



Contract No: 701760450

For: AHCSP/0005 Long Term Training and
Support Service for Apache AH-64E

SCHEDULE L
INTELLECTUAL PROPERTY RIGHTS

Document Control

Version	Issued	Notes
ENGROSSMENT	Contract Award	

1 **Technical Publication Condition**

Subject to Paragraph 2 of this Schedule L (Intellectual Property Rights), the Contractor shall ensure that the Authority has the right to copy amend, extend or have copied, amended or extended by its Technical Support Contractors on its behalf any of those technical publication as listed in Appendix 8 (Appendix 8 AH-64E ADS Responsibility and Assignment Matrix (RAM) of Schedule A (*Statement of Requirement*) in respect of which the Contractor is responsible (and subject to the limitations set out in that Schedule) or any part thereof including any such part when incorporated in any amended version of such technical publication, and to circulate, use or have used such technical publication including any amended or extended version and any copies thereof for any United Kingdom Government purpose but not for the purpose of manufacturing. This requirement shall not extend to technical publications where the Contractor has demonstrated (to the Authority's reasonable satisfaction) that such requirement relates to a Commercial Off the Shelf item which is widely available or for which there is a range of items of comparable functionality available on the market. For the avoidance of doubt, nothing in this Schedule, diminishes any obligations arising from third nation export controls on the Parties.

2 **Sub-Contracts**

Where the Sub-Contract is with an entity other than a group company of The Boeing Company, the Contractor shall use reasonable endeavours to secure the rights required by this Contract and, where the Contractor has been unable to secure such rights having used reasonable endeavours, the Authority and the Contractor shall work in good faith to agree a set of terms that are acceptable and workable for inclusion in the relevant Sub-Contract.

3 **Private Venture Software**

3.1 If self-standing Contractor or Sub-Contractor owned software is developed without the funding of the Authority as a licensable component of the systems delivered under this Contract, this shall be termed "**PV Software**" and the following shall apply:

3.1.1 The Parties shall agree terms of licence via DEFFORM 701 (Head Agreement For Licence Terms For Commercial Software Purchased By The Secretary Of State For Defence). For the avoidance of doubt PV Software licences shall be procured for the Authority as part of the Contract Price for carrying out the work under the Contract;

3.1.2 any existing and applicable standard software licence agreement as has been agreed with the Authority; or,

3.1.3 in the absence of any agreement referred to at Paragraph 3.1.2, and prior to the relevant Sub-Contract being placed unless otherwise agreed by the Authority, any other software licence agreement that may be agreed as between the Authority and the Contractor or Sub-Contractor concerned.

- 3.2 Where there is no express licence governing the Authority's use of any software, the Authority shall have an implied right to use and dispose of the same.
- 3.3 If there is any conflict between the provisions of any express software licence granted directly by the Contractor (under either licence or sub-licence) to the Authority and any other provision of the Contract, the Contract shall take precedence.

4 Technical Support Contractors

- 4.1 Subject to Paragraph 4.2, and without prejudice to the Authority's ownership and/or rights of use under any other paragraph of this Schedule L (Intellectual Property Rights), the Authority shall have in respect of all technical information which comprises or is contained within any technical deliverable to which the Contract applies a free licence to:
- 4.1.1 copy that technical information and to circulate it within any Central Government Body and the United Kingdom Armed Forces; and
- 4.1.2 issue that technical information or any copy of the same or any part thereof to a Technical Support Contractor for the following "Permitted Purposes": monitoring the work under the Contract, certification, inspection, testing, modelling, analysis and evaluation of the deliverables, for the avoidance of doubt, this right does not include the right to call for further delivery of documentation that was not contained in a deliverable, unless that right is secured in another clause of this Contract.
- 4.2 The Authority shall ensure that access to the information contained in the technical deliverable is confined to those employees of the Authority and its Technical Support Contractors who require access for the Permitted Purposes, and 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.
- 4.3 The Authority shall not make Limited Rights Data available to a Technical Support Contractor without first giving the Contractor the opportunity to enter into a direct confidentiality agreement in the form of DEFFORM 94 (Confidentiality Agreement) with the Technical Support Contractor.

5 CORNERSTONE

- 5.1 The Contractor, throughout the duration of the Contract, may utilise its proprietary 'CORNERSTONE' tool, to analyse data. This tool includes a set of highly commercially sensitive pre-existing data exploitation capabilities and tools which will take data from a number of sources, analyse the data and enable the Contractor to implement 'aircraft health reports'. Whilst the outcomes of such analysis maybe delivered to the Authority as deliverables (or part thereof) under the Contract, the algorithms and processes and techniques which comprise the CORNERSTONE tool shall remain at all times with the Contractor, notwithstanding any other clause in this Schedule L (Intellectual Property

Rights), and the Authority will obtain no rights in and to the suite of CORNERSTONE tool under this Contract.

6 Intellectual Property Rights – Rights in Data

6.1 Without prejudice to the provisions at Schedule R (Glossary of Standard Terms and Abbreviations) the definitions in this Paragraph 6 shall have the following meanings:

6.1.1 **“Management Information”** shall mean information used, generated or acquired by or for the Contractor in or in relation to fulfilment of the Contract, including financial, administrative and personnel management records, schemes and methods and computer software.

6.1.2 **“Results”** shall mean the technical information resulting from the Work, including any data, reports, drawings, computer software and associated documentation, specifications, designs, or other material generated or acquired or inventions made in the course of such Work.

6.1.3 **“Work”** shall mean anything made done or produced in performance of the Contract.

6.1.4 **“Limited Rights Data”** shall comprise all proprietary Data wholly funded by the Contractor and delivered to the Authority under the Contract.

6.1.5 **“Unlimited Rights Data”** shall comprise data the generation of which has been funded by the Authority or where the Authority has otherwise lawfully acquired rights of use or disclosure.

6.2 Data Rights

6.2.1 The Contractor shall provide such technical and other data, hereinafter referred to as **“Data”**, which may be required by the Authority in accordance with the Contract.

