

Schedule 11

IPR

Part 1: Intellectual Property Rights

1 Ownership of IPR

- 1.1 Subject to any existing rights of the Authority or any third party, and with the exceptions of the System Integrator Deliverables as set out in in Annex 1 (*Deliverables to which Part 3 (Intellectual Property Rights Vesting in the Authority) of Schedule 11 (IPR) applies*) to this Schedule 11 or otherwise identified as vesting in the Authority, the ownership of IPR in Technical Data and any other IPR generated by the System Integrator in the course of work under this Contract shall, as between the Authority and the System Integrator, belong to the System Integrator.

2 Rights in Technical Data

2.1 Unlimited Rights

- 2.1.1 The Authority shall have a royalty-free, worldwide, non-exclusive, perpetual and irrevocable Unlimited Rights licence for all Technical Data, which is a System Integrator Deliverable, or has otherwise been delivered to the Authority as part of the work carried out under this Contract, and has been generated under this Contract but not listed in Annex 1 (*Deliverables to which Part 3 (Intellectual Property Rights Vesting in the Authority) of Schedule 11 (IPR) applies*) to this Schedule 11.
- 2.1.2 Notwithstanding the provisions of paragraph 2.1.1 (*Unlimited Rights*) of Part 1 of this Schedule 11 or any other provisions of this paragraph 2.1, the Authority shall have Unlimited Rights in the following Technical Data delivered or deliverable under this Contract:
- (i) Interface Data (other than Interface Data for which the Crown is the owner of the IPR, or otherwise licensed, by virtue of another provision of this Contract);
 - (ii) Technical Data that has been made publicly available otherwise than in breach of obligations of confidence, or Technical Data that the System Integrator has disclosed without restrictions on further use or disclosure; and
 - (iii) any Technical Data specifically identified in Annex 2 (*Deliverables to be delivered as Unlimited Rights*) to this Schedule 11 as deliverable to the Authority with Unlimited Rights;
 - (iv) studies, analyses, test data or similar data generated for this Contract, or for a response by the System Integrator to an invitation to tender for this Contract, when the study, analysis, test or similar work is a System Integrator Deliverable, but excluding test methodology to the extent that it consists of Limited Rights Technical Data; and

- (v) Technical Data for installation, operation, routine maintenance or training purposes.

2.2 Limited Rights

- 2.2.1 The Authority shall have royalty-free, worldwide, non-exclusive, perpetual and irrevocable Limited Rights in all Technical Data that is or forms part of a System Integrator Deliverable, or has been otherwise been delivered to the Authority, and which has not been generated under this Contract, and which has been notified to the Authority in accordance with the provisions of paragraph 3.1 (*Restrictions on Authority's Use and Disclosure of Technical Data – Prior Identification by the System Integrator*) of Part 1 of this Schedule 11.
- 2.2.2 The Authority shall retain any rights that it has obtained in Technical Data by virtue of the provisions of another contract or other arrangement.
- 2.2.3 Except as may be required or permitted by law or as otherwise permitted by the provisions of another contract or other arrangement, the Authority shall not disclose Limited Rights Technical Data outside HMG unless it has obtained the prior written permission of the System Integrator or as permitted by the provisions of paragraph 2.3 (*Specific Disclosure Rights of the Authority in Limited Rights Technical Data*) of Part 1 of this Schedule 11.

2.3 Specific Disclosure Rights of the Authority in Limited Rights Technical Data

- 2.3.1 Notwithstanding any restrictions on disclosure in paragraph 2.2 (*Limited Rights*) of Part 1 of this Schedule 11, the Authority shall be permitted to disclose, and authorise the use of, Technical Data with Limited Rights for UK Governmental Purposes:
 - (i) to an independent support contractor, solely for the purposes of the provision of a service to the Authority which, unless otherwise stated in this Contract, shall be limited to managing, monitoring, evaluating, assessing or auditing the work under this Contract; and
 - (ii) where this Contract is for the supply of Services and the Limited Rights Technical Data concerns the processes and procedures concerned with the delivery of the Services, to a Follow-On System Integrator only for the continued supply of the Services following termination or expiry of this Contract, or during any transitional period as may be specified in this Contract, and only to the extent necessary for the delivery of the follow-on Services; and
 - (iii) where the Technical Data is necessary for repair, maintenance or overhaul of equipment for urgent operational or safety reasons, subject to the recipient (i) agreeing that the Technical Data shall only be used, or copied for those purposes, and (ii) agreeing to return the Technical Data to the Authority immediately on completion of the urgent operational or safety need without retaining a copy.

2.3.2 The Authority will have the right to disclose Limited Rights Technical Data for information and evaluation purposes in confidence to a foreign government for UK Governmental Purposes only and with the prior written permission of the System Integrator.

2.3.3 The Authority shall not disclose Technical Data properly marked under paragraph 4 (*Marking of Technical Data*) of Part 1 of this Schedule 11 as being Limited Rights Data unless it has first provided the System Integrator, or other party asserting Limited Rights, with the opportunity to enter into a direct confidentiality agreement in the form of DEFFORM 94 with the intended recipient. The Authority shall not be restricted from disclosing the Technical Data to the intended recipient if the System Integrator or other party asserting Limited Rights has not signed a confidentiality agreement in the form of DEFFORM 94 within 30 (thirty) calendar days of its receipt provided that the Authority has placed the intended recipient under an obligation to keep the Technical Data confidential and to use it only for the purposes for which it is disclosed.

2.4 Modifications

2.4.1 The Authority shall not exercise its rights in Unlimited Rights Technical Data to authorise a third party (other than the design rights owner) to modify the design of any Article produced under this Contract without ensuring that (i) it has the right to provide to the System Integrator a copy of all Technical Data relating to any modified design to enable the System Integrator to manufacture articles to the modified design ("**Modified Design Data**"); and (ii) that it has the right to grant to, or to procure the grant to, the System Integrator of a licence on willing licensor/willing licensee terms, to use the Modified Design Data for the purposes of manufacture, sales and support of items made to the modified design for customers other than the Authority.

2.5 System Integrator Background Patents and Designs and other IPR

2.5.1 Subject to paragraph 2.5.2 of Part 1 of this Schedule 11 and to any restrictions notified to the Authority in accordance with paragraph 3.1 (*Restrictions on Authority's Use and Disclosure of Technical Data – Prior Identification by the System Integrator*) of Part 1 of this Schedule 11, the Unlimited Rights granted to the Authority under paragraphs 2.1.1, 2.1.2, and 2.1.2(iv) (*Unlimited Rights*) of Part 1 of this Schedule 11 and Limited Rights granted under paragraph 2.2 (*Limited Rights*) of Part 1 of this Schedule 11 shall include licences under any Background Patents and Designs and other IPR owned by the System Integrator solely in connection with, and to the extent necessary to exercise its rights in the Technical Data in accordance with such clauses.

2.5.2 Subject to the rights of the Crown arising otherwise than under this paragraph, and provided that the System Integrator has met in a timely manner any obligations included in this Contract to inform the Authority of the existence of any relevant United Kingdom patent or registered design, the System Integrator shall be entitled to claim payment under the provisions of sections 55 to 59 of the Patents Act 1977 or the first schedule to the Registered Designs Act 1949 in respect of any Background Patents and Designs owned

or controlled by the System Integrator and used by the Authority, or any third party authorised by the Authority, in the exercise of the rights granted to the Authority under paragraph 2 (*Rights in Technical Data*) of Part 1 of this Schedule 11. The terms to be agreed or settled for the use of any such patented invention or registered design shall not include payment of compensation under section 57A of the Patents Act 1977 or paragraph 2A of the first schedule to the Registered Designs Act 1949 in respect of any invention or design covering the Articles, or described in any Unlimited Rights Technical Data that is a System Integrator Deliverable, and is subject to the provisions of Part 1 of this Schedule 11.

2.6 Authority's Quiet Enjoyment; and Embedded Software

2.6.1 Nothing in Part 1 of this Schedule 11 shall act to prevent the Authority's quiet enjoyment of any Articles delivered to it under this Contract, including the right to operate, maintain, use and dispose of the Articles, and the System Integrator shall not act to enforce rights in relation to any software that is provided as an integral part of such Articles to prevent the Authority's quiet enjoyment of the Articles. Nothing in this condition shall prevent the Authority from exercising its statutory rights, currently in force or hereinafter enacted, in respect of such software. This paragraph 2.6 shall not require the System Integrator to deliver software to the Authority separate from the Article. No trade mark right or right against passing off shall be exercised against any deliverable Article, or any article made by or for the Authority in accordance with the rights granted under this condition, to a design incorporating a trade mark, recorded in deliverable Technical Data or embodied within any deliverable model, die or mould.

3 Restrictions on Authority's Use and Disclosure of Technical Data – Prior Identification by the System Integrator

- 3.1 All Technical Data to be delivered to the Authority under this Contract with restrictions on use or disclosure that are more restrictive than Unlimited Rights, shall be identified in Schedule 22 (*Notifications of Intellectual Property Rights (IPR) Restrictions*). Schedule 22 (*Notifications of Intellectual Property Rights (IPR) Restrictions*) may be updated from time to time during the course of this Contract with the express written agreement of the Authority.
- 3.2 The System Integrator shall not deliver to the Authority any Technical Data with any restrictive marking if that Technical Data is not identified in Schedule 22 (*Notifications of Intellectual Property Rights (IPR) Restrictions*). Subject to paragraph 3.3 of Part 1 of this Schedule 11, any Technical Data delivered to the Authority without first being identified in Schedule 22 (*Notifications of Intellectual Property Rights (IPR) Restrictions*) may be used by the Authority as if it is Unlimited Rights Technical Data, in accordance with the provisions of paragraph 2.1.1 (*Unlimited Rights*) of Part 1 of this Schedule 11, but subject to the provisions of paragraphs 2.4 (*Modifications*) and 2.5 (*System Integrator Background Patents and Designs and other IPR*) of Part 1 of this Schedule 11.
- 3.3 The System Integrator shall notify the Authority of restrictions on the use or disclosure of Technical Data, due to IPR owned by a third party other than a Sub-Contractor, after its delivery to the Authority where the identification of any such restrictions is based on

information not available to the System Integrator at the date of delivery, or where the Technical Data is identified in Schedule 22 (*Notifications of Intellectual Property Rights (IPR) Restrictions*) and the omission of any restrictive marking is inadvertent. The Authority shall give prompt and reasonable consideration to any such notification and shall allow the System Integrator to apply the appropriate restrictive marking to the Technical Data retrospectively if it is clear, in the circumstances, that the restrictive marking correctly reflects the Authority's rights in the relevant Technical Data as detailed in paragraph 2 (*Rights in Technical Data*) of Part 1 of this Schedule 11. The Authority may continue any use of the Technical Data begun prior to the notification made in accordance with this paragraph 3.3 notwithstanding that any such use may be contrary to any restrictive marking retrospectively applied to the Technical Data, but shall otherwise observe all restrictions on use and disclosure notified by the System Integrator as are agreed in accordance with this paragraph 3.3.

