

**OFFICIAL-SENSITIVE (COMMERCIAL)**

**SCHEDULE 5**

**INTELLECTUAL PROPERTY RIGHTS**

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Part 1

Definitions

- 1     **“Authority Background IPRs”** means any IPRs and/or Information (as the case may be) subsisting and owned by the Authority prior to the date of, or created or generated by or on behalf of the Authority outside the scope of, this Agreement (other than any Authority Foreground IPRs);
- 2     **“Authority Data”** means the data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media, and which are:
  - supplied to the Supplier by or on behalf of the Authority; and/or
  - which the Supplier is required to generate, process, store or transmit pursuant to this agreement; orany Personal Data for which the Authority is the Data Controller;
- 3     **“Authority Foreground IPRs”** means IPRs in any Intellectual Property created or generated by the Authority in the course of the performance of this Agreement;
- 4     **“Authority Software”** means software which is owned by or licensed to the Authority (other than under or pursuant to this agreement) and which is or will be used by the Supplier for the purposes of providing the Services;
- 5     **“COTS Products”** means any products which are not bespoke and for which there is a readily available competitive market through which the price of such products is determined (including Supplier COTS Background IPRs, Supplier COTS Software, Supplier Non COTS Background IPRs, and the Supplier Non COTS Software);
- 6     **“Deliverable Information”** means (other than in the draft commercial exploitation agreements at Annex 5) technical or any other Information whether owned or controlled by the Supplier or a Third Party which is generated and/or delivered under this Agreement, (or which would, if the Supplier had fully complied with its obligations under this Agreement, have been generated and/or delivered) to the Authority;
- 7     **“Information”** means all information of whatever nature, however conveyed and in whatever form, including in writing, orally, by demonstration, electronically and in a tangible, visual or machine-readable medium (including CD-ROM, magnetic and digital form);
- 8     **“Intellectual Property Rights” or “IPRs”** means patents, utility models, rights (registered and unregistered) in any designs, applications for any of the foregoing, topography rights, database rights, copyright, inventions, confidential Information and trade secrets, and all rights and forms of protection of a similar nature to these or having equivalent effect anywhere in the world, and references to **“Intellectual Property Rights in”** or **“IPRs in”** any Supplier Deliverables includes rights in Information contained or embodied in the same, rights in any copyright work or design forming any part of the same, rights in any invention contained in the same, and any intellectual property rights covering the same, and all other intellectual property rights required for use of the same or for the use of any Information or data

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contained or embodied in the same, or any part the same (whether alone or in combination with any other Supplier Deliverable);

- 9      **“Interface”** means those tangible or intangible features of any system, equipment, module or application - including those outlined in ISO 7498 (Basic Reference Model for Open Systems Interconnection) - forming part of the Supplier Deliverables, which must be compatible with those tangible or intangible features of one or more other systems, equipment, modules or applications in order to enable their successful integration and interoperation;
- 10     **“Interface Information”** means the Information which is necessary and sufficient to describe, define and implement an Interface, including its operating and physical features, including the relevant API (application programming interface) object code implementation, in order to assist a Third Party (receiving Interface Information), in the designing, developing, integration and manufacture of applications and equipment which are intended to make use of the Interface Information, to enable the system, equipment, module or application to interface or cooperate with other equipment, and includes any associated tools for assisting integration and interoperation using any Interface to the systems, equipment, modules or applications the subject of the Interface;
- 11     **“International Collaboration”** shall mean any 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 Agreement, and for the allocation of responsibility for work under such programme between the parties to such agreement or arrangement;
- 12     **“Non-trivial Customer Base”** means a significant customer base with respect to the date of first release of an item in the relevant market but excluding Affiliates and other entities related to the licensor;
- 13     **“Open Source Software”** means computer software that is released on the internet for use by any persons, such release usually being made under a recognised open source licence and stating that it is released as open source;
- 14     **“Project Specific IPRs”** means Intellectual Property Rights (excluding Supplier Retained Foreground IPRs) funded by the Authority or created or generated by the Supplier or any Sub-contractor in the course of the performance of this Agreement, including the Specially Written Software, and including Intellectual Property Rights arising in:
- customisations and configurations of COTS Products and other Supplier Software or Third Party Software;
  - marketing and recruitment campaigns (including scripts and images);
  - reports, records and data relating to AFRP (particularly candidate data), the Authority and Authority-sponsored personnel;
  - processes created for the Authority to improve recruitment;
  - databases;
  - Information relating to the operation, repair and maintenance of GFA;

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- 15     **“Specially Written Software”** means any software (including database software, linking instructions, test scripts, compilation instructions and test instructions) created by the Supplier (or by a sub-contractor or other Third Party on behalf of the Supplier) specifically for the purposes of this Agreement, including any modifications or enhancements to Supplier Software or Third Party Software created specifically for the purposes of this Agreement;
- 16     **“Supplier Background IPRs”** means any IPRs and/or Information (as the case may be) subsisting and owned by the Supplier the prior to the date of, or created or generated by or on behalf of the Supplier outside the scope of, this Agreement (other than any Supplier Foreground IPRs);
- 17     **“Supplier COTS Background IPRs”** means any embodiments of Supplier Background IPRs that:
- the Supplier makes generally available commercially prior to the date of this Agreement (whether by way of sale, lease or licence) on standard terms which are not typically negotiated by the Supplier save as to price; and
  - has a Non-trivial Customer Base;
- 18     **“Supplier COTS Software”** means Supplier Software (including Open Source Software) that:
- the Supplier makes generally available commercially prior to the date of this Agreement (whether by way of sale, lease or licence) on standard terms which are not typically negotiated by the Supplier save as to price; and
  - has a Non-trivial Customer Base;
- 19     **“Supplier Deliverables”** means the products, deliverables and software provided to fulfil the performance of the Services;
- 20     **“Supplier Non-COTS Background IPRs”** means any embodiments of Supplier Background IPRs that have been delivered by the Supplier to the Authority and that are not Supplier COTS Background IPRs;
- 21     **“Supplier Non-COTS Software”** means Supplier Software that is not Supplier COTS Software;
- 22     **“Supplier Retained Foreground IPRs”** means Intellectual Property Rights in Supplier Deliverables identified in Annex A for which the Supplier shall retain ownership and which are funded by the Authority or created or generated by the Supplier or any of its sub-contractors in the course of the performance of this Agreement;
- 23     **“Supplier Software”** means the Software proprietary to the Supplier listed in Annex 2 of this Schedule 5 including COTS Products;
- 24     **“Third Party”** means a party other than the Authority, the Supplier, and any Affiliate of the Supplier;
- 25     **“Third Party COTS IPRs”** means Third Party IPRs that:

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- the Supplier makes generally available commercially prior to the date of this Agreement (whether by way of sale, lease or licence) on standard terms which are not typically negotiated by the Supplier save as to price; and
  - has a Non-trivial Customer Base;
- 26     **"Third Party COTS Software"** means Third Party Software (including Open Source Software) that:
- the Supplier makes generally available commercially prior to the date of this Agreement (whether by way of sale, lease or licence) on standard terms which are not typically negotiated by the Supplier save as to price; and
  - has a Non-trivial Customer Base;
- 27     **"Third Party IPRs"** means any IPRs owned by a Third Party (excluding any IPRs owned by the Third Party subsisting in any Third Party Software);
- 28     **"Third Party Non-COTS IPRs"** means Third Party IPRs that are not Third Party COTS IPRs;
- 29     **"Third Party Non-COTS Software"** means Third Party Software that is not Third Party COTS Software;
- 30     **"Third Party Software"** means any software which is proprietary to any Third Party (other than an Affiliate of the Supplier) including COTS Products or any Third Party-owned Open Source Software which in any case is, will be or is proposed to be used by the Supplier for the purposes of providing the Supplier Deliverables, including the software detailed as Third Party Software in Part 2 of this Schedule 5;
- 31     **"Vendor Independent"** means in relation to any Interface that the Authority (and any reasonably skilled contractor appointed by the Authority) has sufficient Deliverable Information and Tools and the right to use such Deliverable Information and Tools for any purpose in connection with the use of such Interface, including, in respect of their use of such Interface:
- to build, assemble, maintain, repair, operate, modify, develop, implement, interface with, adapt, prove, Integrate, update, configure, conform, analyse, instantiate, supplement, enhance, train or evolve any equipment or services, and to become and exercise (by itself or through a Third Party) the role as a competent and effective design authority (as that term is understood in accordance with Def Stan 05-57 - Configuration Management) in respect of the same; and
  - to run viable competitions in respect of services or equipment which make use of such Interface between reasonably skilled contractors (independent of any single vendor),

and in all cases without further recourse to the Supplier or any single other Third Party (and **"Vendor Independence"** shall be construed accordingly);

**Part 2**

**Intellectual Property Rights : Ownership and Licensing**

- 1. Ownership and Assignment of Intellectual Property Rights**
- 1.1** The Supplier shall not by virtue of this Agreement acquire title to or rights, other than under the licences set out in this Agreement, in:
  - (a) the Authority Software;
  - (b) the Authority Data;
  - (c) the Authority Background IPRs;
  - (d) Authority Foreground IPRs;
  - (e) Project Specific IPRs; or
  - (f) any IPRs licensed by any Third Party to the Authority.
- 1.2** The Authority shall not by virtue of this Agreement acquire title to or rights or interest in or to the Intellectual Property Rights of the Supplier or its licensors, other than under the assignments and licences set out in this Agreement, namely:
  - (a) the Supplier Software;
  - (b) the Third Party Software;
  - (c) Supplier Retained Foreground IPRs;
  - (d) Supplier Background IPRs; and
  - (e) Third Party IPRs.
- 1.3** Where either Party acquires, by operation of law, title to Intellectual Property Rights that is inconsistent with the allocation of title set out in this Schedule 5, it shall assign in writing such Intellectual Property Rights as it has acquired to the other Party on the request of the other Party (whenever made).
- 1.4** The Supplier hereby assigns to the Authority, with full title guarantee all present and future Project Specific IPRs from the date of creation. The Supplier shall execute and deliver a certificate confirming the delivery of all Information required as part of the Supplier Deliverables being assigned.
- 1.5** The Supplier undertakes to execute all documents and do all reasonable acts which may be necessary for the Authority to obtain the benefit of ownership of Project Specific IPRs including the execution, at the Authority's request, of any formal assignment or other document or instrument necessary or appropriate to give effect to such assignment to the effect that the Authority own all right title and interest in such IPRs (subject to the licences referred to in this Schedule 5), without limitation, consenting to the registration of any licence against any IPRs which is registered.

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- 1.6 If at any time it is determined that Project IPRs have not been assigned to the Authority in accordance with Paragraph 1.4 then:
- (a) where such IPRs is owned or controlled by the Supplier or any Affiliate of the Supplier, the Supplier shall promptly execute or procure the execution of an assignment in favour of the Authority;
  - (b) where such IPRs is owned or controlled by any Third Party, the question will be referred to dispute resolution in accordance with [Clause 41] (*Disputes*) for determination of any appropriate action and in the absence of determination otherwise:
    - (i) in relation to any invention to the extent it is the subject of a UK patent or patent application or UK registered design, then, unless the Supplier and Authority 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;
    - (ii) in relation to any copyright, database right, design right or the like protection, or any confidential Information, trade secret or the like, or any right other than as set out in sub-paragraph (i) above, or the provision to the Authority of any Information or material which the Supplier does not have the right to provide for the purpose of this Agreement, the Supplier shall use its best endeavours to procure for the Authority the same rights licensed pursuant to Paragraph 2, and shall assume all liability and indemnify the Authority and its officers, agents and employees against all liability, including costs arising from any infringement or alleged infringement of such copyright, database, design or other right or misuse or alleged misuse of any such Information or material.
- 1.7 Neither Party shall have any right to use any of the other Party's names, logos or trade marks on any of its products or services without the other Party's prior written consent.

## 2. Licences Granted by the Supplier

### Identifying Licensed Software

- 2.1 The tables in Annex 2 set out details of the Supplier Software or Third Party Software licensed for use by the Authority.
- 2.2 The Supplier shall update the relevant tables in Annex [2] to record each time that a new item of Supplier Software or Third Party Software is provided, used and/or licensed by the Supplier or Third Parties for the purposes of the delivery of the Services.

### Licence to Supplier Deliverables

- 2.3 The Supplier hereby grants to the Authority a perpetual, royalty-free and non-exclusive licences to use (including but not limited to the right to load, execute, store, transmit, display and copy (for the purposes of archiving, backing-up, loading, execution, storage, transmission or display)):



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- (a) the Supplier Non-COTS Software for which the Supplier delivers a copy to the Authority for any purpose relating to the Services (or substantially equivalent services) or for any purpose relating to the exercise of the Authority's (or any other Central Government Body's) business or function;
- (b) the Supplier Non-COTS Background IPRs for any purpose relating to the Services (or substantially equivalent services) or for any purpose relating to the exercise of the Authority's (or any other Central Government Body's) business or function;
- (c) other Supplier Deliverables (other than Project Specific IPRs and COTS Products) which shall include all Interfaces and virtual reality equipment and software for use in aptitude and psychometric testing and training materials and guides (including training syllabuses, lessons, records, course training plans and courseware), for the following purposes:
  - (i) to take the benefit of the Supplier Deliverables for the purpose of, and/or in conjunction with its activities in connection with, receiving and using the Supplier Deliverables under this Agreement, including for the purposes of installation, operation, maintenance and training;
  - (ii) to perform the Authority's duties and obligations under this Agreement;
  - (iii) to disclose or publish any Interfaces;
  - (iv) to perform any review, audit, or legal duty (statutory or otherwise);
  - (v) to integrate the Supplier Deliverables with any of the Authority's other products and/or operations with which the Supplier Deliverables are or will be reasonably associated, including the procurement of any such products or services applicable to such products or operations;
  - (vi) in the case of training materials (including training syllabuses, lessons, records, course training plans and courseware) the right to copy, amend, extend or have copied, amended or extended any training documentation and software or other digital tools required pursuant to the Agreement, irrespective of whether in hard or soft format, or any part thereof including any such part when incorporated in any amended or extended version of such training materials, and to circulate, use or have used such training materials including any amended or extended version and any copies thereof for any purpose of the Government of the UK [or the Crown Dependencies];
  - (vii) to conduct any UK Governmental purpose which may be connected with the use of the Supplier Deliverables by the Authority including for any International Collaboration and for any obligations under any International Treaty, provided always that such purpose does not extend to the commercial exploitation of such rights during or after the Term;
  - (viii) to compete or have competed the provision of replacement, substitute or follow-on services, or of deliverables similar to the Supplier Deliverables; and/or

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- (ix) otherwise in connection with the performance of this Agreement, and otherwise for its own internal UK Government purposes.

