTHORITY for the purposes of the Licence, but only to the extent that this material is held and used within the terms under which it was provided and used solely for the purposes of the Licence.
   4. Clause 6.2 shall not apply in the event that, without the consent of the LICENSOR (which shall not be unreasonably withheld) the AUTHORITY:
      1. has made or makes an admission of any sort to the third party relevant to the claim or action;
      2. the AUTHORITY has entered or enters into negotiations with the third party relevant to the claim or action;
      3. the AUTHORITY has made or makes an offer to the third party for settlement of the claim or action.
   5. Each Party undertakes to notify and consult the other promptly in the event of any enquiry, claim or action brought or likely to be brought against it or its contractor or the Parties jointly, which relates to infringement of any third party intellectual property right in connection with the supply or Use of the Licensed Software under the Licence. By joint agreement, the AUTHORITY may take the lead in dealing with settling and defending any such enquiry claim or action made against it directly in consultation with the LICENSOR and, subject to the LICENSOR’s agreement as to the terms of any settlement, this shall not displace any liability of the LICENSOR arising under Clause 6.2. If any claim is made against the AUTHORITY under Section 55 of the Patents Act 1977 as a result of the AUTHORITY’s use of the Software, and if the AUTHORITY offers a settlement of the claim, otherwise than as a result of a Court order and without the agreement of the LICENSOR, the LICENSOR shall be relieved of any liability which might otherwise arise under Clause 6.2.
   6. In the event that any claim or action is made which is subject to Clause 6.2 or if in the LICENSOR’s reasonable opinion such claim or action is likely to be made, the LICENSOR shall promptly utilise all reasonable endeavours to:
      1. establish or secure the AUTHORITY’s right to continue to Use the Licensed Software or, failing to do so,
      2. avoid that claim or action by, and after consultation with the AUTHORITY as to how to minimise the AUTHORITY’s loss of Use of the Licensed Software, replacing or modifying the Licensed Software without significant change to the specification of the Licensed Software all at the LICENSOR’s expense, including installation and testing.
   7. In the event of the LICENSOR being unable to satisfy the requirements of sub-Clauses 6.6.1 or 6.6.2 the LICENSOR may terminate the Licence relating to the Licensed Software upon not less than three months written notice unless a lesser period is determined by any court order, and the LICENSOR shall make a refund of the licence fee to the AUTHORITY, either in full or with the agreement of the AUTHORITY (which shall not be unreasonably withheld) of a portion of the licence fee representing the lost portion of the Licence.
   8. The conditions set forth in clauses 6.2 to 6.7 represents the total liability and responsibility of each Party to the other under a Licence in respect of any actual or alleged infringement of any intellectual property right owned by a third party, and take precedence over any other liability condition in the Licence.
2. **WARRANTY**
   1. LICENSOR warrants that discrepancies between Licensed Software and the LICENSOR’s specification or user documentation current at the time of delivery reported and demonstrated by the AUTHORITY during the warranty period stated in Part VII of the Schedule will be remedied by LICENSOR without unreasonable delay in a manner commensurate with good software industry practice and without payment by the AUTHORITY. During the warranty period the LICENSOR undertakes to provide to the AUTHORITY free of charge corrections to material errors known to the LICENSOR.
   2. All warranties in the Licensed Software and its user documentation other than that given under Clause 7.1 are hereby excluded including, without limitation, the implied warranty and conditions of satisfactory quality and fitness for a particular purpose, but this shall not prejudice the right of the AUTHORITY to reject the Licensed Software in accordance with Clause 3.3.
   3. No oral or written information or advice given by the LICENSOR, its agents or employees shall create a warranty or extend the scope of the warranty given under Clause 7.1.
   4. The LICENSOR shall utilise all reasonable endeavours to ensure that any Licensed Software supplied, irrespective of the mode of delivery, is free from any published computer virus. In the event that it can be shown that, at the time of delivery, the Licensed Software incorporated such a virus then the AUTHORITY may require the LICENSOR to remove the virus and within the limits of backup data provided by the AUTHORITY to restore any computer system incorporating the Designated Equipment to its pre-infected state or bear the cost of the necessary restoration work.
3. **GENERAL LIABILITY CONDITIONS**
   1. The LICENSOR shall have no liability to the AUTHORITY for any indirect or consequential damages or losses which might arise by reason of Use of the Licensed Software by or for the AUTHORITY including, without limitation, loss of profit, loss of revenue, loss of use, loss of business information produced by Use of the Licensed Software.
   2. The exclusion provided under Clause 8.1 shall not apply where the AUTHORITY suffers loss because of a defect within the Licensed Software which defect is known to the LICENSOR at the time the Licensed Software is furnished to the AUTHORITY unless the AUTHORITY has previously been made aware of and accepted the presence of the defect and its relevance to the AUTHORITY’s application of the Licensed Software.