4 Marking of Technical Data

- 4.1 The System Integrator shall mark any covering, packaging or cover page of Technical Data delivered to the Authority with Unlimited Rights with the following legend:

"This Technical Data is delivered to the Authority by [state System Integrator's name] under Contract [state MOD Contract No.]. The Authority has Unlimited Rights in the Technical Data in accordance with the provisions of that contract."

- 4.2 The System Integrator shall mark any covering, packaging or cover page of Technical Data delivered with Limited Rights with the following legend:

"This Technical Data is delivered to the Authority by [state System Integrator's name] under Contract [state MOD Contract No.]. The Authority has Limited Rights in the Technical Data as marked in accordance with the provisions that contract."

- 4.3 Any pages of documents including Technical Data subject to Limited Rights shall include the legend in paragraph 4.2 (*Marking of Technical Data*) of Part 1 of this Schedule 11 at the top or bottom of the page and shall be clearly marked by the System Integrator to identify the portions of those pages that are subject to those rights. The Technical Data shall be identified by marking, underlining or shading. The Authority shall have the right to remove any Technical Data subject to Limited Rights from a document and copy, use or disclose the edited document in accordance with the rights of the Authority in the resultant document.
- 4.4 The System Integrator may apply a copyright notice to any Technical Data delivered to the Authority to identify the owner of the copyright, but shall not mark the Technical Data with any description of the Authority's rights in it other than those set out in this paragraph 4 (*Marking of Technical Data*).

5 Effect and Removal of Nonconforming and Incorrect Markings

- 5.1 The Authority shall notify the System Integrator in writing of any markings on Technical Data that it reasonably believes are incorrect or do not conform to the provisions of paragraph 4 (*Marking of Technical Data*) of Part 1 of this Schedule 11. The System Integrator shall remove or correct any incorrect or non-conforming markings within 30 (thirty) calendar days of notification. Failure to remove or correct any such markings may

be a ground for non-acceptance of the Technical Data by the Authority and withholding of Contract payment until resolved.

- 5.2 If the System Integrator fails to remove or correct a non-conforming marking within 30 (thirty) calendar days after receipt of notification by the Authority, then the Authority shall be entitled to ignore the marking and treat the Technical Data as Unlimited Rights Technical Data in accordance with paragraph 2 (*Rights in Technical Data*) of Part 1 of this Schedule 11 and, if the Authority considers it appropriate, remove or correct the marking.

6 Technical Data Provided By Sub-Contractors

- 6.1 The System Integrator shall ensure that the Authority's rights in Technical Data which is to be supplied by the Sub-Contractors, and which will be included in Technical Data that is a System Integrator Deliverable, shall be in accordance with the provisions of paragraph 2 (*Rights in Technical Data*) of Part 1 of this Schedule 11 together with any other rights of the Authority as set out in Part 1 of this Schedule 11. The System Integrator shall be responsible for determining with the Sub-Contractor prior to the award of any Sub-Contract the appropriate contractual arrangements, as between the System Integrator and Sub-Contractor, to provide the required Authority user rights in such Technical Data.
- 6.2 If the System Integrator becomes aware that it will be unable to meet its obligations under paragraph 6.1 (*Technical Data Provided by Sub-Contractors*) of Part 1 of this Schedule 11 to the Authority, in respect of Technical Data that will be delivered by a potential Sub-Contractor, to the Authority (regardless of whether that delivery is directly from the potential Sub-Contractor to the Authority or through the System Integrator to the Authority), then the System Integrator shall promptly notify the Authority, providing evidence that the System Integrator has used all reasonable endeavours to secure the necessary rights for the Authority, and that the Sub-Contractor is unwilling to provide the necessary rights to the Authority, and request the potential Sub-Contractor to negotiate directly with the Authority regarding the Authority's user rights in Technical Data arising from a potential Sub-Contract. Upon receipt of such notice the Authority shall use all reasonable endeavours to conclude any direct agreement promptly. The System Integrator shall not enter into a Sub-Contract with the potential Sub-Contractor in respect of the relevant Contract requirement of the Authority unless and until the Authority notifies the System Integrator that the potential Sub-Contractor has entered into a direct agreement with the Authority to provide the necessary rights for the Authority in Technical Data to be delivered by the Sub-Contractor.
- 6.3 If the System Integrator enters into a Sub-Contract with a Sub-Contractor that fails to secure the rights for the Authority as required by the provisions of paragraph 6.1 (*Technical Data Provided by Sub-Contractors*) of Part 1 of this Schedule 11, and has not received prior written authorisation from the Authority to place the Sub-Contract in accordance with the provisions of paragraph 6.2 (*Technical Data to be Provided by Sub-Contractors*) of Part 1 of this Schedule 11, the Authority shall be entitled, to the extent allowed by law and without prejudice to any other contractual remedy, to use any of the Sub-Contractor's Technical Data delivered to the Authority as if the System Integrator had secured rights for the Authority and obligations from the Sub-Contractor consistent with the nature of the Technical Data and the relevant provisions of paragraph 2 (*Rights in Technical Data*), and the System Integrator shall indemnify the Authority and be liable

for any damages or costs incurred by the Authority for so long as the System Integrator fails to secure the rights as aforesaid.

7 System Integrator Retention of Records

- 7.1 The System Integrator shall retain, for the duration of this Contract and for a period of six (6) years thereafter, a record of the work performed under this Contract and of the results obtained, and the Technical Data generated, delivered or to be delivered to the Authority under this Contract.
- 7.2 The Authority shall have the right to inspect the records maintained by the System Integrator in accordance with paragraph 7.1 (*System Integrator Retention of Records*) of Part 1 of this Schedule 11, within the period specified in that paragraph and on reasonable notice. The Authority shall further have the right during that period or for so long as the Technical Data is known to still exist, to require additional deliveries of any Technical Data that was generated in the performance of work under this Contract whether or not it is contained in the System Integrator Deliverables. This right shall be exercisable by separate order and on agreement of a fair and reasonable price based solely on the costs of compiling and delivering the Technical Data. Technical Data required to be delivered under this paragraph 7.2 shall be delivered within forty-five (45) calendar days of receipt by the System Integrator of any order from the Authority and shall only be used by the Authority (or on its behalf) in accordance with the rights granted in such Technical Data under Part 1 of this Schedule 11.
- 7.3 At the written request made by the Authority within the period specified in paragraph 7.1 (*System Integrator Retention of Records*) of Part 1 of this Schedule 11 and subject to the availability of the relevant expertise, the System Integrator shall provide to the Authority, or to any other person to whom the Authority may provide Technical Data in accordance with its rights under paragraph 2 (*Rights in Technical Data*) of Part 1 of this Schedule 11, assistance in understanding the Technical Data. The assistance shall be limited to that required by a person competent in the relevant area of technology to interpret the results of this Contract. The assistance shall be made available within sixty (60) calendar days of the request and on fair and reasonable terms and conditions, including the costs of providing the assistance, but excluding any payment in respect of the right to use the Technical Data.
- 7.4 The System Integrator shall maintain one (1) copy of all Technical Data that is a System Integrator Deliverable (hereinafter called the "**Control Copy**"). The Control Copy shall be the property of the Authority, and shall be marked accordingly, and the Authority may take possession of it notwithstanding any administration, receivership, winding-up or liquidation of the System Integrator or any transfer of its assets to any third party, and copies of any Technical Data from the Control Copy shall be supplied as required from time to time by the Authority at the Authority's expense, the cost of which shall be based solely on the cost of copying and delivering the Control Copy.

8 Liability

- 8.1 In the event that Technical Data to which Part 1 of this Schedule 11 applies is used by or for the Authority otherwise than for the purpose for which it was supplied in accordance with the relevant provisions of this Contract, the System Integrator 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.

9 General

9.1 For the avoidance of doubt, nothing in Part 1 of this Schedule 11 shall:

9.1.1 restrict the entitlement of either party to make use of Technical Data once it enters the public domain otherwise than as a result of the Authority or any person supplied with the Technical Data by the Authority disclosing it in breach of any obligations of confidence relating to such Technical Data; or

9.1.2 extinguish or diminish any statutory rights or common law rights of the Authority to use any Technical Data or any IPR covering such Technical Data or any rights of the Authority acquired under any separate contract or agreement.

9.2 The terms of Part 1 of this Schedule 11 shall survive the termination or expiry of this Contract.

Part 2: Intellectual Property Rights in Software

For the purpose of this Part 2 (*Intellectual Property Rights in Software*) of this Schedule 11, the following wording and expressions shall have the following meanings:

"Deliverable Software" means the Software delivered or to be delivered or which forms an integral part of any Article delivered or to be delivered by the System Integrator to the Authority in accordance with the requirements of this Contract;

"Non risk contract" means a contract placed on a cost reimbursement basis (whether with a fixed fee element or a percentage profit) which insulates the System Integrator against loss;

"Object Code" means machine code executable by a data processing system;

"Risk contract" shall mean all contracts with a pricing arrangement which does not insulate the contractor against loss;

"Software" means all or part of any:

- (a) Object Code;
- (b) Source Material;
- (c) associated user documentation; and
- (d) anything further specified as Software in the Schedule 2 (*Obligation of the System Integrator*);

"Source Code" means a representation of Object Code in or readily translatable into a form suitable for human understanding and transformable into the Object Code;

"Source Material" means that material, taken individually or in any combination thereof, which is:

- (a) Source Code;
- (b) a representation or identification of the data processing system configuration, computer programs, procedures, rules and associated documentation generated by or for the System Integrator under this Contract;
- (c) 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 System Integrator under this Contract, when in sufficient detail and suitable form, subject to paragraph 2.1.2 of this Part 2 (*Intellectual Property Rights in Software*) of this Schedule 11, to permit replication of such data processing system configuration, computer programs, procedures, rules and associated documentation independently of the System Integrator;

- (d) subject to paragraph 2.1.2 of this Part 2 (*Intellectual Property Rights in Software*) of this Schedule 11, and to the extent necessary to enable modification and testing of the Object Code independently of the System Integrator, documentation on the specification, design rules, design, testing, analysis, function, usage and capabilities of the Object Code and of the material at limbs (a), (b) and (c) of this definition;

"the Relevant Period" means the currency of this Contract plus a period of six (6) years from the completion of this Contract or such other period as may be specified in this Contract. Completion of this Contract shall be deemed to occur on the date when all work under this Contract is completed. The System Integrator shall endeavour to ensure that the relevant period in any Sub-Contract shall expire on the same date, but shall consult the Authority if that is not achievable; and

"to modify" means 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 headings contained in this Part 2 (*Intellectual Property Rights in Software*) of this Schedule 11 shall not affect the interpretation thereof.