6.3 Proprietary Data

6.3.1 The Contractor shall be permitted to apply appropriate restrictive legends (e.g. "Boeing Proprietary") on any proprietary data delivered hereunder indicating that such data is proprietary to the Contractor or its parent company or a vendor or Sub-Contractor. Without written authorisation from the Contractor, which may include permissions as set out in the Contract, the Authority shall not disclose any such properly legended proprietary data to any third parties. Where such proprietary data is the property of the parent company, and where the Authority has not secured rights by any other contract, the Authority shall ensure that the intended recipient has entered into Proprietary Information Exchange Agreements (**“PIEA”**) with the Contractor or its parent company to protect all such proprietary data, whether received from the UK Government or the Contractor. Should the Contractor fail to execute a PIEA or fail to procure the execution of a PIEA

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by its parent company with any particular Technical Support Contractor within thirty (30) days of the Authority's request to the Contractor to do so, then the Authority may proceed with the disclosure of proprietary data to that Technical Support Contractor without a PIEA provided the Authority places the Technical Support Contractor under a written agreement, with the Contractor or its parent company as third party beneficiaries of the agreement, not to further disclose such data nor use such data except for fulfilling its contract with the Authority. If the Authority makes copies of any such properly legended proprietary data, the Authority shall carry forward any legends onto the copies. The Authority shall honour such restrictions on disclosure and use, and other restrictions imposed under the Contract subject to the rights of the Authority specified in this Schedule L (Intellectual Property Rights), and the lawfully acquired rights of the Authority arising other than by virtue of the Contract. The Authority accepts no obligations or restrictions whatsoever in respect of any data delivered hereunder without such restrictive legends or in respect of any data which is in or enters the public domain, which is independently conceived by or on behalf of the Authority or which is in or comes into the possession of the Authority with lawful rights of use or disclosure.

6.4 Use of Data

6.4.1 Use by the Authority:

- (i) The Authority may use Limited Rights Data for repair, maintenance and overhaul by and for the Authority only under the provisions of Paragraph 6.6.
- (ii) Except as provided for under this Paragraph 6.4.1 and under Paragraphs 6.4.2(vii) and 6.4.2(viii), the Authority may not use Limited Rights Data for manufacture of parts normally recognised as spares parts.
- (iii) Notwithstanding the foregoing, the Contractor hereby grants to the Authority under the provisions of Paragraph 6.5 a world-wide, non-exclusive, royalty-free license to use Limited Rights Data for manufacture of parts but not for sale to a third party, should the Contractor be unwilling or unable to provide the parts in a reasonably timely manner either directly or through a licensee. The terms of such use shall be for the period of such Authority inability to obtain parts from the Contractor or a licensee.
- (iv) The Authority may disclose Limited Rights Data to its Technical Support Contractors as set out in Paragraph 4 above, and may copy and use Limited Rights data for United Kingdom Government Department (which term includes the United Kingdom Armed Forces) purposes. Save for use in Paragraph 4 and as set out in Paragraph 6.7, the Authority may not disclose Limited Rights Data to any Third Party without the prior written consent of the Contractor.

6.4.2 Use by other than the Authority

- (i) Except as provided for under this Paragraph 6.4.2 and under Paragraphs 6.4.2(vii) and 6.4.2(viii) and under the repair/maintenance and overhaul provisioning of Paragraph 6.6, no use is authorised of Limited Rights Data by a party outside the Authority.
- (ii) If the Contractor is unwilling or unable to supply parts subject to Limited Rights Data in a reasonably timely manner, the Contractor hereby grants the Authority under the provisions of Paragraph 6.5 permission to use the applicable Limited Rights Data on a world-wide, non-exclusive, irrevocable, royalty-free licence to have such parts manufactured on the Authority's behalf or otherwise supplied to it by an outside party. The term of such permission shall be for the period of the Contractor's inability or until parts are available from a licensee of the Contractor. Any contract with an outside party for the supply of such parts shall require compliance with restrictions substantially similar to those in Paragraph 6.6 and prohibit disclosure to any other party.
- (iii) If the Contractor is unable to repair and overhaul parts in a reasonably timely manner, the Contractor, if requested by the Authority, will negotiate in good faith to grant a licence for repair and overhaul on fair and reasonable terms to an outside party acceptable to the Authority. Such licence shall also include, if required, post design support.
- (iv) Unlimited Rights Data shall comprise the following except for such Data in respect of which the Authority has no obligations or restrictions or has otherwise lawfully acquired rights of use or disclosure as contemplated in Paragraph 6.3:
 - (A) All Data for which the Authority has provided development funding including all Data produced during or generated as a necessary part of the performance of the Contract.
 - (B) Form fit and function Data, e.g. specification control drawings, catalogue sheets, envelope drawings, etc configuration, mating and attachment characteristics, necessary for the purpose of identifying sources, size, functional characteristics and performance requirements of end items and components thereof to which the Contract relates; and
 - (C) Manuals or instructional materials proposed or required to be delivered under the Contract or to the extent such rights are obtained under any Sub-Contract for installation, operation, maintenance or training purposes.
- (v) All such Unlimited Rights Data shall be deliverable to the Authority at the Authority's request.

- (vi) Subject to the requirements in Paragraph 6 the Authority and any other UK Government Department shall have the right, by itself or through its agents or contractors or others authorised by the Authority for any item, in any part of the world and without payment, to use Unlimited Rights Data with or without modification, for any purpose of the United Kingdom Government. Such rights shall apply notwithstanding the existence of any patents, copyright or like Intellectual Property Rights owned or controlled by the Contractor.
- (vii) The Contract may be amended in accordance with DEFCON 620 (Contract Change Control Procedure) as agreed by the Parties to include an option for the Authority to acquire a licence on fair and reasonable terms for that Limited Rights Data necessary for it to exercise its rights in respect of other Data to which the Contract relates. Such Limited Rights Data shall be specified in the order, and the use thereof by the Authority shall be pursuant to Paragraph 6.4.2(viii). Any such licence shall be subject to the Contractor's ability to acquire those rights necessary to grant such licence.
- (viii) All use of Limited rights and Unlimited Rights Data by or for the Authority as permitted by the Contract is limited as set forth in this Paragraph 6 and, further, all such use of Limited Rights Data under Paragraphs 6.4.1 and 6.4.2 shall unless otherwise agreed be limited to its use for support of the Aircraft and for only such of those Aircraft as are in the Authority's possession, custody and control. Such limitations shall not however apply to Data in respect of which the Authority has no obligations or restrictions or has otherwise lawfully acquired rights to use or disclosure as contemplated by Paragraph 6.3.
- (ix) Before the Contractor sells other than for the purposes of the United Kingdom Government any Articles developed under the Contract or grants any licence to manufacture such Articles, it shall have agreed 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 licence having regard inter alia to the amounts paid or payable to the Contractor by the Authority under the Contract. Each Party shall use its best endeavours to reach agreement in accordance with the above within six (6) months of any approach to the Authority made in writing by the Contractor.
- (x) Subject to there being a binding obligation of confidence, and subject to export controls limitations, the Authority may disclose to another government Limited Rights Data delivered under the Contract, for the purposes of programme alignment and for identifying opportunities for future co-operation. This right applies to all data arising from The Boeing Company and to non-Boeing companies, to the extent that the rights for such disclosure are obtained under any Sub-Contract with a non-Boeing party. Where the Contractor has not secured these rights in the Limited Rights