   3. The total of the LICENSOR’s liability under or in connection with this Agreement (where arising from contract, negligence or any other basis) is limited in respect of each event or series of connected events to the value given in Part IX of the Schedule, provided that no limitation shall apply in respect of liability for death of or injury to persons arising from the LICENSOR’s negligence, as provided by the Unfair Contracts Act 1977, and, except in relation to sub-Clause 13.2, no limitation shall apply in respect of any liability arising under the provisions of Clause 6.2.
4. **TERM AND TERMINATION OF THE LICENCE**
   1. Each Licence shall continue until the AUTHORITY terminates it by written notification to the LICENSOR, or it is terminated pursuant to Clauses 3.4 or 6.7.
   2. The AUTHORITY shall within thirty days of termination of a Licence, through all reasonable endeavours and to the best of its knowledge, return or destroy, at the LICENSOR’s option, all originals and destroy all copies of the Licensed Software including partial copies and modifications except that the AUTHORITY may on prior written authorisation from the LICENSOR retain one copy for archival purposes only. The AUTHORITY shall promptly certify in writing once it has so done.
   3. In the event of the LICENSOR drawing the attention of the AUTHORITY to a breach of any condition of a Licence then:
      1. where the breach is of a nature that cannot be remedied, the AUTHORITY undertakes to settle with the LICENSOR on fair and reasonable terms and to utilise all reasonable endeavours to ensure that a further breach does not occur;
      2. where the breach is capable of being remedied, the AUTHORITY shall promptly remedy the breach and where appropriate put in place measures to ensure that a further breach does not occur. The AUTHORITY shall indemnify the LICENSOR for all loss and damage incurred by him as a result of the breach.
   4. The termination of any Licence shall be without prejudice to the continuation of the Head Agreement or any other Licence under it.
5. **COMBINATION OF SOFTWARE**
   1. The AUTHORITY may combine all or part of the Licensed Software with other materials to form a new work. Any portion of the Licensed Software included in a new work shall be Used only on Designated Equipment and shall be subject to the conditions of the Licence. The LICENSOR shall be absolved from any obligation or liability under the Licence to the extent that this arises as a result of the creation or use of any new work not approved in writing by the LICENSOR.
6. **OUTPUT**
   1. The AUTHORITY may freely copy and utilise any output resulting from Use in accordance with LICENSOR – supplied documentation of the Licensed Software.
7. **DISPUTES**
   1. Other than for any claim arising from non payment of a valid invoice should any question, dispute or difference whatsoever arise between the AUTHORITY and LICENSOR in relation to or in connection with this Agreement or the Schedule of any Licence granted under it, the AUTHORITY or the LICENSOR may give notice to the other in writing of the existence of that question, dispute or difference and both Parties will attempt to reach a solution. If no mutually acceptable solution is found the AUTHORITY or the LICENSOR may give notice to the other in writing (the ADR notice) that the matter is to be referred to Alternative Dispute Resolution (ADR).
   2. Upon receipt of the ADR notice and subject to sub-Clause 12.3, the Parties shall define the type of ADR to be adopted and the rules for its implementation. Failing agreement to adopt, or to achieve, resolution by one such type, the Parties may decide to adopt a second type of ADR. The Parties agree that after a period of two (2) months from the date of receipt of the ADR notice, or such other date as may be agreed by the Parties, and provided that the dispute remains unresolved, it shall finally be settled by arbitration by a sole arbitrator at the request in writing by either party to the other. Failing agreement on the appointment of the arbitrator within 14 days of receipt of such request, the arbitrator shall be appointed by the President for the time being of the Law Society, in accordance with the Arbitration Act 1996 or any statutory modification or re-enactment of it. The costs of any ADR shall be shared equally by the AUTHORITY and the LICENSOR, however, the costs of arbitration shall be settled by the arbitrator.
   3. Where a Party rejects the referral of the matter to ADR he shall promptly notify the other Party in writing of that rejection and the reasons for it.
8. **TRANSFER**
   1. The LICENSOR shall not assign his interest in any Licence or the intellectual property licensed there under without providing for the continuance of the AUTHORITY’S rights under the Licence and without notifying the AUTHORITY in writing of the identity of the assignee.
   2. Unless prevented by law or national regulation the AUTHORITY shall have the right to novate any Licence to a separate legal entity, without charge to itself or the legal entity, upon two months written notice to the LICENSOR, as provided below:
      1. following a transfer from the AUTHORITY to the legal entity of any function of the AUTHORITY for which the Licensed Software has been obtained; or
      2. on disposal to the legal entity of surplus Designated Equipment where the Licensed Software is essential to the running of that equipment, whether or not it is embedded in the equipment, provided that all warranties (whether express or implied) and all indemnities shall be void, the Licensed Software shall be supplied “as is”, and the liability referred to in Clause 8.3 shall be ten pounds sterling only.