1 Ownership

- 1.1 The System Integrator shall use all reasonable endeavours to ensure that all IPR in any Software generated under this Contract shall be the property of and vest in the System Integrator, subject to any pre-existing rights of the Crown or of Third Parties.

2 User Rights and Related Payments

- 2.1 The following user rights and related terms apply:

2.1.1 The System Integrator grants to the Authority and all other Government Departments to the extent that they have the right to do so, the right, exercisable without payment to the System Integrator:

- (i) to copy, modify and use any Deliverable Software for the services of HMG, whether by itself, its agents or its contractors;
- (ii) to issue any Deliverable Software or copies of any Deliverable Software to any contractor or potential contractor to HMG for the purpose of use only in connection with a contract or the tendering for a proposed contract for a Governmental Purpose.

2.1.2 The System Integrator shall notify the Authority as soon as they become aware of any limitations as to the use of any Deliverable Software the IPR in which are owned by the System Integrator or a third party. The System Integrator shall also give to the Authority full details of the provisions of such limitations and any associated cost as soon as they become aware of them.

2.1.3 Except as provided for by paragraph 4.1.1(ii) (*Subsequent Deliveries of Software*) of this Part 2 (*Intellectual Property Rights in Software*) of this Schedule 11, the Authority shall have a right to exercise:

- (i) any of the rights referred to at paragraph 2.1.1 of this Part 2 (*Intellectual Property Rights in Software*) of this Schedule 11;
- (ii) in respect of Deliverable Software notified to the Authority in accordance with paragraph 2.1.2 of this Part 2 (*Intellectual Property Rights in Software*) of this Schedule 11, the IPR in which are owned by the System Integrator, 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.

2.1.4 The System Integrator shall, if requested to do so by the Authority, endeavour to secure for the Authority those rights listed at paragraph 4.1.1(ii) of this Part 2 (*Intellectual Property Rights in Software*) of this Schedule 11 in Deliverable Software notifiable to the Authority in accordance with paragraph 2.1.1 of this Part 2 (*Intellectual Property Rights in Software*) of this Schedule 11 the IPR in which are owned by a third party on terms and conditions to be agreed with or approved by the Authority.

2.1.5 Subject to the provisions of paragraph 2.1.2 of this Part 2 (*Intellectual Property Rights in Software*) of this Schedule 11 but notwithstanding the provisions of paragraph 5 of this Part 2 (*Intellectual Property Rights in Software*) of this Schedule 11, the System Integrator 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 this 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 2.1.5 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 this Contract.

3 Other Software Generated Under this Contract

3.1 In respect of other Software generated under this Contract:

3.1.1 Should, during the Relevant Period, the Authority require the System Integrator to deliver any Software generated under this Contract but which is not Deliverable Software:

- (i) where this Contract has yet to be priced or has been or is to be priced on a non risk basis, then such Software as is required by the Authority shall be delivered by the System Integrator to the Authority within a reasonable period as a minimum as it exists at the date on which the Authority makes its requirement known in writing to the System

Integrator and from that date such Software shall be deemed to be Deliverable Software;

- (ii) where this Contract has been priced on a risk basis, whether by negotiation or under competition, then such Software as is required by the Authority shall be delivered by the System Integrator to the Authority within a reasonable period and on fair and reasonable terms as a minimum as it exists at the date on which the Authority makes its requirements known in writing to the System Integrator and from that date such Software shall be deemed to be Deliverable Software (except for the purposes of paragraph 8 (*Commercial Exploitation Levy*) of this Part 2 (*Intellectual Property Rights in Software*) of this Schedule 11) provided always that the Authority shall not be liable to pay more than once for the supply of Software required by the Authority. Delivery to the Authority shall not be conditional upon prior agreement on the need for, the amount of, or the making of any payment therefor.

- 3.1.2 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 System Integrator 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 paragraph 3.1.1 above.

4 Subsequent Deliveries of Software

- 4.1 In respect of subsequent deliveries of Software:

- 4.1.1 During the Relevant Period, the System Integrator shall at the request and to the requirements of the Authority and to the extent they are 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) where the System Integrator is unable or unwilling to support, maintain or modify the Deliverable Software, deliver all Software, including such records as are specified in paragraph 4.1.3 (*Subsequent Deliveries of Software*) of this Part 2 (*Intellectual Property Rights in Software*) of this Schedule 11, necessary for the Authority, its contractors or agents to independently support, maintain or modify the Deliverable Software for the services of HMG. 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.

- 4.1.2 The System Integrator shall retain for the Relevant Period a copy of such Software as is required for the performance of their obligations under paragraph 4.1.1 (*Subsequent Deliveries of Software*) of this Part 2 (*Intellectual Property Rights in Software*) of this Schedule 11.

- 4.1.3 If the Software generated under this Contract is subsequently modified by or on behalf of the System Integrator for the Authority, the Software to be retained under paragraph 4.1.2 (*Subsequent Deliveries of Software*) of this Part 2 (*Intellectual Property Rights in Software*) of this Schedule 11 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 System Integrator 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.

5 Confidentiality

5.1 In respect of confidentiality:

5.1.1 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 Government Departments in order to preserve the confidential nature of the Deliverable Software;
- (iii) not disclose the Deliverable Software outside Government Departments and Government Establishments, except as expressly permitted by any other provision of this Part 2 (*Intellectual Property Rights in Software*) of this Schedule 11 or otherwise expressly agreed in writing by the System Integrator.

- 5.1.2 The Authority shall, subject to paragraphs 5.1.3 and 5.1.4 (*Confidentiality*) of this Part 2 (*Intellectual Property Rights in Software*) of this Schedule 11 and to the provisions of Part 6 (*International Collaboration*) of this Schedule 11 (*IPR*), before disclosing any Deliverable Software outside Government Departments and Government Establishments make it a pre-requisite of the disclosure, unless otherwise agreed in writing by the System Integrator, that the recipient shall enter into a confidentiality agreement with the System Integrator whereby the recipient's use of the Deliverable Software is limited to use for the services of HMG. A confidentiality agreement shall be concluded within thirty (30) days, or whatever other period as may be mutually agreed by the Authority and the System Integrator, of the Authority giving written notice to the System Integrator of its 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 System Integrator 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 System Integrator 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 System Integrator 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.

5.1.3 The obligations imposed by paragraphs 5.1.1 and 5.1.2 (*Confidentiality*) of this Part 2 (*Intellectual Property Rights in Software*) of this Schedule 11 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 this Contract and is available for unrestricted use;
- (iii) is received by the Authority from a third party who themselves have the right to disclose without relevant restrictions;
- (iv) is or was independently developed by the Authority;
- (v) is approved by the System Integrator, in writing, for unrestricted release by the Authority.

5.1.4 Notwithstanding the provisions of this Part 2 (*Intellectual Property Rights in Software*) of this Schedule 11 relating to the disclosure of the Deliverable Software, the Authority shall be entitled to disclose the Deliverable Software after notification in writing to the System Integrator by the Authority's Commercial Officer in person that it 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 System Integrator 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 5.1.1 and 5.1.2 (*Confidentiality*) of this Part 2 (*Intellectual Property Rights in Software*) of this Schedule 11.

6 Output

6.1 In respect of output from the Deliverable Software:

6.1.1 Subject to the rights of the System Integrator 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 this Contract. If, however, the material produced contains other information, the IPR in which are owned by the System Integrator 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.

6.1.2 If Deliverable Software is required by the Authority under this Contract for the purpose of producing an output for incorporation in a data processing system, then, notwithstanding paragraph 6.1.1 above or any other provision of this Contract, the Authority shall have the right to use to have used, free of charge, such output for the services of HMG.

7 Marking

7.1 The System Integrator may make or include in any Deliverable Software to which this Part 2 (*Intellectual Property Rights in Software*) of this Schedule 11 applies a copyright notice provided that such copyright notice acknowledges the Authority's rights under this Part 2 (*Intellectual Property Rights in Software*) of this Schedule 11. Any such notice shall be perpetuated in any copies of the Deliverable Software made by the Authority or any other Government Department or its agents or contractors.

8 Commercial Exploitation Levy

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

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

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

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

9 Modified Software

9.1 Should Software generated under this Contract be modified at any time, then each party shall enjoy the same rights and be bound by the same obligations provided by this this

Part 2 (*Intellectual Property Rights in Software*) of this Schedule 11 in respect of any of those parts of the modified Software which were present in the Software prior to modification.

10 Liability And Indemnities

10.1 In respect of liabilities and indemnities:

10.1.1 The System Integrator shall at all times indemnify and keep indemnified the Authority or any other Government Department in respect of all costs, claims, demands, damages, liabilities and expenses made against or incurred by the Authority or any other Government Department:

- (i) arising directly from any actual or alleged infringement of copyright or breach of confidence or IPR-related breach of contract;
- (ii) arising indirectly from any actual or alleged infringement of copyright or breach of confidence or IPR-related breach of contract;

by the System Integrator as a result of the copying, modification, use or possession of the Deliverable Software by or on behalf of the Authority or any other Government Department or their respective agents or contractors.

10.1.2 In the event that any claim is made against the Authority in respect of which the Authority is entitled to be indemnified in accordance with the provisions of paragraph 10.1.1 (*Liability and Indemnities*) above then:

- (i) the Authority shall promptly notify the System Integrator in writing of such costs, claims, demands, damages, liabilities and expenses of which it shall have notice and shall provide the System Integrator with such information regarding the claim as the System Integrator 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 System Integrator;
- (iii) when requested by the System Integrator the Authority shall allow the System Integrator at the System Integrator's expense to conduct all negotiations and litigation and shall give the System Integrator all reasonable assistance in connection therewith PROVIDED THAT:
 - (A) the System Integrator shall have first given to the Authority an unconditional written admission of their liability to indemnify the Authority in accordance with the provisions of paragraph 10.1.1 (*Liability and Indemnities*);

- (B) at the request of the Authority the System Integrator 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 System Integrator shall not be liable to indemnify the Authority under this paragraph 10 (*Liability and Indemnities*) 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 10.1.2(ii) (*Liability and Indemnities*) 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.

10.1.3 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 System Integrator may, with the agreement of the Authority and at the System Integrator'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.

- (i) 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:
 - (A) any use of Deliverable Software not reasonably to be inferred from the specification requirements of the Authority;
 - (B) the refusal by the Authority or such other Government Department to use to have used a modified or replacement item supplied pursuant to paragraph 10.1.3 (*Liability and Indemnities*);
 - (C) the use of any Deliverable Software made after and in contravention of a judicial decision relating to such Deliverable Software.