Data the Parties will work together to secure the necessary rights of disclosure to overseas Governments.

6.4.3 Vendor/Supplier Data

- (i) The Contractor shall obtain vendor/supplier technical data for the Authority so far as such Data relates to the Aircraft. The Contractor shall be considered as having met its obligations under the Contract by identifying to the Authority any vendor/supplier refusing to comply.

6.4.4 Simulator Data:

- (i) The Contractor hereby recognises that the Authority may have a requirement for flight simulator and/or training equipment representative of the Aircraft being procured hereunder. Notwithstanding the provisions of Paragraphs 6.4.1 and 6.4.2, at the Authority's request the Contractor shall subject to export controls limitations, supply, at a fair and reasonable price based on the actual work involved in their provision, Data reasonably necessary for manufacturers skilled in the construction of flight simulator and training equipment to manufacture a simulator and/or training equipment to meet the Authority's requirements under this Paragraph, said Data to be supplied to the Authority or, at the Authority's discretion, directly to the manufacturers. Such Data shall include Aircraft performance data, technical analysis data, acceptance/test procedure data, and airframe data. The Authority is hereby granted a royalty free licence to use and have used such Data for tendering and manufacturing purposes solely in order to meet its requirements as specified above.
- (ii) At the Authority's request the Contractor shall in good faith negotiate with a view to entering into Sub-Contracts under the Authority's flight simulator and training equipment contracts for the provision to the Authority's selected contractors of advice and assistance, particularly that of a technical nature, and, if appropriate, hardware. The obligations of the Contractor in respect of those contracts shall be limited to the supply of advice, assistance and, if appropriate, hardware, in accordance with the provisions of their relevant Sub-Contracts.
- (iii) The obligations of the Contractor to disclose Proprietary Data to third parties under the provisions of Paragraph 6.4.4 (i) and to negotiate with contractors under the provisions of Paragraph 6.4.4 (ii) shall not apply to the extent that the Contractor can demonstrate to the Authority that its commercial interests would be materially jeopardised by disclosure of data under the provisions of Paragraph 6.4.4 (i) or by the provision of advice and assistance required by contractors under Sub-Contracts negotiated under the provisions of Paragraph 6.4.4 (ii).

6.5 Availability of Spares

6.5.1 Notwithstanding the provisions of Paragraph 6, if at any time from the date of the Contract, as long as the Authority is operating the Aircraft, the Contractor is unable or unwilling for whatever reason to supply in a reasonably timely manner spare parts of his own or his suppliers' manufacture for Articles supplied in support of the Services under the Contract to meet a UK Government requirement, then for the period of the Contractor's unwillingness or inability or until such parts are available from the Contractor or a licensee of the Contractor the Authority shall be entitled to procure such parts from outside parties on a world-wide, non-exclusive, irrevocable, royalty-free licence. Under these circumstances and for this same period, the Contractor shall, on request and without charge, additionally furnish to the Authority or to any other contractor with whom the Authority may wish to place an order to meet such a requirement, copies of all Data necessary for the Authority to procure such parts in the possession of the Contractor, or which he may be able to obtain and which he has the right to supply, to enable the parts and components to be procured by and for the Authority. Under these circumstances and for this same period, and subject to Paragraph 6.4.2(ii) the Authority and its agents and contractors shall be entitled in respect of any Data provided by the Contractor under this Paragraph 6.5.1 owned or controlled by the Contractor a royalty-free license to supply such Data and use them and the copies thereof for tender purposes and procurement of such parts to the Authority.

6.6 Maintenance, Repair and Overhaul

6.6.1 For the purpose of this Paragraph the following terms shall have the meanings indicated below:

- (i) the term "Maintenance, Repair and Overhaul" shall, in relation to Articles, include the following activities:
 - (A) work required to keep the Articles in an operable condition;
 - (B) procedures and arrangements (including safety procedures) for removing the Articles from and re-installing them in an operational system, and for handling, storing, transporting, packaging and labelling the Articles;
 - (C) inspection and testing of Articles or parts thereof to check calibration and performance and to detect and identify faults;
 - (D) dismantling Articles for repair or modification;
 - (E) reassembling Articles after repair, or incorporation of replacement or new parts;
 - (F) testing and calibration of Articles or parts thereof prior to, during or after re-assembly and after reinstallation in an operational system;

- (G) reworking or reconditioning of existing Articles or parts thereof;
- (H) Post Design Service support of Articles; and
- (I) publication revisions in support of Articles.

6.6.2 The Authority shall, in respect of all information relating to matters to which this Paragraph 6.6 applies, have a free licence:

- (i) to copy the information and to circulate and use the information or any copy thereof for Maintenance, Repair and Overhaul of the Articles supplied in support of the Services under the Contract within any UK Government Department (which term includes the UK Armed Forces) provided that no part of the information nor any copy thereof shall, except with the written permission of the Contractor or pursuant of Paragraph 6.6.2(ii), be made available to any third party; and
- (ii) to the extent that such information has been funded by the Authority, to issue the information or any part of the information or any copy of the information or any part thereof to any contractor or potential contractor to the UK for the purpose only of use under a UK Government Contract or preparing or tendering for a proposed UK Government Contract, for Maintenance, Repair and Overhaul of the Articles or of any operational system incorporating the Articles. The recipient contractor or potential contractor shall be placed under an obligation which restricts copying, disclosure and use of the information to the said purpose;
- (iii) provided that, subject to the pre-existing rights of the Authority, where any part of the information to which the Paragraph applies has not been generated under the Contract and is properly marked to identify it as "Proprietary", (information identified as such shall be treated as the Contractor Proprietary Data for the purposes of this Paragraph) the Authority shall not, save in operational emergency, issue such information under Paragraph 6.6.2(ii) without first informing the Contractor and allowing the Contractor thirty (30) days to negotiate a direct confidentiality agreement with the intended recipient. Should the Contractor fail to execute a direct confidentiality agreement within the said thirty day period with any particular intended recipient, then the Authority may proceed with the disclosure of the information to the recipient without such agreement provided the Authority places the recipient under its own written agreement, with the Contractor as a third party beneficiary of the agreement, not to further disclose such information or use such information except as permitted under Paragraph 6.6.2(ii).