- 2.4 The Supplier hereby grants to the Authority a licence to use the Supplier COTS Software and Supplier COTS Background IPRs on licence terms which are no less favourable (including as to indemnification against IPRs Claims) than those set out in the Template Proprietary Software Licence (Annex 4) subject to any exceptions agreed with the Authority to be documented in Annex 2 (as updated from time to time) including to reflect terms which are made commercially available by the Supplier for its COTS Products. In all cases, the Authority shall remain entitled to sub-license and to assign and novate the Supplier Non-COTS Software, Supplier Non-COTS Background IPRs, and the Supplier COTS Software and Supplier COTS Background IPRs as permitted by paragraphs 5 and 6 of this Schedule 5.
- 2.5 The Supplier shall identify all relevant Deliverable Information (including forming part of Supplier Background IPRs) and the Supplier shall execute and deliver, together with delivery (or such later time as the Authority may specify) of each Supplier Deliverable, a certificate confirming the delivery of all Deliverable Information required as part of that Supplier Deliverable. The Supplier hereby grants to the Authority a perpetual, royalty-free and non-exclusive licence to use (including but not limited to the right to load, execute, store, transmit, display and copy) the Deliverable Information.
- 2.6 As soon as the Supplier becomes aware that any copyright work to be delivered is a work subject to any special conditions they shall inform the Authority immediately.

**Interfaces**

- 2.7 The Supplier hereby agrees to provide the Authority with the right to use all Interfaces and to disclose or publish any Interfaces, and the right to make, procure, use and develop anything based on any Interface, including, independently of any individual vendor (including the Supplier), to run viable competitions between reasonably skilled contractors, independent of the Supplier, in respect of the provision of services and equipment making use of any Interface, system integration, and to have the same implemented and evolved.
- 2.8 The Authority shall be entitled to use, and the Supplier shall grant or procure the grant of a paid up perpetual and irrevocable licence for the Authority to copy, use (including editing and modifying) and disclose:
  - (a) Interface Information for all Interfaces to ensure the Authority maintains the principles of an open architecture and Vendor Independence;
  - (b) Information that forms part of any Deliverable Information reasonably needed to enable a Third Party to install/uninstall (where relevant) any Supplier Deliverable or any part of it; and
  - (c) all Interface Information relating to COTS Products supplied by the Supplier under this Agreement but excluding Deliverable Information relating to the internal design of any independent COTS Products supplied by the Supplier under this Agreement .

**3. Restrictions on Supplier Commercial Exploitation**

- 3.1 To the extent that the Charges include amounts for the development of Project Specific IPR and/or Supplier Retained Foreground IPRs, then the Supplier shall not be entitled to separately charge a Central Government Body or any other public sector customer, for development costs or charges for the same Project Specific IPR and/or Supplier Foreground IPRs. Upon the Authority's request, the Supplier shall provide written confirmation of compliance with this Paragraph. The obligations, restrictions and rights set out in this Paragraph 3.1 shall survive the expiry or termination of this Agreement.
- 3.2 If the Supplier intends to use or uses any IPRs (other than Supplier Background IPRs and COTS Products) or Deliverable Information for its commercial purposes, the Supplier shall enter into Commercial Exploitation Agreement(s) with the Authority at the relevant time, as determined by the Authority, and the conditions shall be identical in all material respects to those set out in at Annex [5] (*Commercial Exploitation Arrangements / Levy*). Any sums due to the Authority in respect of commercial sales of items developed by the Supplier under this Agreement shall be determined in accordance with the relevant Commercial Exploitation Agreement(s) at Annex [5] (*Commercial Exploitation Arrangements / Levy*). The actual percentages payable or calculated will be agreed by the Parties no later than the point of the first sale or other supply to which the arrangements apply.

**4. Third Party Software and Third Party IPRs: Licences to the Authority**

- 4.1 The Supplier shall not use in the provision of the Services any Third Party Non-COTS Software or Third Party Non-COTS IPRs unless in each case it has:
- (a) first procured that the owner or an authorised licensor of the relevant Third Party Non-COTS IPRs or Third Party Non-COTS Software (as the case may be) has granted a direct licence to the Authority on a royalty-free basis to the Authority and on terms no less favourable to the Authority than those set out in paragraph 2.3 (in relation to the Supplier Deliverables); or
  - (b) complied with the provisions of paragraph 4.2.
- 4.2 If the Supplier cannot obtain for the Authority a licence in respect of any Third Party Non-COTS Software and/or Third Party Non-COTS IPRs in accordance with the paragraph 4.1(a), then the Supplier shall:
- (a) notify the Authority in writing giving details of what licence terms can be obtained from the relevant third party and whether there are alternative software providers which the Supplier could seek to use; and
  - (b) use the relevant Third Party Non-COTS Software and/or Third Party Non-COTS IPRs only if the Authority has first approved in writing the terms of the licence from the relevant third party.
- 4.3 Annex 2 identifies the Third Party Software used or supplied by the Supplier as known at the Effective Date and any exceptions or supplemental terms including to reflect terms which are made commercially available by the relevant third party if it is a COTS Product for example.
- 4.4 The Supplier shall:

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- (a) notify the Authority in writing of all Third Party COTS Software and Third Party COTS IPRs that it uses and the terms on which it uses them; and
- (b) unless instructed otherwise in writing by the Authority in any case within 20 Working Days of notification pursuant to paragraph 4.2(a), use all reasonable endeavours to procure in each case that the owner or an authorised licensor of the relevant Third Party COTS Software and Third Party COTS IPRs grants a direct licence to the Authority on terms no less favourable (including as to indemnification against IPRs Claims) than those set out in the Template Proprietary Software Licence (Annex 4) subject to any exceptions agreed with the Authority to be documented in Annex 2 (as updated from time to time) including to reflect terms which are made commercially available by the relevant third party if it is a COTS Product for example.

4.5 During the Term, the Supplier shall:

- (a) notify the Authority in writing each time that additional Third Party Software and Third Party IPRs are used or proposed to be used and the terms on which it uses them; and
- (b) where instructed in writing by the Authority within twenty (20) Working Days of each notification pursuant to Paragraph 4.5(a) that it requires direct licences from the relevant third parties, use its best endeavours to procure that the owner(s) or an authorised licensor(s) of the relevant Third Party Software and Third Party IPRs grants a direct licence to the Authority on terms no less favourable (including as to indemnification against IPRs Claims) than those set out in the Template Proprietary Software Licence (Annex [4]), subject to any exceptions agreed with the Authority to be documented in Annex 2 (as updated from time to time) including to reflect terms which are made commercially available by the relevant third party if it is a COTS Product for example.

4.6 The existence of direct agreements between the Authority and the licensor(s) shall not relieve the Supplier from its obligations under this Agreement.

4.7 The Supplier shall not make use or assume such use of any UK Government purchase arrangements or agreements for the acquisition of Supplier Software or Third Party Software in performance of this Agreement without the express prior written permission of the Authority.

4.8 If the Supplier becomes aware at any time, including after termination, that the Project Specific IPRs (including Specially Written Software) contain any Intellectual Property Rights for which the Authority does not have a licence, then the Supplier shall notify the Authority within 10 days to identify and explain what those rights are and which parts of the Project Specific IPRs they are found in.

4.9 The Supplier shall register all licences granted to it under any Third Party IPRs in respect of any patent, registered design and any similar form of registered IPRs, including any applications thereof.

4.10 Unless otherwise directed the Supplier shall acquire for and on behalf of the Authority rights of use in Deliverable Information owned by Third Parties on IPR conditions that are similar in all material respects with those set out in this Schedule 5 (*Intellectual Property Rights*).

**5. Authority's right to sub-license**

5.1 Subject to Paragraph 9.1 (Patents) the Authority may sub-license the licensed rights granted under this Schedule 5 to a third party, including any Replacement Supplier, provided that:

- (a) the sub-licence is on the terms no broader than those granted to the Authority;
- (b) the third party is authorised to use the rights licensed only for the purposes relating to the Services or a purpose relating to the exercise of the Authority's (or any Central Government Body's) business or function.

**6. Right to assign/novate licences**

6.1 The Authority may assign, novate or otherwise transfer its rights and obligations under the licences granted to it pursuant to this Schedule 5 to:

- (a) a Central Government Body; or
- (b) to any public sector government organisation which performs or carries on any of the functions and/or activities that previously had been performed and/or carried on by the Authority.

6.2 Any change in the legal status of the Authority shall not affect the validity of any licence granted to it pursuant to this Schedule 5, and the successor body to the Authority shall still be entitled to the benefit of the licence granted to it pursuant to this Schedule 5.

6.3 If a licence granted to the Authority pursuant to this Schedule 5 is novated under Paragraph 6.1 (*Authority's right to assign/novate licence*) or there is a change of the Authority's status pursuant to Paragraph 6.2, the rights acquired on that novation or change of status shall not extend beyond those previously enjoyed by the Authority.

6.4 The Supplier shall not assign, or otherwise transfer or sell any Supplier Background IPRs or Supplier Retained Foreground IPRs to any Third Party during or after the Term without the express permission of the Authority in writing unless it preserves for the Authority the rights granted to it hereunder.

**7. Termination and Replacement Suppliers**

7.1 The termination or expiry of this Agreement shall not of itself result in any termination of any of the licences granted by the Supplier or relevant Third Party pursuant to or as contemplated by this Schedule 5 (*Intellectual Property Rights*).

7.2 The Supplier shall, if requested by the Authority in accordance with Schedule 8.5 (*Exit Management*) use its best endeavours to:

- (a) grant (or procure the grant) to any Replacement Supplier of:
  - (i) a licence (with reasonable endeavours to do so without additional licence cost) to use any Third Party IPRs and/or Third Party Software on a royalty-free basis to the Replacement Supplier and on terms no less favourable than those granted to the Authority in respect of the relevant IPRs pursuant to or as contemplated by this Paragraph 2

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subject to receipt by the Supplier of a confidentiality undertaking (in a form agreed by the Authority and the Supplier) duly executed by the Replacement Supplier;

- (ii) a licence to use any Supplier Software and/or Supplier Background IPRs, on terms no less favourable (including as to indemnification against IPRs Claims) than those on which such software is usually made commercially available by the Supplier; and/or
- (b) use all reasonable endeavours to procure the grant to any Replacement Supplier of a licence to use any Third Party Software and/or Third Party IPRs on terms no less favourable (including as to indemnification against IPRs Claims) than those set out in the Template Proprietary Software Licence (Annex [4]), and failing that, on terms which such software is usually made commercially available by the relevant Third Party.

**8. Inventions and Designs**

8.1 In relation to any invention or potential invention or any design in any Supplier Foreground IPR, or arising in connection with the development or creation of any Supplier Foreground IPR, or made in the course of or resulting from work carried out by the Supplier under the Agreement:

- (a) the Supplier shall give prompt notice to the Authority of any such invention, potential invention or design (and in any event before the same is disclosed to Third Parties other than in confidence);
- (b) the Supplier shall ensure that the Supplier and any patent agent or attorney engaged by the Supplier 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;
- (c) the preparation and filing of applications to which this Paragraph 8 relates shall be handled by the Supplier's own 'Patent Department' under the conditions of security applicable under the Agreement. If the Supplier does not have his own 'Patent Department' the Supplier shall, before initiating the preparation of any application, secure the written agreement of the Authority as to the patent agent or attorney that the Supplier proposes to employ for the preparation and filing of such an application;
- (d) every application to which this Paragraph 8 relates, whether filed by the Supplier or by a patent agent or attorney engaged by the Supplier, 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, and the notification shall also quote the number of the Agreement and the name and address of the Authority;
- (e) the Supplier shall ensure, to the extent he is legally able to do so, that any invention to which this Paragraph 8 relates and made by an employee of the Supplier in the course of duties as defined in Section 39(1) of the Patents Act 1977 and any design to which this Paragraph 8 relates and made by an employee of the Supplier shall vest in the Supplier;

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- (f) the Supplier shall within sixty (60) 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 with a copy of that application together with the number of the Agreement;
- (g) the Supplier shall promptly notify the Authority if he becomes aware of any application as aforesaid by any person who is, or has been an employee or agent of the Supplier or a Sub-contractor and provide the Authority with relevant particulars insofar as he can obtain them and has the right to provide them;
- (h) the Supplier shall not be entitled to any payment whatsoever in respect of anything done in accordance with UK Government Purposes (whether by the Authority, a Government Department or any person) and if any directions relating to the invention are given under Section 22(1) or 22(2) of the Patents Act 1977 the Supplier shall not have any claim for any such compensation as is mentioned in Section 22(7)(b);
- (i) if any question under this Paragraph 8 shall arise between the Supplier 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 Supplier under the Agreement, that question shall be referred for decision to such person as may be agreed upon between the Supplier 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;
- (j) the Supplier shall at the request and expense of the Authority take all such reasonable steps as are within his power and may from time to time be necessary to enable the Authority to register in the UK Patent Office or elsewhere its interest in the invention or design; and
- (k) the Supplier shall flow down in any Sub-Contract the conditions set out in this Paragraph 8 and use all commercially reasonable endeavours to secure assistance from Sub-contractors as appropriate to secure any such patent, design or like protection.

**9. Patents Infringements**

- 9.1 Where a patent owned by the Supplier is necessarily infringed by the use of the Supplier Foreground IPRs by the Authority or any Replacement Supplier, the Supplier hereby grants to the Authority and the Replacement Supplier a non-exclusive, perpetual, irrevocable, royalty-free licence to use the infringing methods, materials or software solely for the purpose for which they were delivered under this Agreement, or the Supplier may replace the patent aspect of the Supplier Foreground IPRs such that no such licence is required.