10.1.4 The System Integrator 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 System Integrator themselves, PROVIDED THAT the exclusion of liability contained in paragraph 10.1.5 (*Liability and Indemnities*) shall not apply in circumstances where the System Integrator would be liable under the terms of this Contract whether or not the Deliverable Software has been modified.

10.1.5 Where the System Integrator is not liable under the provisions of paragraph 10.1.5 (*Liability and Indemnities*), then the Authority shall indemnify and keep

indemnified the System Integrator in respect of all costs, claims, demands, damages, liabilities and expenses made against or incurred by the System Integrator:

- (i) arising directly from any actual or alleged infringement of copyright or breach of confidence or IPR-related breach of contract;
- (ii) arising 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 any modified Deliverable Software by or on behalf of the Authority or any other Government Department or its respective agents or contractors, or by any government which received it in accordance with the provisions of paragraph 2.1.5 (*User Rights and Related Payments*).

10.1.6 Where the Authority supplies or causes to be supplied Software to the System Integrator for use, or instructs the System Integrator to use Software, in the performance of this Contract and that Software was not previously supplied to the Authority by the System Integrator, then the Authority shall indemnify and keep indemnified the System Integrator in respect of all costs, claims, demands, damages, liabilities and expenses made against or incurred by the System Integrator:

- (i) arising directly from any actual or alleged infringement of copyright or breach of confidence or IPR-related breach of contract;
- (ii) arising 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 such Software by the System Integrator solely for the performance of this Contract.

10.1.7 In the event that any claim is made against the System Integrator in respect of which the System Integrator is entitled to be indemnified in accordance with the provisions of paragraphs 10.1.6 and 10.1.7 (*Liability and Indemnities*) above then:

- (i) the System Integrator shall promptly notify the Authority in writing of such costs, claims, demands, damages, liabilities and expenses of which they themselves shall have notice and shall provide the Authority with such information regarding the claim as the Authority shall reasonably require;
- (ii) the System Integrator 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 System Integrator 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 System Integrator an unconditional written admission of its liability to indemnify the System Integrator in accordance with the provisions of paragraphs 10.1.6 and 10.1.7 (*Liability and Indemnities*);
 - (B) at the request of the System Integrator the Authority shall keep the System Integrator fully informed about the conduct and progress of such negotiations and proceedings.
- (iv) The foregoing states the entire liability of the Authority and System Integrator 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:
- (A) the Deliverable Software by or on behalf of the Authority or any other Government Department;
 - (B) the Software referred to in paragraph 10.1.7 (*Liability and Indemnities*) by the System Integrator.

10.2 This Part 2 (*Intellectual Property Rights in Software*) of this Schedule 11 shall constitute an 'agreement to the contrary' for the purposes of section 48 of the Copyright, Design and Patents Act 1988.

Part 3: Intellectual Property Rights Vesting in the Authority

- 1.1 All intellectual property rights of any nature in the results generated in the performance of work under this Contract and recorded in any written or other tangible form (the 'Results'), including rights in inventions, designs, computer software, databases, copyright works and information shall vest in and be the property of the Authority. The System Integrator shall take all necessary measures to secure that vesting. On request, the System Integrator shall demonstrate to the Authority's satisfaction that, where they have Sub-Contracted work under this Contract, they have secured that vesting in the work performed by their Sub-Contractors.
- 1.2 The Authority may use, have used, copy and disclose the Results by itself or through third parties for any purpose whatsoever subject to the System Integrator's patents and design rights (registered or unregistered) and to the rights of third parties not employed in the performance of work under this Contract.
- 1.3 The Authority shall determine whether any of the Results should be protected by patent or other protection. The costs of patent or like protection shall be borne by the Authority. The System Integrator shall assist the Authority in filing and executing documents necessary to secure that protection. The System Integrator shall use all commercially reasonable endeavours to secure similar assistance from subcontractors as appropriate. The costs of such patent or other protection shall be borne by the Authority.
- 1.4 The System Integrator shall mark any copyright work comprising Results with the legend: '© Crown-owned copyright [insert the year of generation of the work]'.
- 1.5 Apart from intellectual property rights vested in the Authority by virtue of paragraph 1.1 of this Part 3 (*Intellectual Property Rights Vesting in the Authority*) of this Schedule 11, ownership of, or rights in, all other intellectual property are not transferred to the Authority by this Part 3 (*Intellectual Property Rights Vesting in the Authority*) of this Schedule 11.
- 1.6 Unless otherwise agreed with the Authority, the System Integrator shall retain a copy of the Results together with records of all work done for the purposes of this Contract for six (6) years after the completion of this Contract.
- 1.7 The Authority shall have the right to require the System Integrator to furnish to the Authority copies of any and all of the Results and such records for so long as they are retained by the System Integrator. A reasonable charge for this service based on the cost of providing it will be borne by the Authority unless already included in the price of this Contract.
- 1.8 The System Integrator shall treat the Results as if received in confidence from the Authority and:
 - 1.8.1 shall not copy, use or disclose to a third party any of the Results without the prior written consent of the Authority, except that the System Integrator may without prior consent, copy and use the Results, and disclose the Results in confidence to their officers, employees and Sub-Contractors, to such extent as may be necessary for the performance of this Contract or any Sub-Contract under it or in the exercise of any right granted pursuant to paragraph 1.12 of

this Part 3 (*Intellectual Property Rights Vesting in the Authority*) of this Schedule 11; and

- 1.8.2 shall take all reasonable precautions necessary to ensure that the Results are treated in confidence by those of their officers, employees and Sub-Contractors who receive them and are not further disclosed or used otherwise than for the purpose of performing work or having work performed for the Authority under this Contract or any Sub-Contract under it.
- 1.9 The System Integrator shall ensure that their employees are aware of their arrangements for discharging the obligations at paragraph 1.8 of this Part 3 (*Intellectual Property Rights Vesting in the Authority*) of this Schedule 11 and take such steps as may be reasonably practical to enforce such arrangements.
- 1.10 The confidentiality provisions of paragraph 1.8 of this Part 3 (*Intellectual Property Rights Vesting in the Authority*) of this Schedule 11 shall not apply to the Results or any part thereof to the extent that the System Integrator can show that they were or have become published or publicly available for use otherwise than in breach of any provision of this Contract or any other agreement between the parties.
- 1.11 The System Integrator shall not be in breach of the confidentiality obligations contained in this Condition where it can show that any disclosure of the Results was made solely and to the extent necessary to comply with a statutory, judicial or parliamentary obligation. Where such a disclosure is made, the System Integrator shall ensure that the recipient of the Results is made aware of and asked to respect its confidentiality and, wherever possible and permitted by law, shall notify the Authority as soon as practicable after becoming aware that such disclosure is required. Such disclosure shall in no way diminish the obligations of the System Integrator under of this Part 3 (*Intellectual Property Rights Vesting in the Authority*) of this Schedule 11.
- 1.12 The System Integrator shall be entitled to request consent from the Authority to re-use (under licence or otherwise) the Results and intellectual property rights vested in the Authority by virtue of paragraph 1.1 of this Part 3 (*Intellectual Property Rights Vesting in the Authority*) of this Schedule 11 for other purposes including, but not limited to, tendering for other work for the Authority or work for another Government Department. Such consent shall be properly considered by the Authority taking into account matters such as national security and the rights of third parties.

Part 4: Inventions and Designs

- 1.1 The provisions of Part 4 (*Inventions and Design*) of this Schedule 11 shall apply in relation to any invention or design made in the course of or resulting from work carried out by the System Integrator under this Contract (hereinafter respectively referred to as "the invention" and the "design").
- 1.2 Where any invention or design, to which the provisions of Part 4 (*Inventions and Design*) of this Schedule 11 apply, is made outside the UK and where local laws so require, any application may, notwithstanding the provisions of paragraph 1.3.3 of this Part 4 (*Inventions and Design*) of this Schedule 11, be made under conditions of secrecy at the local Patent Office of the territory where the invention or the design was made. Where local laws so require, the supply of a copy of the application under paragraph 1.6.1 of this Part 4 (*Inventions and Design*) of this Schedule 11 shall be subject to any necessary approval of the local Patent Office but the application number and date of filing shall be notified to the Authority in all cases.
- 1.3
- 1.3.1 The System Integrator shall ensure that they and any Patent Agent or Attorney engaged by them 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.
- 1.3.2 The preparation and filing of applications to which this paragraph 1.3 relates shall be handled by the System Integrator's own Patent Department under the conditions of security applicable under this Contract. If the System Integrator does not have their own Patent Department they shall, before initiating the preparation of any application, secure the written Agreement of the Authority as to the Patent Agent or Attorney that they propose to employ for the preparation and filing of such an application.
- 1.3.3 Every application to which this paragraph 1.3 relates, whether filed by the System Integrator or by a Patent Agent or Attorney engaged by them, shall be filed direct with the Security Section of the UK Patent Office, who shall be notified at the time of filing that the invention or design forming the subject of the application is related to classified government work. The notification shall also quote the number of this Contract and the name and address of the Authority.
- 1.4 For the purposes of Clause 43.3 to 43.6 (*Security Measures*) any patent application made in accordance with paragraphs 1.2 and 1.3 of Part 4 (*Inventions and Design*) of this Schedule 11 shall be considered to have been made with the prior consent of the Authority.
- 1.5 The System Integrator shall ensure, to the extent they are legally able to do so, that any invention to which this Part 4 (*Inventions and Design*) of this Schedule 11 relates and made by an employee of the System Integrator in the course of duties as defined in section 39(1) of the Patents Act 1977 and any design to which this Part 4 (*Inventions and Design*) of this Schedule 11 relates and made by an employee of the System Integrator shall vest in the System Integrator.

1.6

1.6.1 The System Integrator shall within forty-five (45) days of filing a first patent application or 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 or any application for registration of the design provide the Authority (1) with a copy of that application together with the number of this Contract.

1.6.2 The System Integrator shall promptly notify the Authority if they become aware of any application as aforesaid by any person who is, or has been, an employee or agent of the System Integrator or a Sub-Contractor and provide the Authority with relevant particulars insofar as they can obtain them and have the right to provide them.

1.7 If an employee of the Crown is a joint inventor of the invention or part author of the design to which any application as is referred to in under paragraph 1.6 of this Part 4 (*Inventions and Design*) of this Schedule 11 above relates and 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 System Integrator shall if so requested by the Authority take all such steps and do all such things as are in their power and as may be necessary to ensure either that the Authority or the employee concerned joins in the application or, at the option of the System Integrator, and if the application is one for 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, if the application is one for a Registered Design, that it is withdrawn.