6.6.3 Subject to the limitations contained within paragraph 6.6.2, the Contractor shall, at the request of the Authority, supply to the Authority or to any selected contractor with whom the Authority has placed a contract for

Maintenance, Repair and Overhaul of the Articles, any or all of the information for Maintenance, Repair and Overhaul (including, but not limited to, drawings, material and process specifications, parts lists, test data and computer software) which is specified in the Contract or which the Contractor has in his possession or can obtain and has the right to supply, and this Paragraph shall apply to any of the information so supplied.

6.6.4 The Authority shall pay the actual cost of assembling, copying and transmitting information requested by the Authority under this Paragraph except where delivery is a specific requirement under the other terms and conditions of the Contract.

6.6.5 Nothing in this Paragraph 6.6 shall derogate from the rights of the Authority in Unlimited Rights Data recited in Paragraph 6.

6.7 Copyright

6.7.1 The Contractor shall ensure as far as possible that the copyright on any Work produced under the Contract shall vest in the Contractor subject to the rights of third parties in pre-existing works.

6.7.2 The Contractor agrees not to publish any such copyright Work without the consent in writing of the Authority. The Authority will not normally raise objection to publication of any of the copyright Work unless delay or limited publication only is considered to be necessary in the Authority's national interest. The Authority will review periodically any restrictions on publication and will inform the Contractor as soon as the restriction can be removed.

6.7.3 As soon as he becomes aware that any 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 inform the Authority and upon delivery shall appropriately mark such work or part thereof to identify the same and indicate the relevant conditions or rights.

6.7.4 The Contractor may mark or include in any copyright work to which this Paragraph applies a copyright notice provided that such copyright notice acknowledges the Authority's rights under this Paragraph. 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.

6.7.5 This Paragraph shall constitute an 'agreement to the contrary' for the purposes of Section 48 of the Copyright, Design and Patents Act 1988.

7 Intellectual Property Rights in Software

7.1 In the following Paragraphs without prejudice to the provisions at Schedule R (Glossary of Standard Terms and Abbreviations), the following definitions and interpretations shall have the following meanings:

“Software” shall mean all or any part of any:

- (i) Object Code (as defined);
- (ii) Source Material (as defined);
- (iii) associated user documentation; and/or
- (iv) anything further specified as Software in Schedule A (Statement of Requirements).

“Deliverable Software” shall mean the Software delivered or to be delivered by the Contractor to the Authority in accordance with the requirements of the Contract.

“Object Code” shall mean machine code executable by a data processing system;

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

“Source Code” means:

- (i) a representation of Object Code in or readily translatable into a form suitable for human understanding and transformable into the Object Code;
- (ii) 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 Paragraph 7.3.1(iii), to permit replication of such data processing system configuration, computer programs, procedures, rules and associated documentation independently of the Contractor; and/or
- (iii) subject to Paragraph 7.3.1(iii), 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.

“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;

“the Relevant Period” shall mean the currency of the Contract plus a period of six years from the completion of the Contract or such other period as the Parties may agree. Completion of the Contract shall be deemed to occur on the date when all Work under the Contract is completed, or the effort has been terminated under a termination provision in accordance with Condition 28 (Termination) of the Contract. The Contractor shall endeavour to ensure that the Relevant Period in any Sub-Contract shall expire on the same date as that applicable under the Relevant Period definition above, but shall consult the Authority if that is not achievable; and

“Intellectual Property Rights” or “IPR” means all patents, utility models, or rights (registered and unregistered) in any designs; applications for any of the foregoing; copyright; database rights; semiconductor chip topography rights; rights in confidential information and trade secrets; and all rights and forms of protection of a similar nature to these or having equivalent effect anywhere in the world.

7.2 Ownership

7.2.1 The Contractor shall use all reasonable endeavours to 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.

7.3 User Rights and Related Payments

7.3.1 The Contractor grants to the Authority to the extent that he has the right to do so, exercisable without further payment to the Contractor beyond that stated in the Contract, the right:

- (i) to copy, modify and use any Deliverable Software for the services of the Authority, whether by themselves, their agents or their contractors;
- (ii) where the generation of the Deliverable Software has been funded exclusively by the Authority, to issue such Deliverable Software or copies of any Deliverable Software to any contractor or potential contractor 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. Where the generation of Deliverable Software has not been exclusively funded by the Authority, the Contractor and the Authority may mutually agree different rights of use prior to the generation of the Deliverable Software.
- (iii) The Contractor shall notify the Authority as soon as he becomes aware of any limitations as to the use of any Deliverable Software the IPR in which are owned by the Contractor or a third party. The Contractor shall also give to the Authority full details of the provisions of such limitations and any associated cost as soon as he becomes aware of them.
- (iv) Except as provided for by Paragraph 7.4.1(iii), the Authority shall have a right to exercise any of the rights referred to at Paragraph 7.3.1 in respect of Deliverable Software notified to the Authority in accordance with Paragraph 7.3.1(iii) the IPR in which are owned by the Contractor, subject to fair and reasonable terms.
- (v) The Contractor shall, if requested to do so by the Authority, endeavour to secure for the Authority those rights listed at Paragraph 7.3.1 in Deliverable Software notifiable to the Authority in accordance with Paragraph 7.3.1(iii) the IPR in which are owned

by a third party on terms and conditions to be agreed with or approved by the Authority.