PROVIDED THAT the Licensed Software novated in accordance with this sub-Clause may only be used for the same purposes for which the Authority was licensed in accordance with Clause 2 and wider use shall require the written approval of, and the grant of a further licence by, the LICENSOR.

1. **DISCONTINUANCE OF BUSINESS**
   1. The AUTHORITY shall have the right to secure from the LICENSOR, or from the authorised trustees or receivers acting on behalf of the LICENSOR, in the event of the LICENSOR permanently ceasing to maintain the Licensed Software or the LICENSOR permanently discontinuing in business because of bankruptcy, receivership, dissolution, or other form of permanent business disruption and that business is not continued by a successor in interest to the LICENSOR to whom the benefits and obligations of this Agreement and any licence granted under it have been assigned, Licensed Software documentation including program source code in the possession and control of the LICENSOR, but no more than the LICENSOR uses himself, as the AUTHORITY shall consider necessary for it to maintain and continue its normal Use of the Licensed Software for the duration of the Licence but for no other purpose.
   2. If so required by a Special Condition, the LICENSOR shall compile and maintain, at a price or in accordance with a price formula identified in the Special Condition, an up to date copy of the Licensed Software documentation to which the AUTHORITY is entitled under Clause 14.1 which copy shall be held by the LICENSOR as a bailee without lien for the AUTHORITY and be made available to the AUTHORITY without additional charge. In the absence of such a Special Condition, the copy shall be prepared on the AUTHORITY’s demand and it shall be made available to the AUTHORITY at a fair and reasonable price based on the cost of compilation, reproduction and dispatch.
   3. The AUTHORITY shall have the right to utilise the Licensed Software documentation to which it is entitled under Clause 14.1 for the purpose of maintaining its Use of the Licensed Software for the duration of the Licence but for no other purpose. The AUTHORITY shall hold in confidence all information in the documentation.
2. **GENERAL**
   1. If any provision of this Agreement is held to be invalid, illegal or unenforceable to any extent then:
      1. that provision shall (to the extent it is invalid, illegal or unenforceable) be given no effect and shall be understood not to be included in the Agreement but without invalidating any of the remaining provisions of the Agreement; and
      2. the Parties shall use all reasonable endeavours to replace the invalid, illegal or unenforceable provision by a valid, legal and enforceable provision the effect of which is as close as possible to the effect of the invalid, illegal or unenforceable provision.
   2. No act or omission of either Party shall by itself amount to a waiver of any right or remedy unless expressly stated by that Party in writing. In particular, no reasonable delay in exercising any right or remedy, shall by itself constitute a waiver of that right or remedy.
   3. No waiver of any right or remedy shall operate as a waiver in respect of any other right or remedy.
   4. Neither the LICENSOR nor the AUTHORITY shall be liable for failure to perform any of its obligations under the Licence if that failure results from circumstances beyond its reasonable control.
   5. Headings have been included for convenience only and shall not be used in construing any condition of the Licence.
   6. The Licence shall be subject to and construed and interpreted in accordance with the Laws of England and shall be subject to the non-exclusive jurisdiction of the Courts of England for the enforcement of any arbitral decision.
   7. The Licence shall constitute the entire agreement between the Parties relating to the Licensed Software and supersedes any previous agreement.
   8. No right is granted to any person who is not a Party to the Licence to enforce any term of the Licence in his own right and the Parties declare that they have no intention to grant any such right.