**10. Copyright and Markings**

- 10.1 The Supplier shall:

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- (a) mark copies of Supplier Background IPRs or Supplier Foreground IPRs comprising copyright works to the extent possible to identify ownership; and
  - (b) provide to the Authority on written request a suitable statement confirming the scope of rights the Authority has under this Agreement in relation to any IPRs relating to such works.
- 10.2 Notwithstanding any other provision of this Agreement, and subject to Paragraph 10.1, in respect of all Information comprising Authority Background IPR, Project Specific IPR, Supplier Retained Foreground IPR, and Supplier Background IPR, the Supplier shall:
  - (a) where the Information is owned by the Authority, mark such Information using the relevant legend set out at Annex 6 (*Approved Document Markings*);
  - (b) where the Information is owned by other than the Authority, ensure that any markings whether on reports or other media containing the Information are consistent with the wording set out at Annex 6 (*Approved Document Markings*), recognising the rights of the Authority; and
  - (c) not delete or remove any copyright notices contained within the Information.
- 11. **Vendor Independence for Interfaces**
- 11.1 All Interfaces are required to be Vendor Independent.
- 12. **Specially Written Software**
- 12.1 In relation to Specially Written Software, the Supplier shall:
  - (a) ensure that the rights granted to the Authority pursuant to this Schedule 5 shall include all build instructions, test instructions, test scripts, test data, operating instructions and other documents and tools necessary for maintaining and supporting the Specially Written Software (together the "**Software Supporting Materials**");
  - (b) inform the Authority of all Specially Written Software that constitutes a modification or enhancement to Supplier Software or Third Party Software;
  - (c) deliver to the Authority the Specially Written Software in both Source Code and Object Code forms together with relevant documentation and all related Software Supporting Materials; and
  - (d) provide updates of the Source Code and of the Software Supporting Materials promptly following each new release of the Specially Written Software, in each case on media that is reasonably acceptable to the Authority.
- 13. **Open Source Software**
- 13.1 Unless the Authority otherwise agrees in advance in writing:
  - (a) all Specially Written Software shall be created in a format, or able to be converted into a format, which is suitable for publication by the Authority as Open Source Software; and



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- (b) where Specially Written Software is written in a format that requires conversion before publication as Open Source Software, the Supplier shall also provide the converted format to the Authority.
- 13.2 Where the Authority agrees that Specially Written Software should be excluded from Open Source Software publication, the Supplier shall as soon as reasonably practicable provide written details of the impact that such exclusion will have on the Authority's ability to publish other Open Source Software.
- 13.3 The Supplier hereby warrants that the Specially Written Software:
  - (a) is suitable for release as Open Source Software and that any release will not allow a Third Party to use the Open Source Software to in any way compromise the operation, running or security of the Specially Written Software;
  - (b) shall not cause any harm or damage to any party using anything published as Open Source Software and that the Specially Written Software does not contain any Malicious Software;
  - (c) do not contain any material which would bring the Authority into disrepute upon publication as Open Source;
  - (d) do not contain any IPR owned or claimed to be owned by any Third Party which is found, or alleged to be found, in the Specially Written Software ("**Non-Party IPRs**"); and
  - (e) will be supplied in a format suitable for publication as Open Source Software ("**Open Source Publication Material**") no later than the [Services Commencement Date].
- 13.4 The Supplier shall ensure that the Open Source Publication Material provided to the Authority does not include any Supplier Software or Supplier Background IPRs save that which the Supplier is willing to allow to be included in any Open Source Software publication. In such a case, the Supplier hereby acknowledges that any such Supplier Software or Supplier Background IPRs will become Open Source Software and will be licensed and treated as such following publication by the Authority and any Third Party that uses the Open Source Publication Materials on the terms of the Open Source Software licence used by the Authority when publishing as Open Source Software.
- 13.5 The Supplier hereby indemnifies the Authority against all claims in which the Authority is, or is threatened to be, a party for any alleged infringement of any Non-Party IPRs arising from publication of the Specially Written Software as Open Source Software as permitted by this Agreement.
- 14. **Licences Granted by the Authority**
  - 14.1 The Authority shall make available to the Supplier all Authority Background IPRs that the Authority believes is relevant to the Supplier's performance of this Agreement. The Authority hereby grants a licence to the Supplier on a non-exclusive royalty-free basis to use such Authority Background IPRs solely for performance of this Agreement. The Authority may, at its discretion and by written notice to the

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Supplier, impose restrictions on the Supplier's use of such IPRs limiting use to specific purposes within the scope of this Agreement.

- 14.2 The Authority hereby grants to the Supplier a non-exclusive, royalty free licence to use all Project Specific IPRs, Authority Foreground IPRs and Authority Data necessary for the purpose of the Supplier's performance of this Agreement for the Authority.
- 14.3 The Supplier shall not use Authority Background IPRs, Authority Foreground IPRs or Project Specific IPRs, or Authority Data, for any purpose other than those specified in Paragraphs 14.1 and 14.2 without the prior written consent of the Authority's Representative, which, if given, will include conditions attaching to such wider use. The Supplier shall not do anything or act in any way which will prejudice the rights of ownership by the Crown or the Authority of any Authority Background IPRs, Authority Foreground IPRs or Project Specific IPRs, or Authority Data.
- 14.4 The Authority gives no warranty as to the suitability for the Supplier's purpose of any Authority Background IPRs, Authority Foreground IPRs or Project Specific IPRs licensed under Paragraphs 14.1 and 14.2.
- 14.5 The licences granted to the Supplier under Paragraphs 14.1 and 14.2 include the right to grant sub-licenses to Sub-contractors engaged in the performance of any part of this Agreement for the Supplier provided that such Sub-contractors have entered into a confidentiality undertaking with the Authority in the same form (or substantially the same form) as that set out in Annex 3 (*Form of Confidential Undertaking*). The licence rights set out in Paragraphs 14.1 and 14.2 are otherwise non-transferable and no other sub-licence may be granted by the Supplier without the Authority's consent.
- 14.6 In respect of Third Party IPRs which are the subject of a licence or other agreement between the relevant Third Party vendor and the Authority, if the Supplier identifies such Third Party IPRs which it needs to use to perform obligations in this Agreement, the Supplier shall make a request in writing to the Authority for a sub-licence to use such Third Party IPRs. The request shall include a reasonable justification for the use, then subject to the provisions of Paragraph 14.7 the Authority, to the extent it is legally and contractually permitted to, shall grant a sub-licence to the Supplier on a non-exclusive, royalty-free basis, with the right to grant sub-licenses to Sub-contractors engaged in the performance of any part of this Agreement for the Supplier.
- 14.7 The sub-licence referred to in Paragraph 14.6 shall only be granted if the Authority agrees that the sub-licence is reasonably necessary for the specific purpose notified to the Authority by the Supplier. A sub-licence shall only be granted by the Supplier to a Sub-contractor (as described in Paragraph 14.6) who has entered into a confidentiality undertaking with the Authority in the same form (or substantially the same form) as that set out in Annex 3 (*Form of Confidential Undertaking*).
- 14.8 In the event of the termination or expiry of this Agreement, the licences and sub-licenses granted pursuant to this Paragraph 14 shall terminate automatically on the date of such termination or expiry and the Supplier shall (and shall procure that its sub-licensees shall):
  - (a) immediately cease all use of the licensed items;
  - (b) at the discretion of the Authority, return or destroy documents and other tangible materials that contain any of the Authority's IPRs, provided that if

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the Authority has not made an election within six (6) months of the termination of the licence, the Supplier may destroy the documents and other tangible materials that contain any of the Authority's IPRs; and

- (c) ensure, so far as reasonably practicable, that any of the Authority's IPRs are held in electronic, digital or other machine-readable form ceases to be readily accessible from any Supplier computer, word processor, voicemail system or any other Supplier device containing such Authority Software, Authority Background IPRs and/or Authority Data.

**15. IPRs Indemnity**

15.1 The Supplier shall at all times, during and after the Term, on written demand indemnify the Authority and each other Indemnified Person, and keep the Authority and each other Indemnified Person indemnified, against all losses incurred by, awarded against or agreed to be paid by an Indemnified Person arising from an IPRs Claim.

15.2 The Supplier shall promptly notify the Authority as soon as they become aware of:

- (a) any invention or design the subject of patent or registered design rights (or application thereof) owned by a Third Party which appears to be relevant to the performance of the Agreement or to use by the Authority of anything required to be done or delivered under the Agreement;
- (b) 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 the Agreement or subsequent use by the Authority of anything delivered under the Agreement and, where appropriate, the notification shall include such information as is required by Section 2 of the Defence Contracts Act 1958;
- (c) any allegation of infringement of intellectual property rights made against the Supplier and which pertains to the performance of the Agreement or subsequent use by the Authority of anything required to be done or delivered under the Agreement.

15.3 If the information required under Paragraph 15.2 has been notified previously, the Supplier may meet its obligations by giving details of the previous notification.

15.4 If an IPRs Claim is made, or the Supplier anticipates that an IPRs Claim might be made, the Supplier may, at its own expense and sole option, either:

- (a) procure for the Authority or other relevant Indemnified Person the right to continue using the relevant item which is subject to the IPRs Claim; or
- (b) replace or modify the relevant item with non-infringing substitutes provided that:
  - (i) the performance and functionality of the replaced or modified item is at least equivalent to the performance and functionality of the original item;
  - (ii) the replaced or modified item does not have an adverse effect on any other services or the IT Environment;

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- (iii) there is no additional cost to the Authority or relevant Indemnified Person (as the case may be); and
  - (iv) the terms and conditions of this Agreement shall apply to the replaced or modified Services.
- 15.5 If the Supplier elects to procure a licence in accordance with Paragraph 15.4(a) or to modify or replace an item pursuant to Paragraph 15.4(b), but this has not avoided or resolved the IPRs Claim, then:
  - (a) the Authority may terminate this Agreement (if subsisting) with immediate effect (or any other such period that it shall decide) by written notice to the Supplier; and
  - (b) without prejudice to the indemnity set out in Paragraph 15.1, the Supplier shall be liable for all reasonable and unavoidable costs of the substitute items and/or services including the additional costs of procuring, implementing and maintaining the substitute items.
- 15.6 The Supplier shall not be entitled to any reimbursement of any royalty, licence fee or similar expense incurred in respect of anything to be done under the Agreement, where:
  - (a) a relevant discharge has been given under Section 2 of the Defence Agreements 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 Rights; or
  - (b) any obligation to make payments for Intellectual Property Rights has not been promptly notified to the Authority under Paragraph 15.
- 16. **Conduct of claims**
  - 16.1 If the Indemnified Party receives any notice of any IPRs Claims for which it appears that the Indemnified Party is, or may become, entitled to indemnification for IPRs Claims, the Indemnified Party shall give notice in writing to the Supplier as soon as reasonably practicable and in any event within ten (10) Working Days of receipt of such notice.
  - 16.2 On the giving of a notice by the Indemnified Party, where it appears that the Indemnified Party is or may be entitled to indemnification from the Supplier in respect of all (but not part only) of the liability arising out of the IPRs Claims, the Supplier shall (subject to providing the Indemnified Party with a secured indemnity to its reasonable satisfaction against all costs and expenses that it may incur by reason of such action) be entitled to dispute the IPRs Claims in the name of the Indemnified Party at the Supplier's own expense and take conduct of any defence, dispute, compromise or appeal of the IPRs Claims and of any incidental negotiations relating to the IPRs Claims. If the Supplier does elect to conduct the IPRs Claims, the Indemnified Party shall give the Supplier all reasonable cooperation, access and assistance for the purposes of such Claim and the Indemnified Party shall not make any admission which could be prejudicial to the defence or settlement of the IPRs Claims without the prior written consent of the Supplier.

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- 16.3 With respect to any IPRs Claims conducted by the Supplier pursuant to Paragraph 16.2:
- (a) the Supplier shall keep the Indemnified Party fully informed and consult with it about material elements of the conduct of the IPRs Claims;
  - (b) the Supplier shall not bring the name of the Indemnified Party into disrepute;
  - (c) the Supplier shall not pay or settle such IPRs Claims without the prior written consent of the Indemnified Party, such consent not to be unreasonably withheld or delayed; and
  - (d) the Supplier shall conduct the IPRs Claims with all due diligence.
- 16.4 The Indemnified Party shall be entitled to have conduct of the Claim and shall be free to pay or settle any IPRs Claims on such terms as it thinks fit and without prejudice to its rights and remedies under this Agreement if:
- (a) the Supplier is not entitled to take conduct of the IPRs Claims in accordance with Paragraph 16.2;
  - (b) the Supplier fails to notify the Indemnified Party in writing of its intention to take conduct of the relevant IPRs Claims within ten (10) Working Days of the notice from the Indemnified Party or if the Supplier notifies the Indemnified Party in writing that it does not intend to take conduct of the IPRs Claims; or
  - (c) the Supplier fails to comply in any material respect with the provisions of Paragraph 16.3.
- 16.5 With respect to any IPRs Claims which the Indemnified Party, acting reasonably, considers is likely to have an adverse impact on the general public's perception of the Indemnified Party (a "**Sensitive Claim**"), the Supplier shall be entitled to take conduct of any defence, dispute, compromise or appeal of the Sensitive Claim only with the Indemnified Party's prior written consent. If the Indemnified Party withholds such consent and elects to conduct the defence, dispute, compromise or appeal of the Sensitive Claim itself, it shall conduct the Sensitive Claim with all due diligence and if it fails to do so, the Supplier shall only be liable to indemnify the Indemnified Party in respect of that amount which would have been recoverable by the Indemnified Party had it conducted the Sensitive Claim with all due diligence.
- 16.6 The Indemnified Party shall be free at any time to give written notice to the Supplier that it is retaining or taking over (as the case may be) the conduct of any IPRs Claims, to which Paragraph 16.2 applies if, in the reasonable opinion of the Indemnified Party, the Claim is, or has become, a Sensitive Claim.
17. **Recovery of Sums**
- 17.1 If the Supplier pays to the Indemnified Party an amount in respect of an indemnity and the Indemnified Party subsequently recovers (whether by payment, discount, credit, saving, relief or other benefit or otherwise) a sum which is directly referable to the fact, matter, event or circumstances giving rise to the IPRs Claims, the Indemnified Party shall forthwith repay to the Supplier whichever is the lesser of:
- (a) an amount equal to the sum recovered (or the value of the discount, credit, saving, relief, other benefit or amount otherwise obtained) less any out-of-

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pocket costs and expenses properly incurred by the Indemnified Party in recovering or obtaining the same; and

- (b) the amount paid to the Indemnified Party by the Supplier in respect of the IPRs Claims.

**18. Authorisation by the Crown for use of Third Party Intellectual Property Rights**

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

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**Annex 1 - Supplier Retained Foreground IPRs**

The list below identifies the Supplier Deliverables (or part of) which shall be classed as Supplier Retained Foreground IPRs. The list shall only be updated by the agreement in writing of both parties .