- (vi) Subject to the provisions of DEFCON 528 (Import and Export Licences) and Paragraph 7.3.1(iii) but notwithstanding the provisions of Paragraph 7.5.2, 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 the recipient government is placed under an obligation not to use Deliverable Software so released for other than information purposes or to disclose it to a third party. Provided that, where the supply of Source Code is contemplated, and subject to any pre-existing rights of the Authority, this Paragraph 7.3.1(vi) 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.

7.4 Subsequent Deliveries of Software

7.4.1 During the Relevant Period, the Contractor shall at the request and to the requirements of the Authority and to the extent he is able to do so in relation to third party software:

- (i) deliver further copies of the Deliverable Software to the Authority at a reasonable charge based on the cost of providing such copies;
- (ii) to issue any Deliverable Software or copies of any Deliverable Software to any contractor or potential contractor to the Authority for the purpose of use only in connection with the Contract.
- (iii) Where the Contractor is unable or unwilling to support, maintain or modify the Deliverable Software, deliver all software necessary for the Authority, its contractors or Agents to independently support, maintain or modify the Deliverable Software for the services of the UK Government in support of Aircraft covered by this programme. All such software shall be supplied on fair and reasonable terms to be agreed.
- (iv) The Contractor shall retain for the Relevant Period a copy of such Software as is required for the performance of his obligations under the Contract.
- (v) 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 Paragraph 7.4.1(iv) 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.

7.5 Confidentiality

7.5.1 The Authority undertakes to:

- (i) receive and hold in confidence all Deliverable Software;
- (ii) enforce all reasonable regulations and precautions 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;
- (iii) not disclose the Deliverable Software outside United Kingdom Government Departments and Establishments, except as expressly permitted by any other provision of this Paragraph or otherwise expressly agreed in writing by the Contractor.

7.5.2 The Authority shall, subject to Paragraphs 7.5.3 and 7.5.4, before disclosing any Deliverable Software outside United Kingdom Government Departments and Establishments make it a pre-requisite of the disclosure, unless otherwise agreed in writing by the Contractor, that the recipient shall enter into a confidentiality agreement with the Contractor whereby the recipient's use of the Deliverable Software is limited to use for the services of the United Kingdom Government for the Aircraft in their possession for the purposes of the services provided under the Contract. A confidentiality agreement shall be concluded within thirty (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 between the Contractor and the intended recipient is not concluded within that period then, notwithstanding the absence of a direct confidentiality agreement between the parties, the Authority shall have the right to make the disclosure, provided further the Authority places the intended recipient under written agreement with the Contractor as third party beneficiary of the agreement and that 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;
- (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;
- (C) restrictions on the circulation, copying or use of the Deliverable Software to be disclosed.

7.5.3 The obligations imposed by Paragraphs 7.5.1 and 7.5.2 shall not apply to such of the Deliverable Software that:

- (i) is, or becomes, rightfully in the possession of the Authority without relevant restrictions;
- (ii) is in or enters the public domain without breach of the Contract and is available for unrestricted use;
- (iii) is received by the Authority from a third party who himself has the right to disclose without relevant restrictions;
- (iv) is or was independently developed by the Authority;
- (v) is approved by the Contractor, in writing, for unrestricted release by the Authority.

7.5.4 Notwithstanding the provisions of this Paragraph relating to the disclosure of the Deliverable Software, the Authority shall be entitled to disclose the Deliverable Software after notification in writing to the Contractor by a Director of Contracts in person that he considers it to be in the national interest to do so. Save where the Authority considers the 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 the disclosure in this circumstance the Authority shall place upon the recipient an obligation of confidence and a limitation of use as set out in Paragraphs 7.5.1 and 7.5.2.

7.6 Output

7.6.1 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 the 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.

7.6.2 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 Paragraph 7.6.1 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.

7.7 Marking

7.7.1 Notwithstanding any other provision of the Contract to the contrary, the Contractor may make or include in any Deliverable Software to which this Paragraph 7.7 applies a Copyright notice provided that such Copyright notice acknowledges the Authority's rights under this Paragraph. 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.

7.8 Commercial Exploitation Levy

7.8.1 The Contractor shall not provide training based in whole or in part on the Training Courseware developed under the Contract, otherwise than for the purposes of the United Kingdom Government, or grant any licence to reproduce or otherwise use such Training Courseware 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 in respect of such Training Courseware.

7.9 Modified Software

7.9.1 Should Deliverable Software be modified at any time, then each Party shall enjoy the same rights and be bound by the same obligations provided by this Paragraph in respect of any of those parts of the modified Software which were present in the Software prior to modification.

7.10 Liability and Indemnities

7.10.1 The Contractor shall at all times indemnify and keep indemnified the Authority or any other United Kingdom Government Department in respect of all costs, claims, demands, damages, liabilities and expenses made against or incurred by the Authority or any other United Kingdom Government Department arising directly or indirectly from any actual or alleged infringement of Copyright or breach of confidence or IPR-related breach of contract as a result of the copying, modification, use, or possession of the Deliverable Software by or on behalf of the Authority or any other UK Government department or their respective agents or contractors;

7.10.2 In the event that any claim or legal action is made or taken against the Authority in respect of which the Authority is entitled to be indemnified in accordance with the provisions of Paragraph 7.10.1 above then:

- (i) the Authority shall promptly notify the Contractor in writing of such costs, claims, demands, damages, liabilities and expenses of which it shall have notice and shall provide the Contractor with such information regarding the claim as the Contractor shall reasonably require PROVIDED THAT the Authority shall not be obliged to disclose any information the disclosure of which would prejudice any right or interest of the Crown;
- (ii) unless there is a statutory obligation to do so, the Authority shall not make any statement which may be prejudicial to the settlement or defence of such claim without the prior written consent of the Contractor;
- (iii) when requested by the Contractor the Authority shall allow the Contractor at the Contractor's expense to conduct all negotiations and litigation and shall give the Contractor all reasonable assistance in connection therewith PROVIDED THAT:
 - (A) the Contractor shall have first given to the Authority an unconditional written admission of his liability to indemnify the Authority in accordance with the provisions of Paragraph 7.10.1;
 - (B) at the request of the Authority the Contractor shall keep the Authority fully informed about the conduct and progress of such negotiations and proceedings;
 - (C) the Authority shall have the right to intervene or assume responsibility for the conduct of such proceedings or any consequent settlement thereof at any time PROVIDED THAT the Contractor shall not be liable to indemnify the Authority under this Paragraph 7.10 against any liability or any part of any damages costs or expenses to the extent that such liability or part is incurred by the Authority by reason of any breach by the Authority or Paragraph 7.10.2(ii), or by the Authority acting unreasonably either in the conduct of any negotiations or legal proceedings or in the making of any settlement in relation to any claim or demand.