1.8 If an employee of the Crown is a party to any such application as is mentioned in paragraphs 1.6 and 1.7 of this Part 4 (*Inventions and Design*) of this Schedule 11 and the Authority so requests, the System Integrator shall at the expense of the Authority take such reasonable steps as are in their power and may from time to time be necessary to ensure that the Authority is substituted for the employee of the Crown as co-applicant and shall 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 their interest in the application and in any Patent or Registered Design granted pursuant thereto, provided that the System Integrator is not required by this is Part 4 (*Inventions and Design*) of this Schedule 11 to consent to any assignment other than that specifically referred to herein.

1.9 Subject to the provisions of paragraphs 1.7 and 1.8 of Part 4 (*Inventions and Design*) of this Schedule 11 above and to the rights of the Authority as set out in paragraph 1.10 of Part 4 (*Inventions and Design*) of this Schedule 11 below the invention or design shall belong to the System Integrator.

- 1.10 Any Government Department and any person authorised by a Government Department may in any part of the world do in relation to the invention any act as defined in section 55(1) (a) to (e) of the Patents Act 1977 or use the design for the services of the Government of the United Kingdom.
- 1.11 Subject to paragraph 1.18 of Part 4 (*Inventions and Design*) of this Schedule 11, the System Integrator shall not be entitled to any payment whatsoever in respect of anything done in accordance with paragraph 1.10 of Part 4 (*Inventions and Design*) of this Schedule 11 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 System Integrator shall not have any claim for any such compensation as is mentioned in section 22(7)(b).
- 1.12 If any question under this Part 4 (*Inventions and Design*) of this Schedule 11 shall arise between the System Integrator and the Authority as to whether an employee of the Crown is a joint inventor of the invention or a part author of the design or as to whether the invention or design was made in the course of or resulted from work carried out by the System Integrator under this Contract, that question shall be referred for decision to such person as may be agreed upon between the System Integrator and the Authority or in default of such agreement as may be appointed by the President for the time being of the Chartered Institute of Patent Agents, and the decision of any such person on that question shall be final and conclusive.
- 1.13 The System Integrator shall at the request and expense of the Authority take all such reasonable steps as are within their 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.
- 1.14 The rights conferred by this Part 4 (*Inventions and Design*) of this Schedule 11 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.
- 1.15 In this Part 4 (*Inventions and Design*) of this Schedule 11 references to a Government Department are references to a Department of Her Majesty's Government in the United Kingdom.
- 1.16 The foregoing provisions of this Part 4 (*Inventions and Design*) of this Schedule 11 shall have effect both during the period the System Integrator is carrying out the other provisions of the contract and at all times thereafter.
- 1.17 The System Integrator shall include, in any Sub-Contract which they may enter into for the purpose of this Contract, provisions as in this Part 4 (*Inventions and Design*) of this Schedule 11, but with the substitution therein of references to the Sub-Contractor for references to the System Integrator, and of references to the subcontract for references to this Contract, and the System Integrator shall at all times use all reasonable endeavours to secure the full and effectual observance by the Sub-Contractor of those provisions and that the Authority and all Government Departments

obtain the benefit thereof, and to advise the Authority if they become aware of any breach of the provisions. Provided that this paragraph 1.17 shall only apply to any Sub-Contract for the carrying out of any work for research, design or development under this Contract.

1.18 Nothing herein shall prejudice the rights of either party arising otherwise than by virtue of this Part 4 (*Inventions and Design*) of this Schedule 11.

1.19 Notes

1.19.1 The agreement of the Authority is to be sought from and the information addressed to:

Patent Security Unit

Directorate of Intellectual Property Rights

Poplar 2 #2214

MOD Abbey Wood

BRISTOL BS34 8JH

1.19.2 Any communication from the Authority to the System Integrator on the subject of paragraph 1.13 of this Part 4 (*Inventions and Design*) of this Schedule 11 is to be addressed to the System Integrator's address for service for the application.

Part 5: Third Party Intellectual Property

1 Notifications

1.1 As they become aware, the System Integrator shall promptly notify the Authority of:

- 1.1.1 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 this Contract or to use by the Authority of anything required to be done or delivered under this Contract;
- 1.1.2 any restriction as to disclosure or use, or obligation to make payments in respect of any other intellectual property (including technical information) required for the purposes of this Contract or subsequent use by the Authority of anything delivered under this Contract and, where appropriate, the notification shall include such information as is required by section 2 of the Defence Contracts Act 1958;
- 1.1.3 any allegation of infringement of intellectual property rights made against the System Integrator and which pertains to the performance of this Contract or subsequent use by the Authority of anything required to be done or delivered under this Contract.

This paragraph 1.1 (*Notifications*) does not apply in respect of Articles or Services normally available from the System Integrator as a COTS item or service.

1.2 If the information required under this Part 5 (*Third Party Intellectual Property*) of Schedule 11 (*IPR*) has been notified previously, the System Integrator may meet their obligations by giving details of the previous notification.

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

2.1 In respect of any question arising (by way of an allegation made to the Authority or System Integrator, or otherwise) that the manufacture or supply under this Contract of any Article or Service normally available from the System Integrator as a COTS item or service is an infringement of a United Kingdom Patent or Registered Design not owned or controlled by the System Integrator or the Authority, the System Integrator 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 System Integrator shall indemnify the Authority, its officers, agents and employees against any liability and cost arising from such allegation. This paragraph 2.1 (*Patents and Registered Designs in the UK – COTS Articles of Services*) will not apply if:

- 2.1.1 the Authority has made or makes an admission of any sort relevant to such question;

- 2.1.2 the Authority has entered or enters into any discussions on such question with any third party without the prior written agreement of the System Integrator;
 - 2.1.3 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;
 - 2.1.4 legal proceedings have been commenced against the Authority or the System Integrator in respect of Crown Use, but only to the extent of such Crown Use that has been properly authorised.
- 2.2 The indemnity in paragraph 2.1 (*Patents and Registered Designs in the UK – COTS Articles of Services*) of this Part 5 (*Third Party Intellectual Property*) of Schedule 11 (*IPR*) does not extend to use by the Authority of anything supplied under this Contract where that use was not reasonably foreseeable at the time of this Contract.
- 2.3 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 System Integrator for the purposes of performing this 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.
- 3 Patents and Registered Designs in the UK – All other Articles and Services**
- 3.1 If a relevant invention or design has been notified to the Authority by the System Integrator prior to the date of this 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 System Integrator 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 this Contract.
- 3.2 If, under paragraph 1.1 (*Notifications*) of this Part 5 of Schedule 11, a relevant invention or design is notified to the Authority by the System Integrator after the Effective Date, then:
- 3.2.1 if the owner (or their exclusive licensee) takes or threatens in writing to take any relevant action against the System Integrator, the Authority shall issue to the System Integrator 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
 - 3.2.2 in any event, unless the System Integrator 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.

4 Patents, Utility Models and Registered Designs outside the UK

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

5 Royalties and Other Licence Fees

- 5.1 The System Integrator shall not be entitled to any reimbursement of any royalty, licence fee or similar expense incurred in respect of anything to be done under this Contract, where:
- 5.1.1 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
- 5.1.2 any obligation to make payments for intellectual property has not been promptly notified to the Authority under paragraph 1.1 (*Notifications*) of this Part 5 of Schedule 11.
- 5.2 Where an authorisation is given by the Authority under paragraph 2.3 (*Patents and Registered Designs in the UK – COTS Articles or Services*) and paragraphs 3.1 and 3.2 (*Patents and Registered Designs in the UK – all other Articles or Services*) of this Part 5 of Schedule 11, 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 System Integrator shall also be:

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

6 Copyright, Design Rights etc.

- 6.1 The System Integrator shall assume all liability and indemnify the Authority and its officers, agents and employees against liability, including costs as a result of:
 - 6.1.1 infringement or alleged infringement by the System Integrator or their suppliers of any copyright, database right, design right or the like protection in any part of the world in respect of any item to be supplied under this Contract or otherwise in the performance of this Contract;
 - 6.1.2 misuse of any confidential information, trade secret or the like by the System Integrator in performing this Contract;
 - 6.1.3 provision to the Authority of any information or material which the System Integrator does not have the right to provide for the purpose of this Contract.
- 6.2 The Authority shall assume all liability and indemnify the System Integrator, their officers, agents and employees against liability, including costs as a result of:
 - 6.2.1 infringement or alleged infringement by the System Integrator or their suppliers of any copyright, database right, design right or the like protection in any part of the world in respect of any item provided by the Authority for the purpose of this Contract but only to the extent that the item is used for the purpose of this Contract;
 - 6.2.2 alleged misuse of any confidential information, trade secret or the like by the System Integrator as a result of use of information provided by the Authority for the purposes of this Contract, but only to the extent that System Integrator's use of that information is for the purposes intended when it was disclosed by the Authority.

7 Authorisation and Indemnity – General

- 7.1
 - 7.1.1 The above represents the total liability of each party to the other under this Contract in respect of any infringement or alleged infringement of Patent or other Intellectual Property Right owned by a third party.

- 7.1.2 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 Intellectual Property Right owned by a third party.
- 7.1.3 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 Part 5 (*Third Party Intellectual Property*) of Schedule 11 (*IPR*) 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.
- 7.1.4 The party benefiting from the indemnity or authorisation shall allow the other party, at their 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.
- 7.1.5 Following a notification under paragraph 7.1.3 (*Authorisation and Indemnity – General*) of Part 5 (*Third Party Intellectual Property*) of Schedule 11 (*IPR*), the party notified shall advise the other party in writing within thirty (30) days whether or not they are 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.
- 7.1.6 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.

7.2

- 7.2.1 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 System Integrator to the Authority, the System Integrator may at their own expense replace the item with an item of equivalent functionality and performance so as to avoid infringement or breach;
- 7.2.2 The parties will co-operate with one another to mitigate any claim or damage which may arise from use of third party intellectual property rights.

7.3 Sub-Contracts

- 7.3.1 The System Integrator shall secure from any Sub-Contractor, the prompt notification to the Authority of the information required by paragraph 1.1 (*Notifications*) of this Part 5 of Schedule 11. On receipt of any such notification the Authority will issue a written authorisation to the Sub-

Contractor in accordance with paragraph 3.2 (*Patents and Registered Designs in the UK – all other Articles or Services*) of this Part 5 of Schedule 11. Any such authorisation will be subject always to paragraphs 5.1 and 5.2 (*Royalties and Other Licence Fees*) and paragraph 7.1 (*Authorisation and Indemnity – General*) of this Part 5 of Schedule 11 as though the Sub-Contractor was the System Integrator. If any claim or action relevant to such authorisation arises, it shall be promptly notified to the Authority. The System Integrator 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.

- 7.4 Any arrangement between the System Integrator and Sub-Contractor to enable the System Integrator to underwrite their indemnities to the Authority under this Part 5 of Schedule 11 is a matter between the System Integrator and the Sub-Contractor.