Deliverable / Product Name	Deliverable / Product Description	Cross reference to the Requirements / other documents	Date created / estimated to be created	Restrictions / other terms

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**ANNEX 2 - SOFTWARE**

- 1) The Supplier Software in Table A and Third Party Software in Table B below is licensed to the Authority in accordance with [Part 2 of] Schedule 5 (*Intellectual Property Rights*) as supplemented by the information in this Annex 2.
- 2) The detail of Table A and Table B supplements the definitions of Supplier Software and Third Party Software set out in [Part 1] of this Schedule 5.
- 3) The Parties agree that they will update Table A and Table B to record each time there is Supplier Software or Third Party Software subsequently licensed by the Supplier or Third Parties for the purposes of the delivery of the Services.
- 4) The Supplier Software is as set out below:

Table A

Software Name and Details	Vendor name and address (if an Affiliate of the Supplier)	Purpose	Number of Licences	Restrictions	Number of Copies	Tick if COTS Product *	Term/ Expiry

\*Other licence provisions for the Supplier Software COTS Products which vary from the terms of the Template Proprietary Software Licence set out in Annex 4:

[insert details]



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5) The Third Party Software is as set out below:

Table B

Third Party Software Name and Details	Vendor name and address	Purpose	Number of Licences	Restrictions	Number of Copies	Tick if COTS Product**	Term/ Expiry

\*\*Other licence provisions for the Third Party COTS Products which vary from the terms of the Template Proprietary Software Licence set out in Annex 4:

[insert details]

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**ANNEX 3 - FORM OF CONFIDENTIALITY AGREEMENT**

Ministry of Defence

## Confidentiality Agreement

THIS AGREEMENT is made the ..... day of ..... 20 .

**BETWEEN**

THE SECRETARY OF STATE FOR DEFENCE (hereinafter called "the Holder"), AND

[...] (hereinafter called "the Recipient").

**WHEREAS:**

- A. The Holder owns valuable property and equitable rights in information contained, identified or referenced in certain contractual and procurement documentation relating to the Holder and the Armed Forces Recruitment Programme (the "Programme");
- B. The Holder has agreed that Confidential Information may be disclosed to the Recipient for the Purpose in accordance with the terms of this Agreement;
- C. The Recipient is willing to receive and hold the Confidential Information subject to the terms of this Agreement;

NOW the parties to this Agreement agree that:

**DEFINITIONS AND INTERPRETATION**

1. The following definitions and rules of interpretation in this clause apply in this agreement:

"**Confidential Information**" means all confidential information provided by or on behalf of the Holder to achieve the Purpose (however conveyed) and which relates to the Holder or the Programme, including information relating to operations, processes, plans or intentions, developments, trade secrets, know-how, design rights, market opportunities, personnel, customers and suppliers of the Holder disclosed by the Holder or its Representatives to Recipient after the date of this Agreement including but not limited to:

- (a) the terms of this agreement; and
- (b) any information or analysis derived from the Confidential Information;

but not including any information that:

- (c) is or becomes generally available to the public other than as a result of its disclosure by Recipient in breach of this agreement or of any other undertaking of confidentiality addressed to the Holder (except that any compilation of otherwise public information in a form not publicly known shall nevertheless be treated as Confidential Information); or
- (d) was available to Recipient on a non-confidential basis prior to disclosure by the Holder; or
- (e) was, is or becomes available to Recipient on a non-confidential basis from a person who, to the Recipient's knowledge, is not bound by a confidentiality agreement with the Holder or otherwise prohibited from disclosing the information to the Recipient; or
- (f) was lawfully in the Recipient's your possession before the information was disclosed to it by the Holder; or
- (g) the parties agree in writing is not confidential or may be disclosed;

"**Programme**" shall have the meaning given to it in the recitals;

"**Purpose**" means [to enable to the provision of services to the Holder]; and

"**Representative**" means employees, agents and other representatives of or advisors of the Holder.

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2. Clause, schedule and paragraph headings shall not affect the interpretation of this agreement.
3. A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality) and that person's legal and personal representatives, successors and permitted assigns.
4. Unless the context otherwise requires, words in the singular include the plural and in the plural include the singular.
5. A reference to a statute or statutory provision is a reference to it as it is in force for the time being, taking account of any amendment, extension, or re-enactment, and includes any subordinate legislation for the time being in force made under it.
6. Any obligation in this agreement on a person not to do something includes an obligation not to agree or allow that thing to be done.
7. References to clauses and schedules are to the clauses and schedules of this agreement; references to paragraphs are to paragraphs of the relevant schedule.

### **Obligations of Confidentiality**

8. The Recipient shall, subject to the following provisions of this Agreement:
  - a. hold the Confidential Information under conditions of strict confidence;
  - b. not use or exploit, the Confidential Information, in whole or in part, in any manner or form other than for the Purpose;
  - c. not disclose or make available the Confidential Information in whole or in part to any third party, except as expressly permitted by this Agreement;
  - d. not copy, reduce to writing or otherwise record the Confidential Information except as strictly necessary for the Purpose (and any such copies, reductions to writing and records shall be the property of the Holder);
  - e. not use, reproduce, transform, or store the Confidential Information in an externally accessible computer or electronic information retrieval system or transmit it in any form or by any means whatsoever outside of its usual place of business;
  - f. keep the Confidential Information in tangible or documented form separate from other tangibles or documents held by the Recipient;
  - g. apply the same security measures and degree of care to the Confidential Information as the Recipient would apply to their own confidential information, which Recipient warrants as providing adequate protection from unauthorised disclosure, copying or use; and
  - h. keep a written record of any document or other Confidential Information received from the Holder in tangible form and any copy made of the Confidential Information.
9. The Recipient may disclose the Confidential Information under an obligation of confidence only to those of its officers and employees as need to know the Confidential Information for the Purpose. If the Recipient needs to disclose the Information to potential sub-contractors the Recipient shall first inform the Holder for approval, obtain from the potential sub-contractor an agreement on behalf of the Holder in the same form as this Agreement, and forward it promptly to the Holder.
10. The Recipient shall not be in breach of this Agreement where it can show that any disclosure of Confidential Information was made solely and to the extent necessary to comply with a statutory, judicial or parliamentary obligation. Where such a disclosure is made, the Recipient shall ensure that any new recipient of the Confidential Information is made aware of and asked to respect its confidentiality, and that any such disclosure is to the minimum extent possible. Such disclosure shall in no way diminish the obligations of the parties under this Agreement.

### **Termination and Return of Information**

11. This Agreement shall come into effect on the date of this Agreement or on the date of the first

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disclosure of Confidential Information from the Holder to the Recipient (whichever is the earlier) and the obligations of each party shall continue in full force and effect until this Agreement is terminated by the Holder by giving notice of termination to the Recipient.

12. Termination of this agreement shall not affect any accrued rights or remedies to which either party is entitled.

13. On completion or termination of the Purpose or on written instruction from the Holder to the Recipient, the Recipient shall at the discretion of the Holder either (i) promptly return the Confidential Information, and any copies of it, to the Holder, or (ii) destroy the Confidential Information, taking all reasonable steps to permanently expunge all electronic copies of the Confidential Information, and in each case this Agreement shall terminate except for the restrictions and obligations in paragraphs 8, 9 and 14.

14. At the request of the Holder, the Recipient shall promptly certify in writing to the Holder that the Recipient has complied with the requirements of clause 11, provided that the Recipient may retain documents and materials containing, reflecting, incorporating, or based on Confidential Information to the extent required by law or any applicable governmental or regulatory authority and to the extent reasonable to permit the Recipient to keep evidence that they have performed their obligations under this Agreement. The provisions of this Agreement shall continue to apply to any documents and materials retained by the Recipient.

15. In the event that the Recipient is awarded the contract pursuant to its response to an ITT as part of the Purpose, the Recipient agrees that the terms of this Agreement shall apply to the Confidential Information disclosed (and any amended or extended versions of it) to the Recipient under the contract supplemented only by those requirements in the contract which relate to the use of the Confidential Information by the Recipient for the duration of the contract. On completion or termination of the contract the Recipient shall promptly return or destroy the Confidential Information in accordance with paragraph 13 above.

### **Reservation of Rights and Acknowledgement**

16. The provisions of this Agreement shall be in addition to and not in substitution for any obligation of confidence, whether arising under contract or otherwise, between the Recipient and the Holder in respect of the Confidential Information.

17. This Agreement does not include, constitute or imply any transfer, assignment or licence or rights in any information or Confidential Information, including intellectual property rights. No obligations are imposed on the Holder other than those expressly stated in this Agreement.

18. The Recipient hereby acknowledges that the Confidential Information is disclosed to the Recipient on the basis that the Holder makes no express or implied warranty or representation concerning the Confidential Information, and shall have no liability whatsoever to the Recipient arising from any use of the Confidential Information by the Recipient. The Recipient will bring no claim against the Holder in relation to the Confidential Information or any use of it.

19. The disclosure of Confidential Information by the Holder shall not form any offer by, or representation or warranty on the part of the Holder to enter into any further discussions or agreements with the Recipient.

20. The Recipient shall indemnify and keep fully indemnified the Holder at all times against all liabilities, costs (including legal costs on an indemnity basis), expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and other reasonable costs and expenses suffered or incurred by the Holder) arising from any breach of this agreement by the Recipient.

21. The Recipient acknowledge that damages alone would not be an adequate remedy for the breach of any of the provisions of this Agreement. Accordingly, without prejudice to any other rights and remedies it may have, the Holder shall be entitled to the granting of equitable relief (including without limitation injunctive relief) concerning any threatened or actual breach of any of the provisions of this Agreement.

### **Unauthorised Possession of Confidential Information**

22. The Recipient shall immediately notify the Holder if it becomes aware of, or reasonably suspects, any loss, unauthorised use or knowledge, or other compromise of any of the Confidential

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Information. At the request of the Holder, the Recipient shall provide all assistance to remedy such unauthorised possession, use or knowledge as the Holder shall reasonably require.

23. The assistance described at clause 22 shall be at the Recipient's expense (unless the unauthorised possession, use or knowledge is the sole of the Holder or other third party in receipt of the Confidential Information directly or indirectly from the Holder, in which case such assistance shall be at the Holder's expense).

### Assignment

24. This Agreement is personal to the Holder and the Recipient and shall not be assigned by either one of them without the prior written consent of the other (such consent not to be unreasonably withheld), provided that in all cases of assignment the assignee effectively undertakes to perform all the obligations of the assignor as though the assignee had been an original party to this Agreement.

### Entire Agreement, Variation and Waiver

25. This Agreement (including Appendix 1) sets out the entire agreement between the Holder and the Recipient in connection with the subject matter of this Agreement.

26. Neither this Agreement nor any of its provisions shall be amended or waived unless agreed to in writing by duly authorised representatives of the Holder and the Recipient.

27. No waiver of any provision of this Agreement shall constitute a waiver of any other provision(s) or of the same provision on another occasion.

### Notices

28. Any notice or other communication required to be given under this Agreement shall be in writing and shall be delivered personally, or sent by pre-paid first-class post or recorded delivery, or by commercial courier, to each party required to receive the notice or communication at the registered address.

### Governing Law

29. This Agreement is made subject to English law and to the exclusive jurisdiction of the English courts.

Signed on behalf of  
the Recipient by:

Signed on behalf of  
the Holder by:

In the capacity of:

In the capacity of:

Date:

Date:

**OFFICIAL-SENSITIVE (COMMERCIAL)**

**ANNEX 4 -TEMPLATE PROPRIETARY SOFTWARE LICENCE**

## OFFICIAL-SENSITIVE (COMMERCIAL)

### 1. DEFINITIONS

- 1.1 "Authority" shall mean the Secretary of State for Defence
- 1.2 "Licensor" shall mean the Company or the wholly owned subsidiary of the Company being the Party granting the License to the Authority.
- 1.3 "Licensed Software" means the computer programs together with any user documentation, update programs and anything else furnished to the AUTHORITY by the LICENSOR under the Licence in connection with those listed programs.
- 1.4 "Use" (or "to Use") in relation to the Licensed Software means copying the software from a store unit or medium into equipment, customising it within its functionality and consistent with the user documentation, running or processing it, operating upon it, all of these acts either alone or with other programs, and producing copies including, where appropriate, in eye readable form.
- 1.5 "Designated Equipment" means that equipment in respect of which Use of the Licensed Software is licensed. It shall be the equipment specified in the [Prime Agreement] unless changed to alternative equipment in accordance with the provisions of Clauses 2.5 or 2.6 of this Licence.
- 1.6 "Licence" means the rights granted by the Licensor to the Authority under Clauses 2 and 4 of this Proprietary Software Licence in respect of the Licensed Software.

### 2. LICENCE GRANT

- 2.1 The Authority may Use the Licensed Software on the Designated Equipment from the date of receipt of the Licensed Software by the Authority.
- 2.2 The Authority may allow contractors of the Authority and their sub-contractors to Use the Licensed Software on the Designated Equipment on Authority contracts only, provided that the Authority ensures or procures that those contractors and sub-contractors are bound by the conditions of the License and that, unless prevented by security considerations, the Authority shall notify the Licensor of the identity of those contractors or sub-contractors as soon as is reasonably practical. The Authority shall not charge for that Use.
- 2.3 The Authority may also issue such Licensed Software on the Designated Equipment to any contractor or potential contractor in connection with a contract or the tendering for a proposed contract for any United Kingdom Government purpose including but not limited to International Collaboration for the purposes of interoperability as set out in Clause 4 below.
- 2.4 Notwithstanding the grant of rights under Clauses 2.2, 2.3 and 4, where issue of the Licensed Software on behalf of the United Kingdom Government is justified as commercially sensitive then before issue the Licensor shall be given the opportunity to enter into a non-disclosure agreement with the recipient in the form of DEFFORM 94.
- 2.5 The Authority may specify alternative Designated Equipment by notification to the Licensor, in which case Clause 2.1 shall apply to the alternative Designated Equipment as notified. However, in the event that the alternative Designated Equipment shall be equipment of a greater processing capacity or capability or a different operating system outside the parameters of the original Designated



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Equipment the Licensor may require the Authority to pay a fair and reasonable additional fee which will not exceed the difference between the corresponding fees shown in respect of Use of the Licenses Software on the existing and alternative Designated Equipment respectively in the Licensor's price list current at the time when the Authority has specified the alternative Designated Equipment.

- 2.6 The Authority may Use the Licensed Software on alternative equipment if the Designated Equipment is temporarily inoperative until the Designated Equipment is again operative without notification or additional payment to the Licensor.
- 2.7 Notwithstanding the above, the Authority may copy the Licensed Software in machine readable form for back-up purposes for Use of the Licensed Software. The Authority may also create eye readable copies of documentation solely for utilisation by operating personnel of the Licensed Software. All copyright in such copies shall remain the property of the Licensor.