7.10.3 If at any time an allegation of infringement of Copyright or breach of confidence or breach of contract is made as a result of the copying, modification, use or possession of the Deliverable Software or any part thereof, the Contractor may, with the agreement of the Authority and at the Contractor's own expense, modify the Deliverable Software or any part thereof or replace the same with an item of equivalent functionality and performance so as to avoid infringement or breach.

- 7.10.4 Except as may be otherwise agreed, the foregoing provisions shall not apply in so far as any costs, claims, demands, damages, liabilities and expenses are in respect of:
- (i) any use of Deliverable Software not reasonably to be inferred from the s specification requirements of the Authority;
 - (ii) the refusal by the Authority or such other United Kingdom Government Department to use to have used a modified or replacement item supplied pursuant to Paragraph 7.10.3;
 - (iii) the use of any Deliverable Software made after and in contravention of a judicial decision relating to such Deliverable Software.
- 7.10.5 The Contractor shall have no liability in respect of any Deliverable Software modified by or on behalf of the Authority, other than Deliverable Software modified under the direction and control of the Contractor himself. PROVIDED THAT the exclusion of liability contained in Paragraph 7.10.5 shall not apply in circumstances where the Contractor would be liable under the terms of the Contract whether or not the Deliverable Software has been modified.
- 7.10.6 Where the Contractor is not liable under the provisions of Paragraph 7.10.5, then the Authority shall indemnify and keep indemnified the Contractor in respect of all costs, claims, demands, damages, liabilities and expenses made against or incurred by the Contractor:
- (i) as a result of the copying, modification, use or possession of any modified Deliverable Software by or on behalf of the Authority or any other United Kingdom Government Department or their respective agents or contractors, or by any government which received it in accordance with the provisions of Paragraph 7.3.1(vi).
 - (ii) Where the Authority supplies or causes to be supplied Software to the Contractor for use, or instructs the Contractor to use Software, in the performance of the Contract and that Software was not previously supplied to the Authority by the Contractor, then the Authority shall indemnify and keep indemnified the Contractor in respect of all costs, claims, demands, damages, liabilities and expenses made against or incurred by the Contractor:
 - (A) arising directly or indirectly from any actual or alleged infringement of Copyright or breach of confidence or IPR-related breach of contract;
 - (B) as a result of the copying, modification, use or possession of such Software by the Contractor solely for the performance of the Contract.

7.10.7 In the event that any claim is made against the Contractor in respect of which the Contractor is entitled to be indemnified in accordance with the provisions of Paragraphs 7.10.6(i) and 7.10.6(ii) above then:

- (i) the Contractor shall promptly notify the Authority in writing of such costs, claims, demands, damages, liabilities and expenses of which he himself shall have notice and shall provide the Authority with such information regarding the claim as the Authority shall reasonably require;
- (ii) the Contractor shall not make any statement which may be prejudicial to the settlement or defence of such claim without the prior written consent of the Authority;
- (iii) when requested by the Authority the Contractor shall allow the Authority at the Authority's expense to conduct all negotiations and litigation and shall give the Authority all reasonable assistance in connection therewith PROVIDED THAT:
 - (A) the Authority shall have first given to the Contractor an unconditional written admission of its liability to indemnify the Contractor in accordance with the provisions of Paragraphs 7.10.6(i) and 7.10.6(ii);
 - (B) at the request of the Contractor the Authority shall keep the Contractor fully informed about the conduct and progress of such negotiations and proceedings.

7.10.8 The foregoing states the entire liability of the Authority and Contractor with respect to any actual or alleged infringement of Copyright or breach of confidence or IPR-related breach of contract arising from the copying, modification, use or possession of:

- (i) the Deliverable Software by or on behalf of the Authority or any other United Kingdom Government Department;
- (ii) the Software referred to in Paragraph 7.10.6(ii) by the Contractor.

7.10.9 This Paragraph shall constitute an "agreement to the contrary" for the purposes of Section 48 of the Copyright, Design and Patents Act 1988.

8 Third Party Intellectual Property Rights (IPR) – Commercial and Non-commercial Articles and Services

General

In this Paragraph:

“**design right**” has the meaning ascribed to it by Section 213 of the Copyright, Designs and Patents Act 1988;

“**Crown Use**” in relation to a patent means the doing of anything by virtue of Sections 55 to 57 of the Patents Act 1977 which otherwise would be an infringement of the

patent and in relation to a Registered Design has the meaning given in paragraph 2A(6) of the First Schedule to the Registered Designs Act 1949;

“Patent” shall mean legal protection of the right to exclude others from making, using or selling an invention.

Nothing in this Paragraph 8 shall be taken as an authorisation or promise of an authorisation under Section 240 of the Copyright, Designs and Patents Act 1988.

8.1 Notifications. As soon as it becomes aware, the Contractor shall promptly notify the Authority of:

8.1.1 any invention or design the subject of Patent or Registered Design rights (or application therefor) owned by a third party which appears to be relevant to the performance of the Contract or to use by the Authority of anything required to be done or delivered under the Contract;

8.1.2 any restriction as to disclosure or use or obligation to make payments in respect of any other IPR (including technical information) required for the purposes of the Contract or subsequent use by the Authority of anything delivered under the Contract and, where appropriate, the notification shall include such information as is required by Section 2 of the Defence Contracts Act 1958;

8.1.3 any allegation of infringement of IPR made against the Contractor and which pertains to the performance of the Contract or subsequent use by the Authority of anything required to be done or delivered under the Contract,

This Paragraph 8.1 does not apply in respect of Articles or Services normally available from the Contractor as a COTS item or service.

8.2 If the information required under this Paragraph 8 has been notified previously, the Contractor may meet his obligations by giving details of the previous notification.