**ATTACHMENT TO ANNEX TO HEAD AGREEMENT – STANDARD FORM OF LICENSING SCHEDULE**

**SCHEDULE TO THE HEAD AGREEMENT BETWEEN THE AUTHORITY AND** ………………… *[Insert name of Company]***DATED:** ……………………….. *[Insert date of Head Agreement]* Version Number: ……… *[insert, if any]*

CONTRACT REFERENCE NUMBER: ……………………………………………………………………

By their respective signatures of this Schedule the Secretary of State For Defence (the “AUTHORITY”) undertakes to purchase and ……………………………………………. *[insert name of the LICENSOR which must be either the name of the COMPANY as recorded on the Head Agreement or the name of a legally entitled wholly owned subsidiary]* (the “LICENSOR”) undertakes to supply the Licensed Software for Use on the Designated Equipment at the Designated Site (all as identified below) under the Standard Conditions set down in the Annex to the Head Agreement and any Special Conditions set down in Part VIII below which may vary or add to those Standard Conditions.

PART I – LICENSED SOFTWARE PROGRAMS

*Insert details of each program sufficient for unambiguous identification of nature and release standard.*

*Indicate for each program whether these are supplied by the LICENSOR as owner or a licensee of the owner.*

PART II – DESIGNATED EQUIPMENT

*Insert identification details of the specific equipment on which the Licensed Software is licensed for use (which can be specified as an individual installation, or if the LICENSOR allows any installation of a particular type of processing characteristic) or else insert “not restricted” as a safe default.*

PART III – DESIGNATED SITE

*Insert identification details of the specific site or sites on which the Licensed Software is licensed for use, or else insert “not restricted” as a safe default.*

PART IV – ACCEPTANCE PERIOD & TEST

*Insert the acceptance period defined by duration and commencement event or defined by a specific end date. Insert acceptance test documentation reference, if applicable.*

PART V – LICENCE FEES

*Insert the full details of the payments to be made by the AUTHORITY as licence fees and identify separately any payments to be made for software installation or support.*

PART VI – INVOICE ARRANGEMENTS

*Insert the AUTHORITY’s address for submission of the Invoice and any special requirements for Invoicing.*

PART VII – WARRANTY PERIOD

*Insert the warranty period defined by duration and commencement event or defined by a specific end date.*

PART VIII – SPECIAL CONDITIONS

*Insert here any special conditions. These can add to or vary the Standard Conditions contained in the Annex to the Head Agreement. If the Licensed Software comprises a library of routines, or a compiler or other software generating tool, incorporate and complete the appropriate provisions from below:*

|  |
| --- |
| *Provisions for library compiler or software generator.* |

PART IX – LIMITS OF LICENSOR’s LIABILITY

Insert the LICENSOR’s limit of liability consequent on matters arising in connection with the Licence (whether arising from contract, negligence or any other basis), other than through death, injury or infringement of third party intellectual property rights.

In the event that no separate limit of liability is inserted in connection with the Licence the LICENSOR’s liability under this PART IX shall not exceed five million pounds sterling.

**FOR LICENSOR**  **FOR AUTHORITY**

Signed ……………………………………………. Signed……………………………………………..

Name …………………………………………….. Name ………………………………………..……

*[Print Name]* …………………………………. *[Print Name]* …………………………………..

Appointment …………………………………. Appointment …………………………………..

Date ………………………………………………. Date …………………………………………………

**ATTACHMENT TO ANNEX TO HEAD AGREEMENT – STANDARD FORM OF LICENSING SCHEDULE**

**SCHEDULE TO THE HEAD AGREEMENT BETWEEN THE AUTHORITY AND** ……………………………………………………………….. DATED …………………………… Version Number …….....

CONTRACT REFERENCE NUMBER

By their respective signatures of this Schedule the Secretary of State For Defence (the “AUTHORITY”) undertakes to purchase and ……………………………………………. (the “LICENSOR”) undertakes to supply the Licensed Software for Use on the Designated Equipment at the Designated Site (all as identified below) under the Standard Conditions set down in the Annex to the Head Agreement and any Special Conditions set down in Part VIII below which may vary or add to those Standard Conditions.

PART I – LICENSED SOFTWARE PROGRAMS

PART II – DESIGNATED EQUIPMENT

PART III DESIGNATED SITE

PART IV – ACCEPTANCE PERIOD & TEST

PART V – LICENCE FEES

PART VI – INVOICE ARRANGEMENTS

PART VII – WARRANTY PERIOD

PART VIII – SPECIAL CONDITIONS

|  |
| --- |
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**FOR LICENSOR**  **FOR AUTHORITY**

Signed ……………………………………………. Signed……………………………………………..

Name …………………………………………….. Name ………………………………………..……

*[Print Name]* …………………………………. *[Print Name]* …………………………………..

Appointment …………………………………. Appointment …………………………………..

Date ………………………………………………. Date …………………………………………………