8 General

- 8.1 Nothing in this Part 5 of Schedule 11 (*IPR*) shall be taken as an authorisation or promise of an authorisation under section 240 of the Copyright, Designs and Patents Act 1988.

Part 6: International Collaboration

- 1.1 For the purpose of this Part 6 (*International Collaboration*) of Schedule 11 (*IPR*) the expression "International Collaboration Agreement" shall mean any agreement or arrangement made or proposed to be made between the United Kingdom Government and the government of another country or any government-sponsored international body for collaboration in a joint programme of research, development, production, supply or operations utilising any results produced under this Contract, and for the allocation of responsibility for work under such programme between the parties to such agreement or arrangement.
- 1.2 Subject to the rights of third parties arising otherwise than from work performed under this Contract and to the provisions of this Part 6 (*International Collaboration*) of Schedule 11 (*IPR*), the Authority shall have the right under this paragraph 1.2 of Part 7 (*International Collaboration*) of Schedule 11 (*IPR*) to copy any copyright work furnished by the System Integrator under this Contract, the copyright in which belongs to the System Integrator, and to issue for information only such work or copy for the purpose of promoting the establishment of an International Collaboration Agreement and for the purpose of technical oversight of an International Collaboration Agreement made. Subject as aforesaid, the System Integrator shall, if requested by the Authority within the period prescribed in this Contract, provide the Authority with such assistance and further information as the Authority may reasonably require for such promotion and technical oversight. A reasonable charge for this service, based on the cost of providing it, will be borne by the Authority.
- 1.3 If, under an International Collaboration Agreement made, the Authority agrees that any results produced under this Contract shall be utilised in work undertaken or shared by or on behalf of another party to such International Collaboration Agreement then, to the extent of their right to do so and on fair and reasonable terms approved by the Authority, the System Integrator shall, if requested by the Authority within the period prescribed in this Contract, make available under licence to that other party or their nominee, for use for the purpose provided in such an International Collaboration Agreement only, any information which the Authority is entitled to receive under this Contract, together with any technical assistance and background information necessary for the effective application of such information.
- 1.4
- 1.4.1 If disclosure by the Authority under paragraph 1.2 of Part 6 (*International Collaboration*) of Schedule 11 (*IPR*) of any copyright work would affect any rights of the System Integrator or third parties arising otherwise than from work performed for the purposes of this Contract, the System Integrator shall have the right to place on such copyright work a notice stating that it is supplied under contract to the Authority and may not be issued outside United Kingdom Government Departments except in accordance with the conditions of this Contract. Before exercising its rights under paragraph 1.2 of Part 6 (*International Collaboration*) of Schedule 11 (*IPR*) in respect of

any work bearing such notice the Authority shall give to the System Integrator prior written notice of fifteen days (or such other period as may be agreed) of its intention to do so and have regard to any representations made by the System Integrator 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 this Contract. The System Integrator shall be free under the terms of this Part 6 (*International Collaboration*) of Schedule 11 (*IPR*) to make any proposals for the protection of the information referred to herein. In particular, the Authority shall give full consideration to any proposals the System Integrator may make for the preparation of a special International Collaboration Report, for the release of information in stages, or for restrictions on the circulation of the information to be released. The Authority shall be entitled to make issue contrary to such representations and proposals fifteen days after notifying the System Integrator in writing that it considers it in the national interest to do so.

- 1.4.2 The Authority shall not have the right and the System Integrator shall not be obliged under this Part 6 (*International Collaboration*) of Schedule 11 (*IPR*) 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 this Contract. Provided that if the System Integrator has not granted and does not wish to grant a licence to a manufacturer in the country of the other party and if so there is no reasonable substitute article available in the other country the System Integrator shall in that event be obliged to make the disclosure and grant a licence direct to at least one manufacturer in the country of the other party to be approved by the System Integrator. The System Integrator shall on request supply the identification and shape, size and function of such units, sub-units and components.
- 1.4.3 The System Integrator shall on request insofar as they may be able to do so supply or procure the supply of such of the units, sub-units and components referred to in paragraph 1.4.2 of this Part 6 (*International Collaboration*) of Schedule 11 (*IPR*) as may be required to such other party within a reasonable timescale and on reasonable commercial, non-discriminatory terms.
- 1.4.4 If the Authority makes issue of information contrary to the System Integrator's representations under paragraph 1.4.1 of this Part 6 (*International Collaboration*) of Schedule 11 (*IPR*) as to the protection of trade secrets, know-how and similar proprietary information, the System Integrator shall be entitled to such compensation, if any, as is fair and reasonable in the circumstances.
- 1.5 If the System Integrator is party to a licence or other agreement relating to the use of inventions, designs or technical information which restricts their freedom to supply or

authorise the disclosure or use of information for the purposes of this Part 6 (*International Collaboration*) of Schedule 11 (*IPR*), the System Integrator shall, when tendering, quoting a price for this Contract, or offering to perform it (or, if at these times the restriction is not apparent, as soon thereafter as it is), notify the Authority and 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. Without the prior consent in writing of the Authority, the System Integrator shall not wittingly make use in the performance of this Contract of inventions, designs or technical information which are the subject of any agreement made after the date of this Contract or make any grant of rights in the results of work under this Contract which they know would restrict their freedom as aforesaid.

- 1.6 Unless in respect of any particular Sub-Contract the Authority agrees otherwise, the System Integrator shall include the provisions of this Part 6 (*International Collaboration*) of Schedule 11 (*IPR*) mutatis mutandis in any subcontract placed by them for the performance of any work of research, study, or development for the purposes of this Contract.
- 1.7 The Authority undertakes that it will consult with the System Integrator as early, as frequently and as fully as is reasonably practicable in the consideration of any International Collaboration Agreement into which it may wish to enter and will pay due regard to any representations of the System Integrator.

Annex 1: Deliverables to which Part 3 (*Intellectual Property Rights Vesting in the Authority*)
of Schedule 11 (*IPR*) applies

- 1 Amendments to Authority supplied documentation including the System Requirements Document;
- 2 Design data and technical drawings in relation to modifications to third party designs;
- 3 Amendments to System Architecture documentation or any newly generated System Architecture documentation;
- 4 Training Needs Analysis and supporting documentation;
- 5 Training materials generated under this Contract;
- 6 Any intellectual property generated or modified under this Contract to which neither Annex 2 (*Deliverables to be delivered as Unlimited Rights*) of Schedule 11 (*IPR*) nor Part 2 (*Intellectual Property Rights in Software*) of Schedule 11 applies.

Annex 2: Deliverables to be delivered as Unlimited Rights

- 1 Operation and maintenance data pack(s) pre-existing at the Effective Date;
- 2 Training materials pre-existing at the Effective Date;
- 3 Systems Architecture documentation pre-existing at the Effective Date;
- 4 Interface Data pre-existing at the Effective Date; and
- 5 Design data and technical drawings in relation to modifications to designs, which design are owned by the System Integrator at the Effective Date.

Schedule 12

Transfer Regulations (TUPE)

In this Schedule 12, the following definition shall have the following meaning given:

"Data Protection Legislation" means all applicable data protection and privacy legislation in force from time to time in the UK, including but not limited to:

- (a) the General Data Protection Regulation ((EU) 2016/679) as retained in UK law by the EU (Withdrawal) Act 2018 and the Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019 (the **"UK General Data Protection Regulation"** or **"UK GDPR"**);
- (b) the Data Protection Act 2018;
- (c) the Privacy and Electronic Communications Directive 2002/58/EC (as updated by Directive 2009/136/EC) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended; and
- (d) all applicable legislation and regulatory requirements in force from time to time which apply to a party relating to the processing of personal data and privacy and the guidance and codes of practice issued by the Information Commissioner's Office which apply to a party.

EMPLOYEE TRANSFER ARRANGEMENTS ON EXIT

1.1 Information on Re-tender, Partial Termination, Termination or Expiry

1.1.1 No earlier than two (2) years preceding the termination, partial termination or Expiry Date of this Contract or a potential Transfer Date or at any time after the service of a notice to terminate this Contract or the provision of any of the System Integrator Deliverables (whether in whole or part) or on receipt of a written request by the Authority, the System Integrator shall (and shall procure that any Employing Sub-Contractor shall):

- (i) supply to the Authority such information as the Authority may reasonably require in order to consider the application of the Transfer Regulations on the termination, partial termination or expiry of this Contract;
- (ii) supply to the Authority such full and accurate and up-to-date information as may be requested by the Authority including the information listed in Annex 1 to this Schedule 12 relating to the employees who are wholly or mainly employed, assigned or engaged in providing the System Integrator Deliverables or part of

the System Integrator Deliverables under this Contract who may be subject to a Relevant Transfer;

- (iii) provide the information promptly and in any event not later than three (3) months from the date when a request for such information is made and at no cost to the Authority;
- (iv) acknowledge that the Authority will use the information for informing any prospective Follow-On System Integrator for any services and/or Articles which are substantially the same as the System Integrator Deliverables or part of the System Integrator Deliverables provided pursuant to this Contract; and
- (v) inform the Authority of any changes to the information provided under paragraph 1.1.1(i) or 1.1.1(ii) up to the Transfer Date as soon as reasonably practicable.

1.1.2 Three (3) months preceding the termination, partial termination or Expiry Date of this Contract or on receipt of a written request from the Authority the System Integrator shall:

- (i) ensure that Employee Liability Information and such information listed in Part A of Annex 2 (*Personnel Information*) of this Schedule 12 relating to the Transferring Employees is provided to the Authority and/or any Follow-On System Integrator;
- (ii) inform the Authority and/or any Follow-On System Integrator of any changes to the information provided under this paragraph 1.1.2 up to any Transfer Date as soon as reasonably practicable; and
- (iii) enable and assist the Authority and/or any Follow-On System Integrator or any sub-contractor of a Follow-On System Integrator to communicate with and meet those employees and their trade union or other employee representatives.

1.1.3 No later than twenty-eight (28) days prior to the Transfer Date the System Integrator shall provide the Authority and/or any Follow-On System Integrator with a final list of the Transferring Employees together with the information listed in Part B of Annex 2 (*Personnel Information*) of this Schedule 12 relating to the Transferring Employees. The System Integrator shall inform the Authority and/or Follow-On System Integrator of any changes to this list or information up to the Transfer Date.

1.1.4 Within 14 days following the relevant Transfer Date the System Integrator shall provide to the Authority and/or any Follow-On System Integrator the information set out in Part C of Annex 2 of this Schedule 12 in respect of Transferring Employees.