8.3 Patents and Registered Designs in the UK – COTS Articles or Services

8.3.1 In respect of any question arising (by way of an allegation made to the Authority or the Contractor, or otherwise) that the manufacture or supply under the Contract of any Article or Service normally available from the Contractor as a COTS item or service is an infringement of a United Kingdom Patent or Registered Design not owned or controlled by the Contractor or the Authority, the Contractor shall, subject to the agreement of the third party owning such Patent or Registered Design, be given exclusive conduct of any and all negotiations for the settlement of any claim or the conduct of any litigation arising out of such question. The Contractor shall indemnify the Authority, its officers, agents and employees against any liability and cost arising from such allegation. This Paragraph will not apply if:

- (i) the Authority has not informed the Contractor as soon as practicable of any suit or action alleging infringement and given the Contractor such opportunity as is afforded by applicable laws, rules, or regulations to participate in its defence;
- (ii) the Authority has made or makes an admission of any sort relevant to such question;
- (iii) the Authority has entered or enters into any discussions on such question with any third party without the prior written agreement of the Contractor;
- (iv) the Authority has entered or enters into negotiations in respect of any relevant claim for compensation in respect of Crown Use under Section 55 of the Patents Act 1977 or Section 12 of the Registered Designs Act 1977;
- (v) legal proceedings have been commenced against the Authority or the Contractor in respect of Crown Use, but only to the extent of such Crown Use that has been properly authorised; or
- (vi) the infringement results from compliance with specific written instructions of the Authority, its officers, agents or employees, directing a change in the supplies to be delivered or in the materials or equipment to be used, or directing a manner of performance of the Contract not normally used by the Contractor.

8.4 The indemnity in Paragraph 8.3 does not extend to use by the Authority of anything supplied under the Contract where that use was not reasonably foreseeable at the time of the Contract.

8.5 In the event that the Authority has entered into negotiation in respect of a claim for compensation, or legal proceedings in respect of the Crown Use have commenced, the Authority shall forthwith authorise the Contractor for the purposes of performing the Contract (but not otherwise) to utilise a relevant invention or design in accordance with Sections 55 and 56 of the Patents Act 1977 or Section 12 of the Registered Designs Act 1949 and to use any model, document or information relating to any such invention or design which may be required for that purpose.

8.6 Patents and Registered Designs in the UK - All other Articles or Services

8.6.1 If a relevant invention or design has been notified to the Authority by the Contractor prior to the date of the Contract, then unless it has been otherwise agreed, under the provisions of Sections 55 and 56 of the Patents Act 1977 or Section 12 of the Registered Designs Act 1949, the Contractor is hereby authorised to utilise that invention or design, notwithstanding the fact that it is the subject of a United Kingdom Patent or United Kingdom Registered Design, for the purpose of performing the Contract.

8.6.2 If, under Paragraph 8.1, a relevant invention or design is notified to the Authority by the Contractor after the date of the Contract, then:

- (i) if the owner (or his exclusive licensee) takes, or threatens in writing to take, any relevant action against the Contractor, the Authority shall issue to the Contractor a written authorisation in accordance with the provisions of Sections 55 and 56 of the Patents Act 1977 or Section 12 of the Registered Designs Act 1949, and
- (ii) in any event, unless the Contractor and the Authority can agree an alternative course of action, the Authority shall not unreasonably delay the issue of a written authorisation in accordance with the provisions of Sections 55 and 56 of the Patents Act 1977 or Section 12 of the Registered Designs Act 1949.

8.7 Patents, Utility Models and Registered Designs in the US

8.7.1 The Authority shall assume all liability and shall indemnify the Contractor, its officers, agents and employees against liability, including the Contractor's costs, as a result of infringement by the Contractor or his suppliers of any Patent, Utility Model, Registered Design or like protection in the United States in the performance of the Contract when such infringement arises from or is incurred by reason of the Contractor following any specification, statement of work or instruction in the Contract or using, keeping or disposing of any item given by the Authority for the purpose of the Contract in accordance with the Contract.

8.7.2 The Contractor shall assume all liability and shall indemnify the Authority, its officers, agents and employees against liability, including the Authority's costs, as a result of infringement by the Contractor or his suppliers of any Patent, Utility Model, Registered Design or like protection in the United States in the performance of the Contract when such infringement arises from or is incurred otherwise than by reason of the Contractor following any specification, statement of work or instruction in the Contract or using, keeping or disposing of any item given by the Authority for the purpose of the Contract in accordance with the Contract.

8.8 Royalties and Other Licence Fees.

8.8.1 The Contractor shall not be entitled to any reimbursement of any royalty, licence fee or similar expense incurred in respect of anything to be done under the Contract, where:

- (i) a relevant discharge has been given under Section 2 of the Defence Contracts Act 1958, or relevant authorisation in accordance with Sections 55 or 57 of the Patents Act 1977, Section 12 of the Registered Designs Act 1949 or Section 240 of the Copyright, Designs and Patents Act 1988 in respect of any Intellectual Property, or
- (ii) any obligation to make payments for Intellectual Property has not been promptly notified to the Authority under Paragraph 8.1 of this Paragraph.

8.8.2 Where an authorisation is given by the Authority under Paragraph 8.5, Paragraph 8.6. or this Paragraph 8.7, to the extent permitted by Section 57 of the Patents Act 1977, Section 12 of the Registered Designs Act 1949 or Section 240 of the Copyright, Designs and Patents Act 1988, the Contractor shall also be:

- (i) released from payment whether by way of royalties, licence fees or similar expenses in respect of the Contractor's use of the relevant invention or design, or the use of any relevant model, document or information for the purpose of performing the Contract, and
- (ii) authorised to use any model, document or information relating to any such invention or design which may be required for that purpose.

8.9 Copyright, Design Rights etc.

8.9.1 The Contractor shall assume all liability and indemnify the Authority and its officers, agents and employees against liability, including costs as a result of

- (i) infringement or alleged infringement by the Contractor or his suppliers of any Copyright, Database Right, Design Right or the like protection in the United Kingdom and the United States in respect of any item to be supplied under the Contract or otherwise in the performance of the Contract;
- (ii) misuse of any confidential information, trade secret or the like by the Contractor in performing the Contract;
- (iii) provision to the Authority of any information or material which the Contractor does not have the right to provide for the purpose of the Contract.