### **3. CONFIDENTIALITY**

- 3.1 Subject to Clause 3.2 and except as otherwise agreed in writing, the Authority and the Licensor shall each hold in confidence and shall not use, disclose or otherwise make available, except in accordance with the License, all the following information received from the other under or in connection with the License:

- a) The Licensed Software;
- b) Details of the Authority's use and application of the Licensed Software;
- c) Any other information which is identified as being disclosed in confidence at the time of disclosure,

Provided that: the obligation for b) and c) relates only to information received in writing or other material form; and if such information is disclosed orally, the obligation shall apply for thirty (30) days unless the discloser confirms such information in writing or other material form within thirty (30) days when the obligation of confidence shall apply thereafter.

- 3.2 The obligations under Clause 3.1 shall not require the receiving party to maintain confidence in, or refrain from using, any part of the information to the extent that the receiving party can show that such part of the information:

- a) was already known to that party, without restraint on use or disclosure, prior to the date of receipt or acquisition under or in connection with the License; or
- b) has been received by that party, without restraint on use or disclosure, from a Third Party having the right to disclose it; or
- c) has entered the public domain otherwise than in breach of the License or any other agreement between the parties; or
- d) was generated by that party independently of the information which is subject to Clause 3.1;

provided that the relationship of such part of the information to the remainder of the information which is subject to Clause 3.1 is not revealed.

**OFFICIAL-SENSITIVE (COMMERCIAL)**

- 3.3 The obligations under Clause 3.1 shall be perpetual
- 3.4 The Authority shall ensure or procure that any individual to whom the Licensed Software is made available is made aware of, and complies with, the obligations as to confidentiality and other relevant conditions of the License.
- 3.5 The Authority shall reproduce and maintain any copyright notices and trade marks on or in any of the copies of the Licensed Software made in accordance with the License, including partial copies, and on any software changed under the terms of the License.
- 4. INTERNATIONAL COLLABORATION FOR THE PURPOSES OF INTEROPERABILITY**
- 4.1 For the purposes of this Proprietary Software Licence 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, support or operations utilising the Licensed Software, and for the allocation of responsibility for work under such programme between the parties to such agreement or arrangement.
- 4.2 Subject to the rights of Third Parties the Authority shall have the right under this Proprietary Software Licence to issue for information only such Licensed Software, the copyright of which belongs to the Licensor, 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 and for as long as the Licensed Software remains in use by the Authority, the Licensor shall, if requested by the Authority, 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.
- 4.3 If, under an International Collaboration Agreement made, the Authority agrees that the Licensed Software 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 his right to do so and on fair and reasonable terms approved by the Authority, the Licensor shall, if requested by the Authority, make available the Licensed Software to that other party or his nominee, for use for the purposes of interoperability only, together with any technical assistance information necessary for the effective integration of the Licensed Software.
- 4.4 The Licensor shall have the right to place on such Licensed Software a notice stating that it has been supplied to the Authority and may not be issued outside United Kingdom Government Departments except in accordance with the conditions of the Proprietary Software Licence. Before exercising his rights under Clause 4.2 in respect of the Licensed Software bearing such notice the Authority shall give to the Licensor prior written notice of fifteen (15) days (or such other period as may be agreed) of his intention to do so and have regard to any representations and proposals made by the Licensor at any time before issue takes place as to the protection of any aspect of the Licensed Software. In particular, the preparation of a special International Collaboration Report, for the release of the Licensed Software in stages, or for restrictions on the circulation of the Licensed Software. The Authority shall be entitled to make issue contrary to such representations and proposals fifteen (15) days after notifying the Licensor in writing that he considers is in the national interest to do so. If the Authority makes issue of the Licensed Software contrary to the

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Licensor's representations under this Clause the Licensor shall be entitled to such compensation, if any, as is fair and reasonable in the circumstances.

- 4.5 If the Licensor is party to a license or other agreement which restricts his freedom to supply or authorise the disclosure any part of the Licensed Software, the Licensor shall, when entering into this Proprietary Software Licence, or when 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.
- 4.6 The Authority undertakes that he will consult with the Licensor as early, as frequently and as fully as is reasonably practicable in the consideration of any International Collaboration Agreement, into which he may wish to enter and will pay due regard to any representations of the Licensor.

### **5. TERM AND TERMINATION OF THE LICENCE**

- 5.1 Each Licence shall continue until the Authority terminates it by written notification to the Licensor, or it is terminated pursuant to Clause 7.
- 5.2 The Authority shall within thirty (30) days of termination of a License, through all reasonable endeavours and to the best of its knowledge, return or destroy, at the Licensor's option, all originals and destroy all copies of the Licensed Software including partial copies and modifications except that the Authority may on prior written authorisation from the Licensor retain one copy for archival purposes only. The Authority shall promptly certify in writing once it has so done.
- 5.3 In the event of the Licensor drawing the attention of the Authority to a breach of any condition of this Licence agreement then:
- a) where the breach is of a nature that cannot be remedied, the Authority undertakes to settle with the Licensor on fair and reasonable terms and to utilise all reasonable endeavours to ensure that a further such breach does not occur; or
  - b) where the breach is capable of being remedied, the Authority shall remedy the breach and where appropriate put in place measures to ensure that a further breach does not occur. The Authority shall indemnify the Licensor for all loss and damage incurred by him as a result of the breach.

### **6. COMBINATION OF SOFTWARE**

- 6.1 The Authority may combine all or part of the Licensed Software with other materials to form a new work. Any portion of the Licensed Software included in a new work shall be used only on Designated Equipment and shall be subject to the conditions of this Licence. The Licensor shall be absolved from any obligation or liability under the Licence to the extent that this arises as a result of the creation or use of any new work not approved in writing by the Licensor.

### **7. IPRs ACTIONS AND LIABILITIES FOR IPRs INFRINGEMENT**

- 7.1 The Licensor declares that he is entitled as either owner or licensee to provide the Licensed Software to the Authority on the terms and conditions of the Licence.

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- 7.2 Subject to the limitations imposed in Clauses 7.3 and 7.4, the Licensor shall assume all liability and indemnify the Authority against all costs or liabilities arising under any valid claim or action brought by a Third Party against either Party, or against any of its contractors (which expression shall include any sub-contractor) engaged in tasks relevant to the provision of the Licensed Software or to the Authority's exercise of the Licence, in respect of any Third Party intellectual property right, including a patent, registered or unregistered design right, trade mark, copyright, trade secret or confidential information, which relates to the supply of the Licensed Software or the Use of the Licensed Software in accordance with the Licence by the Authority or its contractor, then:
- a) If the claim or action is brought against the Licensor he shall take full responsibility for dealing with settling or defending the claim or action;
  - b) If any claim is made against the Authority or its contractors the Licensor shall be given full responsibility for dealing with settling or defending the claim as appropriate in his judgement;
  - c) If legal action is taken against the Authority or its contractor that party shall be entitled to join the Licensor in the action.
- 7.3 Clause 7.2 shall not apply, and the Authority shall assume all liability for and indemnify the Licensor and its contractors, against all costs and liabilities under the claim or action in the event that it arises as a consequence of any of:
- a) Use of the Licensed Software by the Authority, or by a contractor permitted to use the Licensed Software pursuant to Clause 2.2, outside the Licensor's specification or user documentation on the Designated Equipment or in a manner outside the reasonable knowledge or expectation of the Licensor or in circumstances particular to the Authority as distinct from other customers for the equivalent Licensed Software;
  - b) Use of modifications to the Licensed Software not provided or not approved in writing by the Licensor;
  - c) infringement by the Licensor of any Third Party intellectual property right by reason only of use of any material provided by the Authority for the purposes of the Licence, but only to the extent that this material is held and used within the terms under which it was provided and used solely for the purposes of the Licence.
- 7.4 Clause 7.2 shall not apply in the event that, without the consent of the Licensor (which shall not be unreasonably withheld) the Authority:
- a) has made or makes an admission of any sort to the Third Party relevant to the claim or action;
  - b) the Authority has entered or enters into negotiations with the Third Party relevant to the claim or action;
  - c) the Authority has made or makes an offer to the Third Party for settlement of the claim or action.
- 7.5 Each Party undertakes to notify and consult the other promptly in the event of any enquiry, claim or action brought or likely to be brought against it or its contractor or

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the Parties jointly, which relates to infringement of any Third Party intellectual property right in connection with the supply or Use of the Licensed Software under the Licence. By joint agreement, the Authority may take the lead in dealing with settling and defending any such enquiry claim or action made against it directly in consultation with the Licensor and, subject to the Licensor's agreement as to the terms of any settlement, this shall not displace any liability of the Licensor arising under Clause 7.2. If any claim is made against the Authority under Section 55 of the Patents Act 1977 as a result of the Authority's use of the Software, and if the Authority offers a settlement of the claim, otherwise than as a result of a Court order and without the agreement of the Licensor, the Licensor shall be relieved of any liability which might otherwise arise under Clause 7.2.

7.6 In the event that any claim or action is made which is subject to Clause 7.2 or if in the Licensor's reasonable opinion such claim or action is likely to be made, the Licensor shall promptly utilise all reasonable endeavours to:

- a) establish or secure the Authority's right to continue to Use the Licensed Software or, failing to do so,
- b) avoid that claim or action by, and after consultation with the Authority as to how to minimise the Authority's loss of Use of the Licensed Software, replacing or modifying the Licensed Software without significant change to the specification of the Licensed Software all at the Licensor's expense, including installation and testing.

7.7 In the event of the Licensor being unable to satisfy the requirements of sub-Clauses 7.6a or 7.6b the Licensor may terminate the Licence relating to the Licensed Software upon not less than three (3) months written notice unless a lesser period is determined by any court order, and the Licensor shall make a refund of the licence fee to the Authority, either in full or with the agreement of the Authority (which shall not be unreasonably withheld) of a portion of the licence fee representing the lost portion of the Licence.

7.8 The conditions set forth in Clauses 7.2 to 7.7 represents the total liability and responsibility of each Party to the other under a Licence in respect of any actual or alleged infringement of any intellectual property right owned by a Third Party, and take precedence over any other liability condition in the Licence.

## **8. OUTPUT**

8.1 The Authority may freely copy any output resulting from Use in accordance with Licensor - supplied documentation of the Licensed Software.

## **9. DISPUTES**

9.1 Other than for any claim arising from non-payment of a valid invoice should any question, dispute or difference whatsoever arise between the Authority and Licensor in relation to or in connection with this Agreement or the Schedule of any Licence granted under it, the Authority or the Licensor may give notice to the other in writing of the existence of that question, dispute or difference and both parties will attempt to reach a solution. If no mutually acceptable solution is found the Authority or the Licensor may give notice to the other in writing (the ADR notice) that the matter is to be referred to Alternative Dispute Resolution ("ADR").

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- 9.2 Upon receipt of the ADR notice and subject to sub-Clause 9.3, the parties shall define the type of ADR to be adopted and the rules for its implementation. Failing agreement to adopt, or to achieve, resolution by one such type, the parties may decide to adopt a second type of ADR. The parties agree that after a period of two (2) months from the date of receipt of the ADR notice, or such other date as may be agreed by the parties, and provided that the dispute remains unresolved, it shall finally be settled by arbitration by a sole arbitrator at the request in writing by either party to the other. Failing agreement on the appointment of the arbitrator within fourteen (14) days of receipt of such request, the arbitrator shall be appointed by the President for the time being of the Law Society, in accordance with the Arbitration Act 1996 or any statutory modification or re-enactment of it. The costs of any ADR shall be shared equally by the Authority and the Licensor, however, the costs of arbitration shall be settled by the arbitrator.
- 9.3 Where a party rejects the referral of the matter to ADR he shall promptly notify the other party in writing of that rejection and the reasons for it.

## **10. TRANSFER**

- 10.1 The Licensor shall not assign his interest in any License or the intellectual property licensed there under without first providing for the continuance of the Authority's rights under the License and without notifying the Authority in writing of the identity of the assignee.
- 10.2 Unless prevented by law or national regulation the Authority shall have the right to assign the Licence to a separate legal entity, without charge to itself or the legal entity, upon two (2) months written notice to the Licensor, as provided below:
- 10.2.1 following a transfer from the Authority to the legal entity of any function of the Authority for which the Licensed Software has been obtained; or
- 10.2.2 on disposal to the legal entity of surplus Designated Equipment where the Licensed Software is essential to the running of that equipment, whether or not it is embedded in the equipment, provided that all warranties (whether express or implied) and all indemnities shall be void, the Licensed Software shall be supplied "as is".

PROVIDED THAT the Licensed Software assigned in accordance with this sub-Clause may only be used for the same purposes for which the Authority was licensed in accordance with Clauses 2 and 4 and wider use shall require the written approval of, and the grant of a further licence by, the Licensor.

## **11. DISCONTINUANCE OF SUPPLIER BUSINESS**

- 11.1 The Authority shall have the right to secure from the Licensor, or from the authorised trustees or receivers acting on behalf of the Licensor, in the event of the Licensor permanently ceasing to maintain the Licensed Software or the Licensor permanently discontinuing in business because of bankruptcy, receivership, dissolution, or other form of permanent business disruption and that business is not continued by a successor in interest to the Licensor to whom the benefits and obligations of this Agreement and any licence granted under it have been assigned, Licensed Software documentation including program source code in the possession and control of the Licensor, but no more than the Licensor uses himself, as the Authority shall consider necessary for it to maintain and continue its normal Use of the Licensed Software for the duration of the Licence but for no other purpose.

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- 11.2 If so required by a Special Condition, the Licensor shall compile and maintain, at a price or in accordance with a price formula identified in the Special Condition, an up to date copy of the Licensed Software documentation to which the Authority is entitled under Clause 10.1 which copy shall be held by the Licensor as a bailee without lien for the Authority and be made available to the Authority without additional charge. In the absence of such a Special Condition, the copy shall be prepared on the Authority's demand and it shall be made available to the Authority at a fair and reasonable price based on the cost of compilation, reproduction and dispatch.
- 11.3 The Authority shall have the right to utilise the Licensed Software documentation to which it is entitled under Clause 10.1 for the purpose of maintaining its Use of the Licensed Software for the duration of the Licence but for no other purpose. The Authority shall hold in confidence all information in the documentation.