- 1.1.5 Paragraphs 1.1.1 and 1.1.2 of this Schedule 12 are subject to the System Integrator's obligations in respect of the Data Protection Legislation and the System Integrator shall use its best endeavours to obtain the consent of its employees (and shall procure that its Sub-Contractors use their best endeavours to obtain the consent of their employees) to the extent necessary under the Data Protection Legislation or provide the data in an anonymous form in order to enable disclosure of the information required under paragraphs 1.1.1 and 1.1.2. Notwithstanding paragraph 1.1.4, the System Integrator acknowledges (and shall procure that its Sub-Contractors acknowledge) that they are required to provide sufficient information to the Authority to enable the Authority to determine the nature of the activities being undertaken by employees engaged in providing the System Integrator Deliverables, to assess whether there is an organised grouping for the purposes of the Transfer Regulations and to assess who is assigned to such organised grouping. To the extent that anonymous data has been provided by the System Integrator pursuant to its obligations under paragraph 1.1.1 or 1.1.2 above, the System Integrator shall provide full data to the Authority no later than twenty-eight (28) days prior to the Transfer Date.
- 1.1.6 On notification to the System Integrator by the Authority of a Follow-On System Integrator or within the period of six (6) months prior to the Expiry Date or after service of a notice to terminate this Contract (whether in whole or in part), whichever is earlier and in any event on receipt of a written request by the Authority, the System Integrator shall not and shall procure that an Employing Sub-Contractor shall not:
- (i) materially amend or promise to amend the rates of remuneration or other terms and conditions of employment of any person wholly or mainly employed or engaged in providing the System Integrator Deliverables under this Contract; or
 - (ii) replace or re-deploy from the System Integrator Deliverables any person wholly or mainly employed or engaged in providing the System Integrator Deliverables, or materially increase or decrease the number of persons performing the System Integrator Deliverables under this Contract or the working time spent on the System Integrator Deliverables (or any part thereof); or
 - (iii) reorganise any working methods or assign to any person wholly or mainly employed or engaged in providing the System Integrator Deliverables (or any part thereof) any duties unconnected with the System Integrator Deliverables (or any part thereof) under this Contract; or
 - (iv) terminate or give notice to terminate the employment of any person wholly or mainly employed or engaged in providing the System Integrator Deliverables (or any part thereof) under this Contract

other than in the case of serious misconduct or for poor performance,

save in the ordinary course of business and with the prior written consent of the Authority (not to be unreasonably withheld or delayed) and the System Integrator shall indemnify and keep indemnified the Authority in respect of any reasonable costs (including reasonable legal costs), losses and expenses and all damages, compensation, fines and liabilities arising out of or in connection with any breach of paragraphs 1.1.1, 1.1.2, 1.1.3, 1.1.4 or 1.1.6 of this Schedule 12.

- 1.1.7 The Authority may at any time prior to the period set out in paragraph 1.1.5 of this Schedule 12 request from the System Integrator any of the information in paragraphs 1(a) to (d) of Annex 1 and the System Integrator shall and shall procure any Sub-Contractors will provide the information requested within twenty-eight (28) days of receipt of that request.

1.2 Obligations in Respect of Transferring Employees

- 1.2.1 To the extent that the Transfer Regulations apply on expiry, termination or partial termination of this Contract, the System Integrator shall and shall procure any Employing Sub-Contractor shall and the Authority shall and shall procure that a Follow-On System Integrator shall in such circumstances:
- (i) before and in relation to the Transfer Date liaise with each other and shall co-operate with each other in order to implement effectively the smooth transfer of the Transferring Employees to the Authority and/or a Follow-On System Integrator; and
 - (ii) comply with their respective obligations under the Transfer Regulations including their obligations to inform and consult under Regulation 13 of the Transfer Regulations.

1.3 Unexpected Transferring Employees

- 1.3.1 If a claim or allegation is made by an employee or former employee of the System Integrator or any Employing Sub-Contractor who is not named on the list of Transferring Employees provided under paragraph 1.1.3 (an "**Unexpected Transferring Employee**") that he has or should have transferred to the Authority and/or Follow-On System Integrator by virtue of the Transfer Regulations, the Party receiving the claim or allegation shall notify the other Party (or the System Integrator shall notify the Authority on the Sub-Contractor's behalf and the Authority shall notify the System Integrator on the Follow-On System Integrator's behalf) in writing as soon as reasonably practicable and no later than ten (10) Working Days after receiving notification of the Unexpected Transferring Employee's claim or allegation, whereupon:

- (i) the System Integrator shall (or shall procure that the Employing Sub-Contractor shall), as soon as reasonably practicable, offer and/or confirm continued employment to the Unexpected Transferring Employee or take such other steps so as to effect a written withdrawal of the claim or allegation; and
- (ii) if the Unexpected Transferring Employee's claim or allegation is not withdrawn or resolved the System Integrator shall notify the Authority (who will notify any Follow-On System Integrator who is a party to such claim or allegation), and the Authority (insofar as it is permitted) and/or Follow-On System Integrator (as appropriate) shall employ the Unexpected Transferring Employee or as soon as reasonably practicable, (subject to compliance with its obligations at paragraph 1.3.1(iii)(C)), serve notice to terminate the Unexpected Transferring Employee's employment in accordance with his contract of employment; and
- (iii) the System Integrator shall indemnify the Authority against all reasonable costs (including reasonable legal costs) losses and expenses and all damages, compensation, fines and liabilities arising out of or in connection with any of the following liabilities incurred by the Authority or Follow-On System Integrator in dealing with or disposing of the Unexpected Transferring Employee's claim or allegation:
 - (A) any additional costs of employing the Unexpected Transferring Employee up to the date of dismissal where the Unexpected Transferring Employee has been dismissed in accordance with paragraph 1.3.1(ii);
 - (B) any liabilities acquired by virtue of the Transfer Regulations in relation to the Unexpected Transferring Employee;
 - (C) any liabilities relating to the termination of the Unexpected Transferring Employee's employment but excluding such proportion or amount of any liability for unfair dismissal, breach of contract or discrimination attributable:
 - 1) to a failure by the Authority or a Follow-On System Integrator to act reasonably to mitigate the costs of dismissing such person);
 - 2) directly or indirectly to the procedure followed by the Authority or a Follow-On System Integrator in dismissing the Unexpected Transferring Employee; or

3) to the acts/omissions of the Authority or a Follow-On System Integrator not wholly connected to the dismissal of that person;

(D) any liabilities incurred under a settlement of the Unexpected Transferring Employee's claim which was reached with the express permission of the System Integrator (not to be unreasonably withheld or delayed);

(E) reasonable administrative costs incurred by the Authority or Follow-On System Integrator in dealing with the Unexpected Transferring Employee's claim or allegation, subject to a cap per Unexpected Transferring Employee of five thousand pounds (£5,000); and

(F) legal and other professional costs reasonably incurred.

1.3.2 The Authority shall be deemed to have waived its right to an indemnity under paragraph 1.3.1(iii) if it fails without reasonable cause to take, or fails to procure any Follow-On System Integrator takes, any action in accordance with any of the timescales referred to in this paragraph 1.3.

1.4 Indemnities on transfer under the Transfer Regulations on Partial Termination, Termination or Expiry of this Contract

1.4.1 If on the expiry, termination or partial termination of this Contract there is a Relevant Transfer, the System Integrator shall indemnify the Authority and any Follow-On System Integrator against all reasonable costs (including reasonable legal costs) losses and expenses and all damages, compensation, fines and liabilities arising out of or in connection with any claim by any employee or trade union representative or employee representative arising whether before or after the Transfer Date out of any failure by the System Integrator or any Sub-Contractor to comply with their obligations under Regulation 13 of the Transfer Regulations in relation to any Transferring Employee or any other employee of the System Integrator or any Sub-Contractor affected by the Relevant Transfer (as defined by Regulation 13 of the Transfer Regulations), save to the extent that all reasonable costs (including reasonable legal costs), losses and expenses and all damages, compensation, fines and liabilities are a result of the act or omission of the Authority or the Follow-On System Integrator.

1.4.2 If there is a Relevant Transfer, the Authority shall indemnify the System Integrator against all reasonable costs (including reasonable legal costs) losses and expenses and all damages, compensation, fines and liabilities arising out of, or in connection with:

(i) any claim or claims by a Transferring Employee at any time on or after the Transfer Date which arise as a result of an act or omission

of the Authority or a Follow-On System Integrator or a sub-contractor of a Follow-On System Integrator during the period from and including the Transfer Date; and

- (ii) subject to paragraph 1.4.1 any claim by any employee or trade union representative or employee representative arising whether before or after the Transfer Date out of any failure by the Authority or a Follow-On System Integrator or a sub-contractor of a Follow-On System Integrator to comply with their obligations under Regulation 13 of the Transfer Regulations in relation to any Transferring Employee or any other employee engaged wholly or mainly in connection with the System Integrator Deliverables by the Follow-On System Integrator or any other employee of the Authority or any Follow-On System Integrator affected by the Relevant Transfer effected by this Contract (as defined by Regulation 13 of the Transfer Regulations),

save to the extent that all reasonable costs (including reasonable legal costs), losses and expenses and all damages, compensation, fines and liabilities are a result of the act or omission of the System Integrator or any Employing Sub-Contractor.

- 1.4.3 In the event of a Relevant Transfer, the Authority shall indemnify the System Integrator in respect of all reasonable costs (including reasonable legal costs), losses and expenses and all damages, compensation, fines and other liabilities arising out of or in connection with or as a result of a substantial change by the Authority or a Follow-On System Integrator or any sub-contractor of a Follow-On System Integrator on or after the Transfer Date to the working conditions of any Transferring Employee to the material detriment of any such Transferring Employee. For the purposes of this paragraph 1.4.3, the expressions "substantial change" and "material detriment" shall have the meanings as are ascribed to them for the purposes of Regulation 4(9) of the Transfer Regulations.

1.5 Contracts (Rights of Third Parties) Act 1999

- 1.5.1 A Follow-On System Integrator may enforce the terms of paragraph 1.3 and 1.4 against the System Integrator in accordance with the Contracts (Rights of Third Parties) Act 1999.
- 1.5.2 The consent of a Follow-On System Integrator (save where the Follow-On System Integrator is the Authority) is not required to rescind, vary or terminate this Contract.
- 1.5.3 Nothing in this paragraph 1.5 shall affect the accrued rights of the Follow-On System Integrator prior to the rescission, variation, expiry or termination of this Contract.

1.6 General

- 1.6.1 The System Integrator shall not recover any costs and/or other losses under this Schedule 12 where such costs and/or losses are recoverable by the System Integrator elsewhere in this Contract and/or are recoverable under the Transfer Regulations or otherwise.