8.9.2 The Authority shall assume all liability and indemnify the Contractor, its officers, agents and employees against liability, including costs as a result of:

- (i) infringement or alleged infringement by the Contractor or his suppliers of any Copyright, Database Right, Design Right or the like protection in the United Kingdom and the United States 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;
- (ii) alleged misuse of any confidential information, trade secret or the like 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 the Contractor's use of that information is for the purposes intended when it was disclosed by the Authority.

- 8.10 The above represents the total liability of each Party to the other under the Contract in respect of any infringement or alleged infringement of Patent or other IPR owned by a third party.
- 8.10.1 Neither Party shall be liable, one to the other, for any consequential loss or damage arising as a result, directly or indirectly, of a claim for infringement or alleged infringement of any Patent or other IPR owned by a third party.
- 8.10.2 A Party against whom a claim is made or action brought, shall promptly notify the other Party in writing if such claim or action appears to relate to an infringement which is the subject of an indemnity or authorisation given under this Paragraph by such other Party. The notification shall include particulars of the demands, damages and liabilities claimed or made of which the notifying Party has notice.
- 8.10.3 The Party benefiting from the indemnity or authorisation shall allow the other Party, at its own expense, to conduct any negotiations for the settlement of the same, and any litigation that may arise therefrom and shall provide such information as the other Party may reasonably require.
- 8.10.4 Following a notification under Paragraph 8.10.2, the Party notified shall advise the other Party in writing within thirty (30) days whether or not it is assuming conduct of the negotiations or litigation. In that case the Party against whom a claim is made or action brought shall not make any statement which might be prejudicial to the settlement or defence of such a claim without the written consent of the other Party.
- 8.10.5 The Party conducting negotiations for the settlement of a claim or any related litigation shall, if requested, keep the other Party fully informed of the conduct and progress of such negotiations.
- 8.10.6 If at any time a claim or allegation of infringement arises in respect of Copyright, Database Right, Design Right or breach of confidence as a result of the provision of any item by the Contractor to the Authority for which the Contractor has agreed above to indemnify the Authority, the Contractor may at its own expense replace the item with an item of equivalent functionality and performance so as to avoid infringement or breach.
- 8.10.7 The Parties will co-operate with one another to mitigate any claim or damage, which may arise from use of third party IPR.
- 8.11 Sub-Contracts.
- 8.11.1 The Contractor shall secure from any Sub-Contractor, the prompt notification to the Authority of the information required by Paragraph 8.1 of this Paragraph. In addition, the Contractor may pass the benefits and obligations of this Paragraph to his Sub-Contractors. In order to do so the Contractor may act as the agent of the Authority in entering, on behalf of the

Authority, an agreement passing the benefits and indemnities given by the Authority under this Paragraph. Any such benefits and indemnities will be subject always to Paragraphs 8.8, 8.8.2 and 8.10 as though the Sub-Contractor was the Contractor. If any claim or action relevant to such benefit or indemnity arises, it shall be promptly notified to the Authority. The Contractor is not authorised to enter into any substantive correspondence in such matter nor in any way to act on behalf of the Authority in such claim or action. Any arrangements between the Contractor and Sub-Contractor to enable the Contractor to underwrite his indemnities to the Authority under this Paragraph is a matter between the Contractor and the Sub-Contractor.

8.11.2 For the purposes of this Paragraph, COTS products shall be characterised by the following features:

- (i) they have been developed to support a commercial (i.e. non-military) market;
- (ii) they are available for purchase without modification at the time of the Authority's request for purchase.

9 Design/Patents, Etc Rights – Sub-Contracts.

9.1 In those circumstances under the Contract where Sub-Contracts are contemplated for design and development effort and the costs of such design and development will be substantially borne by the Authority through the Contract, the Contractor shall not enter in to any commitments in relation to the Contract until the Sub-Contractor has entered in to an agreement with the Authority in the form set out in DEFFORM 177 (Design Rights and Patents-Sub-Contractors Agreement) to the Contract. Wherever possible, the request for approval should be accompanied by two (2) copies of the completed agreement signed by the Sub-Contractor. If, in any case the Contractor is unable to comply with this Paragraph they shall report the matter directly to the Authority's Commercial Branch and await further instructions before placing the Sub-Contract or order.

9.2 The Contractor shall include in all Sub-Contracts or orders placed all relevant Conditions agreed with the Authority and shall ensure that all Sub-Contracts are amended as necessary to include any amendments to the Contract in accordance DEFCON 620 (Contract Change Control Procedure).

9.3 Step-in Rights.

In the event of:

9.3.1 Termination of the Contract, or

9.3.2 the Contractor being unwilling or unable either to continue with the Contract or accept a follow-on agreement from the Authority for the continuing provision of the Services which are the subject of this, or

- 9.3.3 the Contractor permanently discontinuing its business because of bankruptcy, receivership, dissolution, or other form of permanent business disruption and such business is not continued by a successor in interest to the Contractor to whom the relevant Intellectual Property Rights have been transferred,

the Authority has the right to obtain from the Contractor, or from the authorised trustees or receivers acting on behalf of the Contractor, sufficient of the Contractor's Management Information as to permit the Authority to continue the efficient operation of the Contract during the period until a replacement arrangement can be established by the Authority for the provision of Services which are subject to the Contract. The Authority shall have the right for the period of one calendar year from the date when the Management Information is received by the Authority, to use or have used the Management Information for this purpose.

- 9.4 Within three (3) calendar months from the expiry of the period in Paragraph 9.3 above, the Authority shall return to the Contractor or to the authorised trustees or receivers acting on behalf of the Contractor as appropriate, the Management Information received by the Authority and all copies e.g. fax, email, soft copy etc, or certify its destruction thereto.

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

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

11 Licence and Data

- 11.1 Subject to security and operational considerations the Authority hereby grants to the contractor a non-exclusive licence to use Authority owned information that exists now or is generated by the Authority during the lifetime of the Contract and related to the Aircraft, for the purpose of carrying out the Contractor's obligations under this Contract where such information is necessary for or useful in such purpose.
- 11.2 Additionally, subject to security and operational considerations, and at its sole discretion, the Authority will make available flight and structural data available to the Contractor for the purposes of airframe analysis, improving structural data, performance and failure prediction, product and logistics support development. No other use shall be permitted. The Contractor may make such data available to another group company of The Boeing Company provided that they are legally bound not to use the data for any other purpose and that they anonymise such data to the fullest extent practicable prior to incorporation into any datasets or analysis.