## **12. GENERAL**

- 12.1 If any provision of this Agreement is held to be invalid, illegal or unenforceable to any extent then:
- a) that provision shall (to the extent it is invalid, illegal or unenforceable) be given no effect and shall be understood not to be included in the Agreement but without invalidating any of the remaining provisions of the Agreement; and
  - b) the parties shall use all reasonable endeavours to replace the invalid, illegal or unenforceable provision by a valid, legal and enforceable provision the effect of which is as close as possible to the effect of the invalid, illegal or unenforceable provision.
- 12.2 No act or omission of either party shall by itself amount to a waiver of any right or remedy unless expressly stated by that Party in writing. In particular, no reasonable delay in exercising any right or remedy shall by itself constitute a waiver of that right or remedy.
- 12.3 No waiver of any right or remedy shall operate as a waiver in respect of any other right or remedy.
- 12.4 Neither the Licensor nor the Authority shall be liable for failure to perform any of its obligations under the Licence if that failure results from circumstances beyond its reasonable control.
- 12.5 Headings have been included for convenience only and shall not be used in construing any condition of the Licence.
- 12.6 The Licence shall be subject to and construed and interpreted in accordance with the Laws of England and shall be subject to the non-exclusive jurisdiction of the Courts of England for the enforcement of any arbitral decision.
- 12.7 The Licence shall constitute the entire agreement between the parties relating to the Licensed Software and supersedes any previous agreement.
- 12.8 No right is granted to any person who is not a party to the Licence to enforce any term of the Licence in his own right and the parties declare that they have no intention to grant any such right

**13. SECURITY ACCREDITATION**

- 13.1 Notwithstanding Clause 10 above at the request of the Authority the Licensor shall promptly provide to the Authority a copy of the source code for the Licensed Software and other supporting information solely for the purposes of enabling such security accreditation associated with the use of the Licensed Software as the Authority may require. Source code and other supporting information provided for this purposes shall not be disclosed by the Authority to anyone other than UK Government personnel without the prior written permission of the Licensor.



ANNEX 5 : A

**Commercial Exploitation Levy Agreement for Hardware Where Percentage Levy Rates Apply**

**Commercial Exploitation of Defence Equipment Developed at Government Expense**

CEL Agreement No: [ ]  
Project Team Details:[ ]

**Interpretation etc.**

1. In this Agreement the following shall have the effect with respect to interpretation:
  - (a) 'the Agreement(s)' mean(s) Agreement No(s) [ ] between the Ministry and the Supplier relating to/ for the procurement of [insert]
  - (b) 'Agreement Article' means any article which uses the design produced under the Agreement(s) and includes any sub-assemblies, components or spares thereof;
  - (c) 'Government-funded tooling' means jigs and tools, etc. provided or paid for by the Ministry and required for the production of an Agreement Article;
  - (d) the 'Supplier' includes any subsidiary or associated company of the Supplier;
  - (e) 'leviable transaction' means a sale or any other transaction giving rise to levy under this Agreement;
  - (f) the 'Supplier's selling price' means, subject to the proviso hereto, the price for which the Supplier invoices its customer but excluding the cost of such of the following elements as are applicable and can be identified to the satisfaction of the Ministry:
    - (1) Freight costs and insurance.
    - (2) Cost of packing not developed at UK Government expense.
    - (3) The cost of ECGD servicing and other sales finance charges including interest on customer credit.
    - (4) The cost of any MOD inspection.
    - (5) Installation and commissioning costs where installation and commissioning form no part of the work under the development contract(s).
    - (6) Agents' fees and commission.
    - (7) The price paid by the Supplier for an article or articles supplied to them by a third party for incorporation in the Agreement Article, but only if such third party has a separate commercial exploitation agreement with the Ministry relating to such article or articles and has

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been informed by the Supplier that such article or articles are being used for a leviable transaction.

(8) Value Added Tax where applicable.

- (g) 'Profit' other than for the purposes of the proviso to sub-clause (f) of this Clause means the difference between the Supplier's selling price and the allowable costs prescribed by the Ministry for the purpose of the sale in question, provided such difference is a positive sum.

Provided that any element of profit which the contractor has included in the above items (1) - (8) shall not be so included.

**Sales and Licences**

2. Should the Supplier sell any Agreement Article, other than for any purpose set out in **Clauses 16 and [◆]**hereof, the Supplier shall pay to the Ministry:

- (a) a levy for the use of the design to be calculated at 7.5 per cent of the Supplier's selling price;
- (b) a levy of 7.5 per cent of the Supplier's selling price for the use of Government-funded tooling except that the rate of 7.5 per cent shall be reduced appropriately where a substantial part of jigs and tools etc. used in connection with a sale or other transaction has not been provided or paid for by the Ministry,

except that, unless otherwise agreed by the Ministry, levy on individual sales above [REDACTED] pounds sterling ([REDACTED]) in value (for which purpose contemporaneous sales of the same equipment to the same customer will count as one sale) will be payable on an appropriate profit-sharing basis to be agreed between the Supplier and the Ministry before the contract of sale is entered into. The threshold of [REDACTED] pounds sterling ([REDACTED]) may be increased from time to time by the Ministry, in relation to future sales, to take account of inflation.

3. Should the Supplier grant a licence to manufacture Agreement Articles, the Supplier shall pay to the Ministry a levy calculated at 33.3 per cent of the gross receipts of the Supplier in money by way of royalties, licence fees or otherwise in respect thereof, provided that:

- (a) where the consideration consists wholly or in part of some benefit other than money the levy shall, in lieu of or in addition to such payments (as the case may be), consist of or include a sum representing 33.3 per cent of what may reasonably be regarded as the value of the said benefit; and
- (b) the Supplier shall not grant any licence for which there is no consideration, or only nominal consideration, without first agreeing with the Ministry what levy if any should reasonably be paid to the Ministry in respect of such licence; and
- (c) where the licensee pays for parts supplied in addition to paying its licence fee for manufacturing Agreement Articles, levy on such parts shall be due in accordance with Clause 2 above in addition to the rate due under this clause. The receipts by the Supplier in respect of such parts shall not be regarded as

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receipts in respect of the licence on which the level of 33.3 per cent is charged

4. Payment of levy is deemed to include payment for the use of any industrial property rights owned by the Ministry in connection with a sale or other transaction giving rise to levy under this Agreement.
5. No levy shall be payable in respect of:
  - (a) purchases by the Ministry;
  - (b) sales to another UK Government Supplier or sub-contractor when the Agreement Articles concerned can be clearly identified as being supplied to meet the requirements of the Ministry;
  - (c) substantial individual equipment not developed at UK Government expense.
6. In the case of sales to the Government of Australia, whether directly or under a sub-contract, of Agreement Articles which are Guided Weapons or other items which have been developed with the aid of the Joint Project facilities at the Weapons Research Establishment, Woomera, and of spares for elements of such systems, the levy shall be restricted to a charge for the use of Government-funded tooling in accordance with Clause 2(b).

**Sales of or Licensing of Spares or Parts**

7. The sale of or licence to manufacture spares or parts of Agreement Articles shall attract levy in accordance with this Agreement unless the Ministry agrees that an allowance may be made for any elements of the design of any such spare or part that were not developed at UK Government expense or a reduced rate of levy shall apply on all such spares and parts where there are practical difficulties in distinguishing between those which attract the full rate of levy, those which attract a reduced rate of levy and those on which no levy is due.

**Derivatives**

8. Should the Supplier sell, refurnish, recondition, maintain, lend, hire, or grant a licence to manufacture any articles in any further stage of development or articles based on the design of, or using design features of, or being a scaled version of, the Agreement Article, levy calculated in accordance with this Agreement shall be due to the Ministry only to such extent as shall be reasonable in the circumstances. Subject to this the provisions of this Agreement shall apply.

**Refurbishing or Reconditioning**

9. Should the Supplier for resale or otherwise refurbish or recondition any Agreement Articles (except at no charge to the customer under defects liability obligations) the Supplier shall pay to the Ministry a levy consisting of:
  - (a) a sum calculated in accordance with this Agreement on the selling price of any new sub-assemblies, components and spare parts embodied in the reconditioned or refurbished Agreement Articles; and
  - (b) a sum for any use of Government-funded tooling (other than any used only in the manufacture of the said new sub-assemblies, components and spare

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parts) calculated as in Clause 2(b) on the Supplier's selling price of the said reconditioned or refurbished Agreement Articles after deduction of the selling price of any new sub-assemblies, components and spare parts embodied in the reconditioned or refurbished Agreement Articles.

### **Maintenance Agreements**

10. Where an agreement for the maintenance of Agreement Articles between the Supplier and another party for a fee includes the provision of parts and spares of such Agreement Articles not separately invoiced, a levy calculated in accordance with this Agreement will be due on that proportion of the maintenance fee which represents a reasonable estimate for the provision of such parts and spares.

### **Loan or Hire of Agreement Articles**

11. Should the Supplier enter into any Agreement for lending any Agreement Articles or for otherwise making such Articles available to a third party except by way of sale, the Supplier shall pay to the Ministry a levy calculated as specified under Clause 2 hereof of the gross receipts of the Supplier, provided that:
  - (a) where the consideration consists wholly or in part of some benefit other than money the levy shall, in lieu of or in addition to such payment (as the case may be), consist of or include a sum calculated in accordance with Clause 2 hereof and based on what may be reasonably regarded as the value of the said benefit; and
  - (b) the Supplier shall not enter into any Agreement (as set out in this clause) for which there is no consideration, or only nominal consideration, unless the Ministry has agreed what levy, if any, should reasonably be paid to the Ministry in respect of such Agreement.
12. Unless the Agreement Article is subsequently sold, no levy shall be due where the Supplier makes an Agreement Article solely for its own research or development purposes or for its own demonstration or sales promotion purposes, except in respect of use of Government-funded tooling. Agreement Articles made and used by the Supplier for any other purpose shall attract levy at normal rates in accordance with Clause 2.

### **Abatement of Levy**

13. Where, in the circumstances of an individual sale, the Supplier considers that the effect upon its selling price of inclusion of levy rates calculated in accordance with Clause 2 would be such as to prejudice its chances of completing the sale, or would result in an unreasonably low profit, it shall be open to the Supplier before the sale contract is entered into to seek the approval of the Ministry to an abatement scheme in accordance with the provisions of Clauses 14 and 15 herein. Provided that the Supplier's cost accounting system is adequate in the opinion of the Ministry to provide the statements of allowable costs necessary to implement the scheme such approval will not be unreasonably withheld.

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14. The abatement scheme shall generally determine levy on the basis of outturn profitability of the sale in question expressed as a percentage on the allowable costs as prescribed for this purpose by the Ministry and shall apply as follows:
- (a) where Government-funded tooling is used, the first half percent of profit on cost shall be payable to the Ministry;
  - (b) the next [Redacted]% of profit on cost (or the initial [Redacted] % where sub-clause 14(a) does not apply) shall be retained by the Supplier;
  - (c) the remaining profit, without upper limit, shall be shared between the Ministry and the Supplier in the ratio of 1:1 until a total profit of [Redacted] % on cost has been reached, and thereafter in the ratio of X:1.

Note: "X" should be one-fifth of the total normal unabated levy rates, but never less than 1.

15. Once a request to apply the abatement scheme has been approved by the Ministry it shall not thereafter be revoked by either party for the sale in question. The Supplier shall provide on request and in a specified form a certified statement of costs and profitability and such facilities as may be necessary for the Ministry, if it so desires, to verify the statements. Where the value of the sale is less than [REDACTED] pounds sterling ([REDACTED]) any abatement of levy may at the discretion of the Ministry, be settled (before the sale contract entered into is concluded) on the basis of the expected outturn profitability provided the request for abatement is supported by adequate evidence and reasonable notice is given to the Ministry. Notification of Leviable Transactions
16. The Supplier shall notify details including, where appropriate, the expected value of the sale, to the Ministry Project Team named in the Agreement quoting the number of the Agreement / CEL Agreement No.: **[insert]**.
- (a) in respect of a sale of any Agreement Articles or of a development or derivation thereof:
    - (1) as soon as it becomes apparent that a sale (or contemporaneous sales of the same equipment to the same customer) above [REDACTED] pounds sterling ([REDACTED]) in value (or such higher value as may be notified by the Ministry from time to time) may arise;
    - (2) immediately a first sale of lesser value is entered into;
  - (b) immediately any negotiations for the grant of a licence for the manufacture of any Agreement Articles, or of a development or derivation thereof, is entered into (the Ministry reserves the right in this connection to be supplied with a copy of the terms of the licence agreement); or
  - (c) in respect of any leviable transaction other than a sale or licence relating to any Agreement Articles, or to a development or derivation thereof:
    - (1) immediately the transaction is entered into where the rate of levy is laid down in this Agreement;
    - (2) immediately negotiations are entered into where the appropriate rate of levy has not been agreed;

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- (d) when any proposed extension or alteration to the transactions set out in (a)(1), (b) or (c)(2) is considered.

**Cancelled Orders**

17. Where a sale is cancelled after some work in aid of the sale involving the use of Government-funded tooling has been undertaken, a levy shall be due in respect of such use calculated on a fair and reasonable basis. Where the Supplier has received any payments, whether from its customer or otherwise which it is entitled to retain, in respect of work done or in hand, or in respect of any claim arising out of the cancellation, levy shall also be due on a fair and reasonable basis having regard to the reasonable costs and claims which the Supplier may have to meet therefrom. The Supplier shall notify any such cancellation to the Ministry Project Team named in the Agreement and shall provide such information as may reasonably be required for the determination of the levies payable under this Clause. Should any Agreement Article (or article falling under Clause 8) manufactured or in course of manufacture prior to cancellation subsequently be re-sold levy will again be due on the normal basis. The liability of the Supplier to the Ministry for any sum due under this Agreement shall accrue:
- (a) in respect of sales, on the date of delivery ex-Supplier's works or, where the sale contract so prescribes, upon shipment;
  - (b) in respect of cancelled sales, six (6) months after the date of cancellation or such longer period as may be agreed;
  - (c) in the case of licences, and in any other case in which levy is based on gross receipts by the Supplier in respect of an agreement relating to Agreement Articles, on the date of receipt by the Supplier of each payment;
  - (d) in respect of the use of Government-funded tooling where no other liability for levy arises, upon completion of the work in question, except that if the work takes longer than a year interim payments of levy will accrue as deliveries take place. In the event of cancellation of the sale liability will accrue six (6) months thereafter;
  - (e) in respect of any Variation of Price settlements on receipt of payment by the Supplier.

Payment of levy shall be in accordance with the Accounting provisions at Clauses 21-24 below.