Annex 1: System Integrator Personnel-Related Information to be Released Upon Re-Tendering where the Transfer Regulations apply

- 1 Pursuant to paragraph 1.1.1(ii) of this Schedule 12, the following information will be provided:
 - 1.1 The total number of individual employees (including any employees of Sub-Contractors) that are currently engaged, assigned or employed in providing the System Integrator Deliverables and who may therefore be transferred. Alternatively the System Integrator should provide information why any of their employees or those of their Sub-Contractors will not transfer;
 - 1.2 The total number of posts or proportion of posts expressed as a full-time equivalent value that currently undertakes the work that is to transfer;
 - 1.3 The preceding twelve (12) months total pay costs – (Pay, benefits employee/employer national insurance contributions and overtime); and
 - 1.4 Total redundancy liability including any enhanced contractual payments.
- 2 In respect of those employees included in the total at paragraph 1.1 the following information:
 - 2.1 Age (not date of Birth);
 - 2.2 Employment Status (i.e. Fixed Term, Casual, Permanent);
 - 2.3 Length of current period of continuous employment (in years, months) and notice entitlement;
 - 2.4 Weekly conditioned hours of attendance (gross);
 - 2.5 Standard Annual Holiday Entitlement (not "in year" holiday entitlement that may contain carry over or deficit from previous leave years);
 - 2.6 Pension Scheme Membership;
 - 2.7 Pension and redundancy liability information;
 - 2.8 Annual Salary;
 - 2.9 Details of any regular overtime commitments (these may be weekly, monthly or annual commitments for which staff may receive an overtime payment);
 - 2.10 Details of attendance patterns that attract enhanced rates of pay or allowances;
 - 2.11 Regular/recurring allowances; and

- 2.12 Outstanding financial claims arising from employment (i.e. season ticket loans, transfer grants).
- 3 The information to be provided under this Annex 1 should not identify an individual employee by name or other unique personal identifier unless such information is being provided twenty-eight (28) days prior to the Transfer Date.
- 4 The System Integrator will provide (and will procure that the Sub-Contractors provide) the Authority/tenderers with access to the System Integrator's and Sub-Contractor's general employment terms and conditions applicable to those employees identified at paragraph 1.1 of this Annex 1.

Annex 2: Personnel Information to be Released Pursuant to this Contract

Part A

- 1 Pursuant to paragraph 1.1.2 of this Schedule 12, the written statement of employment particulars as required by section 1 of the Employment Rights Act 1996 together with the following information (save where that information is included within that statement) which will be provided to the extent it is not included within the written statement of employment particulars:

1.1 Personal, Employment and Career

- 1.1.1 Age;
- 1.1.2 Security Vetting Clearance;
- 1.1.3 Job title;
- 1.1.4 Work location;
- 1.1.5 Conditioned hours of work;
- 1.1.6 Employment Status;
- 1.1.7 Details of training and operating licensing required for Statutory and Health and Safety reasons;
- 1.1.8 Details of training or sponsorship commitments;
- 1.1.9 Standard Annual leave entitlement and current leave year entitlement and record;
- 1.1.10 Annual leave reckonable service date;
- 1.1.11 Details of disciplinary or grievance proceedings taken by or against transferring employees in the last two (2) years;
- 1.1.12 Information of any legal proceedings between employees and their employer within the previous two (2) years or such proceedings that the transferor has reasonable grounds to believe that an employee may bring against the transferee arising out of their employment with the transferor;
- 1.1.13 Issue of Uniform/Protective Clothing;
- 1.1.14 Working Time Directive opt-out forms; and

1.1.15 Date from which the latest period of continuous employment began.

1.2 Superannuation and Pay

1.2.1 Maternity leave or other long-term leave of absence (meaning more than four (4) weeks) planned or taken during the last two (2) years;

1.2.2 Annual salary and rates of pay band/grade;

1.2.3 Shifts, unsociable hours or other premium rates of pay;

1.2.4 Overtime history for the preceding twelve (12) month period;

1.2.5 Allowances and bonuses for the preceding (12) month period;

1.2.6 Details of outstanding loan, advances on salary or debts;

1.2.7 Pension Scheme Membership;

1.2.8 For pension purposes, the notional reckonable service date;

1.2.9 Pensionable pay history for three (3) years to date of transfer;

1.2.10 Percentage of any pay currently contributed under additional voluntary contribution arrangements; and

1.2.11 Percentage of pay currently contributed under any added years arrangements.

1.3 Medical

1.3.1 Details of any period of sickness absence of three (3) months or more in the preceding period of twelve (12) months; and

1.3.2 Details of any active restoring efficiency case for health purposes.

1.4 Disciplinary

1.4.1 Details of any active restoring efficiency case for reasons of performance; and

1.4.2 Details of any active disciplinary cases where corrective action is on going.

1.5 Further information

1.5.1 Information about specific adjustments that have been made for an individual under the Equality Act 2010;

- 1.5.2 Short term variations to attendance hours to accommodate a domestic situation;
- 1.5.3 Individuals that are members of the Reserves, or staff that may have been granted special leave for public duties such as a School Governor; and
- 1.5.4 Information about any current or expected maternity or other statutory leave or other absence from work.

Part B

- 1.6 Information to be provided twenty-eight (28) days prior to the Transfer Date:
 - 1.6.1 Employee's full name;
 - 1.6.2 Date of Birth;
 - 1.6.3 Home address; and
 - 1.6.4 Bank/building society account details for payroll purposes Tax Code.

Part C

- 1.7 Information to be provided within fourteen (14) days following a Transfer Date:
 - 1.7.1 Performance Appraisal
 - (i) The current year's Performance Appraisal;
 - (ii) Current year's training plan (if it exists); and
 - (iii) Performance Pay Recommendations (PPR) forms completed in the current reporting year, or where relevant, any bonus entitlements;
 - 1.7.2 Superannuation and Pay
 - (i) Cumulative pay for tax and pension purposes;
 - (ii) Cumulative tax paid;
 - (iii) National Insurance Number;
 - (iv) National Insurance contribution rate;

- (v) Other payments or deductions being made for statutory reasons; and
- (vi) Any other voluntary deductions from pay.

Schedule 13

System Integrator's Commercially Sensitive Information (DEFFORM 539A)

Schedule 13 has been removed from this contract because it contains commercially sensitive information and personal data.

Schedule 14

Enabling Contracting Plan

Schedule 14 has been removed from this contract because it contains commercially sensitive information.

Schedule 15

Exit Plan

Schedule 15 has been removed from this contract because it contains commercially sensitive information.

Schedule 16

Quality Assurance Plan

Schedule 16 has been removed from this contract because it contains commercially sensitive information.

Schedule 17

Not used

Schedule 18

Social Value Plan

Schedule 18 has been removed from this contract because it contains commercially sensitive information.

Schedule 19

Hazardous Materials (DEFFORM 68)

Schedule 19 has been removed from this contract because it contains commercially sensitive information.

Schedule 20

Addresses and Other Information (DEFFORM 111)

Information has been removed from this Schedule because it contains Personal Data.

1. Authority's Commercial Officer

Name: [REDACTED]

Address: Defence Equipment & Support, Remotely
Piloted Air Systems Team, NH1, Yew 2c, Abbey
Wood, Bristol, BS34 8JH

Email: [REDACTED]
[REDACTED]

8. Public Accounting Authority

1. Returns under DEFCON 694 (or SC equivalent) should be sent to DBS Finance
ADMT – Assets In Industry 1, Level 4 Piccadilly
Gate, Store Street, Manchester, M1 2WD

☎ 44 (0) 161 233 5397

2. For all other enquiries contact DES Fin FA-
AMET Policy, Level 4 Piccadilly Gate, Store
Street, Manchester, M1 2WD

☎ 44 (0) 161 233 5394

**2. Project Manager, Equipment Support Manager
or PT Leader** (from whom technical information is
available)

Name: [REDACTED]

Address: Defence Equipment & Support, Remotely
Piloted Air Systems Team, NH1, Yew 2c, Abbey
Wood, Bristol, BS34 8JH

9. Consignment Instructions

The items are to be consigned as follows:

TBC

Email: [REDACTED]
[REDACTED]

3. Packaging Design Authority

Organisation & point of contact:

TBC

(Where no address is shown please contact the Project Team in Box 2)



4. (a) Supply / Support Management Branch or Order Manager:

Branch/Name:



10. Transport. The appropriate Ministry of Defence Transport Offices are:

A. DSCOM, DE&S, DSCOM, MoD Abbey Wood, Cedar 3c, Mail Point 3351, BRISTOL BS34 8JH

Air Freight Centre

IMPORTS ☐ 030 679 81113 / 81114 Fax 0117 913 8943

EXPORTS ☐ 030 679 81113 / 81114 Fax 0117 913 8943

Surface Freight Centre

IMPORTS ☐ 030 679 81129 / 81133 / 81138 Fax 0117 913 8946

EXPORTS ☐ 030 679 81129 / 81133 / 81138 Fax 0117 913 8946

B. JSCS

JSCS Helpdesk No. 01869 256052 (select option 2, then option 3)

JSCS Fax No. 01869 256837

(b) U.I.N. TBC

Users requiring an account to use the MOD Freight Collection Service should contact UKStratCom-DefSp-RAMP@mod.gov.uk <mailto:deswatergaud-ics-support@mod.gov.uk> in the first instance.

5. Drawings/Specifications are available from

TBC

11. The Invoice Paying Authority

Ministry of Defence ☐ 0151-242-2000

DBS Finance

Walker House, Exchange Flags Fax:
0151-242-2809

Liverpool, L2 3YL **Website is:**
<https://www.gov.uk/government/organisations/ministry-of-defence/about/procurement#invoice-processing>

6. Intentionally Blank

12. Forms and Documentation are available through *:

Ministry of Defence, Forms and Pubs
Commodity Management

PO Box 2, Building C16, C Site

Lower Arncott

Bicester, OX25 1LP (Tel. 01869 256197 Fax:
01869 256824)

Applications via fax or email:

Leidos-FormsPublications@teamleidos.mod.uk

7. Quality Assurance Representative:

██████████

Commercial staff are reminded that all Quality Assurance requirements should be listed under the General Contract Conditions.

AQAPS and **DEF STANs** are available from UK Defence Standardization, for access to the documents and details of the helpdesk visit

*** NOTE**

1. Many **DEFCONs** and **DEFFORMs** can be obtained from the MOD Internet Site:
<https://www.aof.mod.uk/aofcontent/tactical/toolkit/index.htm>

2. If the required forms or documentation are not available on the MOD Internet site requests should be submitted through the Commercial Officer named in Section 1.

<http://dstan.gateway.isg-r.r.mil.uk/index.html>

[intranet] or <https://www.dstan.mod.uk/> [extranet, registration needed].

Schedule 21

Personal Data Particulars (DEFFORM 532)

Schedule 21 has been removed from this contract because it contains commercially sensitive information.

Schedule 22

Notifications of Intellectual Property Rights (IPR) Restrictions

Schedule 22 has been removed from this contract because it contains commercially sensitive information.