18. Where an abatement scheme has been approved in accordance with Clauses 13-15 the Supplier shall be liable for interim payment of levy in accordance with the provisions of Clause 18 at one half the appropriate unabated levy rate unless the Ministry agrees otherwise. A final adjustment to or from the Ministry shall be made as soon as it is practicable after completion of the sale. The Ministry reserves the right to review and alter interim rates of levy from time to time and agrees to carry out such a review upon request by the Supplier.
19. Should the Supplier fail to provide statements under Clause 22 within a reasonable time the Ministry reserves the right to assess the levy payable and to recover the same.

**Accounting**

20. The Supplier shall supply to Defence Business Services Finance-Commercial Exploitation Agreement Team, 1st Floor, Walker House, Exchange Flags, Liverpool L2 3YL, two copies of a statement (see Clause 22) at regular intervals commencing with first sale or licensing arrangements (see Clause 16). The statement shall contain information concerning every sale, licence or other transaction in respect of which levy accruing during the period to which the statement relates is payable, and in particular shall specify:
- (a) the nature of the transaction (making clear under which of the Clauses 2-12 hereof it falls) and the date thereof and the name and address of the other party or parties thereto;
  - (b) in the case of a sale, the quantity and type of equipment sold, the selling price, and in any other case, the gross receipts in money in respect thereof and the nature and value of any consideration other than money;
  - (c) any other matters relevant to determining the levy payable;
  - (d) the sum (to the nearest pound) computed to be payable by the Supplier to the Ministry in respect of each transactions (including a provisional sum in any case in which the sum depends upon a reasonable figure yet to be agreed with the Ministry).
21. The statement shall be provided not later than two (2) months after the close of the period to which it relates once a first sale or licensing has been agreed and 'nil' statements shall thereafter be provided whenever appropriate. Where there are NIL returns over a number of years and no evident prospect of a future leviable activity or receipt the contractor should approach the Ministry Project Team commercial officer regarding future reporting and future CEL arrangements.
22. Each statement shall be accompanied by a payment covering the accrued levy calculated by the Supplier to be due and set out in the statement (plus VAT where applicable). Invoices in respect of any other accrued levy will be issued to the Supplier by Defence Business Services Finance-Commercial Exploitation Arrangement Team ([REDACTED]). Payments (including VAT where applicable) shall be made to the Secretary of State for Defence at the address to which statements are to be supplied, or at the address stated on the invoice, as appropriate.
23. Two copies of an annual certificate that the sums reported on the statements are correct and complete and in accordance with the Supplier's books of account and records or that no sales have been made or licences granted or other leviable transactions entered into, shall be obtained by the Supplier from its Auditors and shall be forwarded to Defence Business Services Finance-Commercial Exploitation Arrangement Team ([REDACTED]) not later than six (6) months after the end of the Supplier's financial year.
24. For the purpose of verifying the statements the Supplier shall maintain proper books of account and records at its premises and shall make them available for inspection at all reasonable times by the representatives of the Ministry and of the National Audit Office.

**Recovery of Sums Due**

25. Whenever under this Agreement any sum of money shall be recoverable from or payable by the Supplier, the same may be deducted from any sum then due, or which at any time thereafter may become due, to the Supplier under any contract with the Ministry or with any Department or Office of Her Majesty's Government.

**Arbitration etc**

26. This Agreement shall be considered as an agreement made in England and subject to English Law.
27. All disputes, differences or questions between the parties to this Agreement with respect to any matter arising out of or relating to this Agreement shall be referred to the arbitration of two persons (one to be appointed by the Ministry and one by the Supplier) or their Umpire, in accordance with the provisions of the Arbitration Act 1996.
28. Nothing in this Agreement shall be construed as relieving the Supplier from responsibility for:
- (a) obtaining the necessary export licence as applicable to any overseas sale;
  - (b) obtaining any necessary release from security restrictions in force for the Agreement Articles.
29. Suppliers are advised to consult the Exports Team, [REDACTED], on a case by case basis before making offers to sell Agreement Articles overseas.



ANNEX 5 : B

**Commercial Exploitation Levy Agreement for Software Where Percentage Levy Rates Apply**

**Commercial Exploitation of Computer Software Developed at Government Expense**

CEL Agreement No: [ ]

Project Team Details:[ ]

*This AGREEMENT is made the [insert] day of [insert] 20[.] BETWEEN THE SECRETARY OF STATE FOR DEFENCE (hereinafter called 'the Ministry') of the one part and [insert] whose registered office is situated at [insert] (hereinafter called 'the Supplier' which expression where the context so admits or requires shall include its successors in title) of the other part.*

**WHEREAS:**

- (1) By virtue of conditions of (a) Agreement(s) between the Supplier and the Ministry the Supplier has developed certain Computer Software for the Ministry and is the beneficial owner of all Intellectual Property Rights therein;
- (2) By virtue of the conditions of said Agreement(s) the Supplier is permitted to commercially exploit said Computer Software provided that it first agrees with the Ministry the sum or sums which should reasonably be paid to the Ministry having regard to the amount paid or payable to the Supplier by the Ministry under the Agreement(s) and other relevant Contracts.
- (3) The parties hereto have agreed that the aforementioned sum or sums payable and the conditions governing payment thereof shall be as set forth in the following Agreement.

**IT IS HEREBY AGREED AS FOLLOWS:**

**Definitions**

1. In this Agreement the following terms shall have the following meanings:
  - (a) 'The Agreement(s)' means Agreement Number(s) [insert] between the Ministry and the Supplier for the procurement of [insert]
  - (b) 'Agreement(s) Software' means the computer program or part thereof generated under the Agreement(s) and including any adaptation, extraction, translation, modification or enhancement thereof and any associated documentation such as program user guides.
  - (c) the 'Supplier' includes any subsidiary company or associated company of the Supplier.
  - (d) 'Sale' means any sale transaction, lease or hire of, or the grant of an end-user licence in respect of, the Agreement(s) Software in whole or in part by the Supplier, and derived terms such as 'selling' shall be construed accordingly.

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- (e) 'Bureau Services' - means a service whereby the benefit of the Agreement(s) Software is provided to a customer for gain, without transfer of the Agreement(s) Software to the customer.
- (f) 'Leviable Transaction' means any transaction giving rise to levy under this agreement, and shall include a transaction for the supply of the Agreement(s) Software and the grant of licences and shall also include a transaction for Bureau Services.
- (g) The 'Supplier's selling price' means the price for which the Supplier invoices its customer before the deduction of any discounts but excluding such of the following elements as are applicable and can be identified to the satisfaction of the Ministry;
  - (1) freight costs and insurance;
  - (2) packaging not developed at UKG expense;
  - (3) the cost of ECGD servicing and other sales finance charges;
  - (4) any charges relating to MOD inspection;
  - (5) installation and commissioning costs incurred where installation and commissioning formed no part of the work under the Agreement(s) but excluding the cost of providing any warranty;
  - (6) Agent's fees and commissions;
  - (7) Value Added Tax where applicable.
- (h) 'Profit' other than for the purposes of the above proviso to sub-clause (g) above means the difference between the Supplier's selling price and the allowable costs as prescribed by the Ministry for the purpose of the Sale in question provided such difference is a positive sum.

Provided that any element of Profit which the Supplier has included in the above items (1) to (7) shall not be so included.

**Sales and Licences**

- 2. Should the Supplier sell any Agreement(s) Software or any material reproducing the Agreement(s) Software other than for any purpose set out in Clause 8 hereof the Supplier shall pay to the Ministry:
  - (a) A levy for the use of the Intellectual Property Rights enshrined in the Agreement(s) Software including copyright to be calculated at 80 per cent of the Supplier's selling price.
  - (b) A share of the profits on any Leviable Transaction for which the Supplier's gross receipts exceed [REDACTED] pounds sterling ([REDACTED]) in value (for which purpose contemporaneous Leviable Transactions of the same Agreement(s) Software to the same customer will count as one Leviable Transaction), said share to be agreed between the Supplier and Ministry before the transaction contract is entered into. The threshold of [REDACTED]

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pounds sterling ([REDACTED]) may be increased from time to time by the Ministry, in relation to future transactions to take into account inflation.

3. Should the Supplier grant a licence to reproduce the Agreement(s) Software and to enable the Licensee to sell the Agreement Software(s) or should the Supplier assign or otherwise dispose of its rights in the Agreement(s) Software, the Supplier shall pay the Ministry a levy calculated at [Redacted] % of the gross receipts of the Supplier in money by way of royalties, licence fees or otherwise in respect thereof, provided that:
  - (a) The Supplier shall not assign or grant an exclusive licence or otherwise dispose of its rights in the Agreement(s) Software without the prior written consent of the Ministry, which consent shall not be unreasonably withheld. It will be a condition of consent that the terms of the said assignment or said exclusive licence or disposition shall be consistent with the terms and conditions of this Agreement and that before entering into an Agreement to assign or grant an exclusive licence or otherwise dispose of its rights in the Agreement(s) Software the Supplier shall ensure that the proposed assignee or the proposed exclusive licensee enters into an agreement with the Ministry reserving to the Ministry the rights granted to it in the Agreement(s);
  - (b) Where the consideration comprises wholly or in part some benefit other than money the levy shall, in lieu of or in addition to such payments (as the case may be), consist of or include a sum representing [Redacted] % of what may be reasonably regarded as the value of the said benefit; and
  - (c) The Supplier shall not grant any licence or make an assignment or otherwise dispose of its rights in the Agreement(s) Software where there is no consideration, or only nominal consideration, without first agreeing with the Ministry what levy (if any) should reasonably be paid to the Ministry in respect of such licence assignment or disposition of rights.
4. If the Supplier uses the Agreement(s) Software to develop other computer software, and the Supplier wishes to enter into a Sale involving the computer software as developed, then the Supplier shall notify the Ministry prior to the said Sale, and the levy due upon the said Sale shall be agreed upon between the Ministry and the Supplier.
5. The Supplier shall not place in the public domain or disclose to a third party the Agreement(s) Software nor any computer software developed by use of the Agreement(s) Software without first notifying the Ministry and agreeing with the Ministry the amount of levy that shall be payable in respect of such placement or disclosure.
6. Where an agreement for the maintenance of the Agreement(s) Software between the Supplier and another party for a fee also includes the supply of the Agreement(s) Software not separately invoiced, a levy calculated in accordance with this Agreement will be due on that proportion of the maintenance fee which represents a reasonable price for the Supply of the Agreement(s) Software.
7. Subject to Clause 8 below payment of levy is deemed to include payment for the use of any Intellectual Property Rights owned by the Ministry (or in the case of copyright, administered for commercial exploitation by the Ministry) which is in the Supplier's possession and is necessary in connection with the Sale or other transaction giving rise to levy under this Agreement.

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8. This Agreement does not provide a right to use or include payment for the use of any Intellectual Property Rights (or in the case of copyright, administered for commercial exploitation by the Ministry) which are administered and managed on behalf of the Ministry by the Meteorological Office.
9. It shall be the sole responsibility of the Supplier to ensure that it has secured adequate rights from any third party to use and exploit elements of the Agreement(s) Software in which the Intellectual Property Rights are owned by such third party.
10. No levy shall be payable in respect of:
  - (a) The supply of the Supplier Software to the Ministry;
  - (b) the supply of the Agreement(s) Software under any transactions with the Ministry's Agents or its contractor or sub-contractor where the Agreement(s) Software can be clearly identified as being supplied to meet the requirements of the Ministry. Sales or Licensing of Adaptations, Extraction's, Translations, or Enhancements of the Agreement(s) Software.

**Sales or Licensing of Adaptations, Extractions, Translations, or Enhancements of the Agreement(s) Software.**

11. Sales involving, or licences to reproduce, adaptations, extraction's, translations or enhancements of the Agreement(s) Software shall attract levy in accordance with this Agreement unless the Ministry agrees that an allowance may be made for software that was not developed at UK Government expense.

**Agreement Software for Supplier's Own Use.**

12. Without prejudice to Clause 3 above unless the Agreement(s) Software is subsequently sold, no levy shall be due where the Supplier reproduces the Agreement(s) Software solely for its own research or development purposes or for its own demonstration or sales promotion purposes. Agreement(s) Software reproduced and used by the Supplier for any other purpose shall attract levy at normal rates in accordance with Clauses 2 to 6 hereof.

**Abatement of Levy**

13. Where, in the circumstances of an individual Sale, the Supplier considers that the effect upon its selling price of inclusion of levy rates calculated in accordance with Clause 2 would be such as to prejudice its chances of completing the Sale or would result in an unreasonably low profit, it shall be open to the Supplier before the Sale contract is entered into to seek the approval of the Ministry to an abatement scheme in accordance with the provisions of Clauses 15 and 17 herein. Provided that the Supplier's Cost Accounting System is adequate in the opinion of the Ministry to provide the statements for allowable costs necessary to implement the scheme such approval shall not be unreasonably withheld.
14. The abatement scheme shall generally determine levy on the basis of outturn profitability of the Sale in question expressed as a percentage of the allowable costs as prescribed for this purpose by the Ministry and shall apply as follows:
  - (a) The first 5 per cent of profit on cost shall be retained by the Supplier.

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- (b) The remaining profit, without upper limit, shall be shared between the Ministry and the Supplier in the ratio of 1:1 until a total profit of 25 per cent on cost has been reached, and thereafter in a ratio to be agreed between the Ministry and the Supplier.
- 15. Once a request to apply the abatement scheme has been approved by the Ministry it shall not thereafter be revised by either party for the Sale in question. The Supplier shall provide on request and in a specified form a certified statement of costs and profitability and such facilities as may be necessary for the Ministry, if it is so desired, to verify the statement. Where the value of the sale is less than [REDACTED] pounds sterling ([REDACTED]) any abatement levy may at the discretion of the Ministry be settled (before the Sale Agreement is entered into) on the basis of the expected outturn profitability provided the request for abatement is supported by adequate evidence and reasonable notice is given to the Ministry.
- 16. Where an abatement scheme has been approved in accordance with Clauses 13 to 15 of this Agreement the Supplier shall be liable for an interim payment of levy in accordance with the provisions of Clause 20 of this Agreement at one-half the appropriate unabated levy rate unless the Ministry agrees otherwise. A final adjustment to or from the Ministry shall be made as soon as it is practicable after completion of the Sale. The Ministry reserves the right to review and alter interim rates of levy from time to time and agrees to carry out such a review upon request by the Supplier.

**Cancelled Orders**

- 17. Where a Sale is cancelled and the Supplier has received any payments, whether from its customer or otherwise, which it is entitled to retain, in respect of work done or in hand, or in respect of any claim arising out of the cancellation, levy shall also be due on a fair and reasonable basis having regard to the reasonable costs and claims which the Supplier may have to meet therefrom. The Supplier shall notify any such cancellation to the Ministry Project Team named in the Agreement and shall provide such information as may be necessary or reasonably required for the determination of the levies payable under this clause. If a sale is entered into which involves any Agreement(s) Software or any adaptation, extraction, translation or enhancement thereof which was involved in the said cancelled Sale levy will again be due on the above-mentioned basis.

**Accounting**

- 18. The liability of the contractor to the Ministry for any sum due under this Agreement shall accrue:
  - (a) in respect of sales on the date of delivery;
  - (b) in respect of cancelled Sales, six (6) months after the date of termination or such longer period as may be agreed between the Supplier and the Ministry;
  - (c) in the case of licences, assignment or other disposition of rights in the Agreement(s) Software on the date of receipt by the Supplier of each payment.
- 19. The Supplier shall prepare statements which contain information concerning every Sale, licence, assignment or disposition of rights or other Leivable Transaction in

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respect of which levy accruing during the period to which the statement relates is payable, and in particular shall specify:

- (a) the nature of the Leviable Transaction (making clear under which of the Clauses 2 to 12 hereof it falls), and the date thereof and the name and address of the other party or parties thereto;
  - (b) in the case of a Sale the number of copies of the Agreement(s) Software sold, the selling price and in any other case, the gross receipts in money by the Supplier and the nature and value of any consideration other than money in respect thereof;
  - (c) in the case of any other Leviable Transaction, the gross receipts in money by the Supplier and the nature and value of any consideration other than money in respect thereof;
  - (d) any other matters relevant to determining the levy payable;
  - (e) the sum (to the nearest pound) computed to be payable by the Supplier to the Ministry in respect of each transaction (including a provisional sum in any case in which the sum depends upon a reasonable figure yet to be agreed with the Ministry).
20. The Supplier shall supply to Defence Business Services Finance-Commercial Exploitation Arrangement Team , [REDACTED], two copies of the Statement at six (6) monthly intervals commencing with the first Sale or licensing, assignment or disposition of rights arrangements.
21. The statement shall be provided not later than two (2) months after the close of the period to which it relates and 'nil' statements shall thereafter be provided whenever appropriate. Where there are 'nil' returns over a number of years and no evident prospect of a future leviable activity or receipt the Supplier should approach the Ministry Project Team commercial officer regarding future reporting arrangements.
22. Each statement shall be accompanied by a payment covering the accrued levy calculated by the Supplier to be due and set out in the statement (plus VAT where applicable). Invoices in respect of any other accrued levy will be issued to the Supplier by Defence Business Services Finance-Commercial Exploitation Arrangement Team. Payments (including VAT where applicable) shall be made to the Secretary of State for Defence at the address to which statements are to be supplied, or at the address stated on the invoice, as appropriate.
23. Should the Supplier fail to provide Statements within a reasonable time the Ministry reserves the right to assess the levy payable and to recover the same.
24. Two copies of an annual certificate that the sum reported on the Statements are correct and complete in accordance with the Supplier's books of account and records, or that no Sale has been made or licence assignment or disposition of rights in the Agreement Software granted or other Leviable Transactions entered into, shall be obtained by the Supplier from its auditor and shall be forwarded to Defence Business Services Finance-Commercial Exploitation Arrangement Team not later than six (6) months after the end of the Supplier's financial year.
25. The Supplier shall maintain proper books of accounting records at its premises and shall make them available for inspection at all reasonable times by the

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representatives of the Ministry and of the National Audit Office for the purpose of verifying that the terms and conditions of this Agreement are being complied with.

26. Whenever under this Agreement any sum of money shall be recoverable from or payable by the Supplier, the same may be deducted from any sum then due, or which at any time thereafter may become due, to the Supplier under any contract with the Ministry or with any Department of Her Majesty's Government.
27. The Supplier shall notify the Ministry Project Team named in the Agreement(s), quoting the number of the Agreement, of details of all transactions involving the Agreement(s) Software as set out in (a), (b) and (c) below:
  - (a) Immediately it becomes apparent to the Supplier that a Sale (or contemporaneous Sale of the same software to the same Supplier) which is of value above [REDACTED] pounds sterling ([REDACTED]) (or such higher value as may be notified by the Ministry from time to time) to the Supplier may arise, and the Supplier shall notify the said Ministry Project Team of the estimated value.
  - (b) In the event of negotiations for the grant of a licence, assignment or other disposition of rights relating to the Agreement(s) Software, immediately a draft licence, assignment or other such document pertaining to the said disposition has been prepared, and shall supply a copy of the said document to the Ministry Project Team.
  - (c) Immediately it becomes apparent to the Supplier that any change in the situations referred to in sub-clause (a) and (b) of this clause is likely to occur.

### **Export Licence**

28. Nothing in this Agreement shall be construed as relieving the Supplier from responsibility for:
  - (a) obtaining the necessary export licences as applicable to any overseas sale; or
  - (b) obtaining any necessary release for security restrictions in force for the Agreement(s) Software.
29. The Supplier is advised to consult the Export Team, Security Policy and Operations, [REDACTED] on a case by case basis, before making offers to sell or licence the Agreement(s) Software overseas.

### **Arbitration**

30. All disputes, differences or questions between the parties to this agreement with respect to any matter arising out of or relating to this Agreement shall be referred to the arbitration of two persons (one to be appointed by the Ministry and one by the Supplier) or their Umpire, in accordance with the Arbitration Act 1996.

### **Law**

31. This Agreement shall be construed as a contract made in England and shall be subject to English Law.

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ANNEX 5 : C

Commercial Exploitation of System Designs (Architecture and System Designs) Developed at Government Expense

[CEL Agreement No.]

This AGREEMENT is made the ..... day of ..... two thousand and ..... BETWEEN THE SECRETARY OF STATE FOR DEFENCE (hereinafter called the '**Ministry**') of the one part and .....whose registered office is situated at ..... (hereinafter called the '**Contractor**' which expression where the context so admits or requires shall include its successors in title) of the other part.

WHEREAS:

- (1) By virtue of conditions of (a) Contract(s) between the Contractor and the Ministry the Contractor has developed certain System Designs for the Ministry and the Contractor and/or the Ministry (as the case may be) is the beneficial owner of all Intellectual Property Rights therein;
- (2) By virtue of the conditions of said Contract(s) the Contractor is permitted to commercially exploit said System Design provided that he first agrees with the Ministry the sum or sums which should reasonably be paid to the Ministry having regard to the amount paid or payable to the Contractor by the Ministry under the Contract(s) and other relevant Contracts.
- (3) The parties hereto have agreed that the aforementioned sum or sums payable and the conditions governing payment thereof shall be as set forth in the following Agreement.

IT IS HEREBY AGREED AS FOLLOWS:

Definitions

1. In this Agreement the following terms shall have the following meanings:
  - (a) The '**Contract(s)**' means Contract Number(s) [ ] between the Ministry and the Contractor for the .....
  - (b) '**Contract(s) System Design**' means the [System Architecture and/or System Design the subject of the Contract, or part of it].
  - (c) the '**Contractor**' includes any subsidiary company or associated company of the Contractor.
  - (d) '**Supply**' means any supply transaction, lease or hire of, or the grant of an end-user licence in respect of, the Contract(s) System Design in whole or in part by the Contractor, and derived terms such as 'supplying' shall be construed accordingly.



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- (e) **'Bureau Services'** means a service whereby the benefit of the Contract(s) System Design is provided to a customer for gain, without transfer of the Contract(s) System Design to the customer.
- (f) **'Leviable Transaction'** means any transaction giving rise to levy under this agreement, and shall include a transaction for the supply of the Contract(s) System Design and the grant of licences and shall also include a transaction for Bureau Services.
- (g) The **'Contractor's supply price'** means the price for which the Contractor invoices his customer before the deduction of any discounts but excluding such of the following elements as are applicable and can be identified to the satisfaction of the Ministry;
  - (i) Freight costs and insurance;
  - (ii) Packaging not developed at UKG expense;
  - (iii) The cost of ECGD servicing and other sales finance charges;
  - (iv) any charges relating to MOD inspection;
  - (v) Installation and commissioning costs incurred where installation and commissioning formed no part of the work under the Contract(s) but excluding the cost of providing any warranty;
  - (vi) Agent's fees and commissions;
  - (vii) Value Added Tax where applicable.

Provided that any element of Profit which the Contractor has included in the above items (i) to (vii) shall not be so included.
- (h) **'Profit'** other than for the purposes of the above proviso to sub-clause (g) above means the difference between the Contractor's supply price and the allowable costs as prescribed by the Ministry for the purpose of the Supply in question provided such difference is a positive sum.

**Supplies and Licences**

- 2. Should the Contractor supply any Contract(s) System Design or any material reproducing the Contract(s) System Design other than for any purpose set out in Clause 8 hereof the Contractor shall pay to the Ministry:
  - (a) A levy for the use of the Intellectual Property Rights enshrined in the Contract(s) System Design including copyright to be calculated at ...% of the Contractor's supply price.
  - (b) A share of the profits on any Leviable Transaction for which the Contractor's gross receipts exceed [REDACTED] pounds sterling ([REDACTED]) in value (for which purpose contemporaneous Leviable Transactions of the same Contract(s) System Design to the same customer will count as one Leviable Transaction, said share to be agreed between the Contractor and Ministry before the transaction contract is entered into. The threshold of [REDACTED] pounds sterling ([REDACTED]) may be increased from time to

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time by the Ministry, in relation to future transactions to take into account inflation.

3. Should the Contractor grant a licence to reproduce the Contract(s) System Design and to enable the Licensee to supply the Contract(s) System Design or should the Contractor assign or otherwise dispose of his rights in the Contract(s) System Design, the Contractor shall pay the Ministry a levy calculated at [Redacted] % of the gross receipts of the Contractor in money by way of royalties, licence fees or otherwise in respect thereof.

Provided that:

- (a) The Contractor shall not assign or grant an exclusive licence or otherwise dispose of his rights in the Contract(s) System Design without the prior written consent of the Ministry, which consent shall not be unreasonably withheld. It will be a condition of consent that the terms of the said assignment or said exclusive licence or disposition shall be consistent with the terms and conditions of this Agreement and that before entering into an Agreement to assign or grant an exclusive licence or otherwise dispose of his rights in the Contract(s) System Design the Contractor shall ensure that the proposed assignee or the proposed exclusive licensee enters into an agreement with the Ministry reserving to the Ministry the rights granted to it in the Contract(s);
  - (b) Where the consideration comprises wholly or in part some benefit other than money the levy shall, in lieu of or in addition to such payments (as the case may be), consist of or include a sum representing [Redacted]% of what may be reasonably regarded as the value of the said benefit; and
  - (c) The Contractor shall not grant any licence or make an assignment or otherwise dispose of his rights in the Contract(s) System Design where there is no consideration, or only nominal consideration, without first agreeing with the Ministry what levy (if any) should reasonably be paid to the Ministry in respect of such licence assignment or disposition of rights.
4. If the Contractor uses the Contract(s) System Design to develop other system designs, and the Contractor wishes to enter into a Supply involving the system designs as developed, then the Contractor shall notify the Ministry prior to the said Supply, and the levy due upon the said Supply shall be agreed upon between the Ministry and the Contractor.
5. The Contractor shall not place in the public domain or disclose to a third party the Contract(s) System Design nor any system designs developed by use of the Contract(s) System Design without first notifying the Ministry and agreeing with the Ministry the amount of levy that shall be payable in respect of such placement or disclosure.
6. Where an agreement for the maintenance of the Contract(s) System Design between the Contractor and another party for a fee also includes the supply of the Contract(s) System Design not separately invoiced, a levy calculated in accordance with this Agreement will be due on that proportion of the maintenance fee which represents a reasonable price for the Supply of the Contract(s) System Design.
7. Subject to Clause 8 below payment of levy is deemed to include payment for the use of any Intellectual Property Rights owned by the Ministry (or in the case of

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copyright, administered for commercial exploitation by the Ministry) which is in the Contractor's possession and is necessary in connection with the Supply or other transaction giving rise to levy under this Agreement.

8. This Agreement does not provide a right to use or include payment for the use of any Intellectual Property Rights (or in the case of copyright, administered for commercial exploitation by the Ministry) which are administered and managed on behalf of the Ministry by the Meteorological Office.
9. It shall be the sole responsibility of the Contractor to ensure that he has secured adequate rights from any third party to use and exploit elements of the Contract(s) System Design in which the Intellectual Property Rights are owned by such third party.
10. No levy shall be payable in respect of:
  - (a) the supply of the Contract(s) System Design to the Ministry; or
  - (b) the supply of the Contract(s) System Design under any transactions with the Ministry's Agents or its contractor or sub-contractor where the Contract(s) System Design can be clearly identified as being supplied to meet the requirements of the Ministry.

Supplies or Licensing of Adaptations, Extraction's, Translations, or Enhancements of the Contract(s) System Design.

11. Supplies involving, or licences to reproduce, adaptations, extraction's, translations or enhancements of the Contract(s) System Design shall attract levy in accordance with this Agreement unless the Ministry agrees that an allowance may be made for system designs that were not developed at UK Government expense.

Contract System Design for Contractor's Own Use.

12. Without prejudice to Clause 3 above unless the Contract(s) System Design is subsequently supplied, no levy shall be due where the Contractor reproduces the Contract(s) System Design solely for his own research or development purposes or for his own demonstration or supply promotion purposes. Contract(s) System Design reproduced and used by the Contractor for any other purpose shall attract levy at normal rates in accordance with Clauses 2 to 6 hereof.

Abatement of Levy

13. Where, in the circumstances of an individual Supply, the Contractor considers that the effect upon his supply price of inclusion of levy rates calculated in accordance with Clause 2 would be such as to prejudice his chances of completing the Supply or would result in an unreasonably low profit, it shall be open to the Contractor before the Supply contract is entered into to seek the approval of the Ministry to an abatement scheme in accordance with the provisions of Clauses 15 and 16 herein. Provided that the Contractor's Cost Accounting System is adequate in the opinion of the Ministry to provide the statements for allowable costs necessary to implement the scheme such approval shall not be unreasonably withheld.
14. The abatement scheme shall generally determine levy on the basis of outturn profitability of the Supply in question expressed as a percentage of the allowable costs as prescribed for this purpose by the Ministry and shall apply as follows:

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- (a) The first [...] % of profit on cost shall be retained by the Contractor.
  - (b) The remaining profit, without upper limit, shall be shared between the Ministry and the Contractor in the ratio of 1:1 until a total profit of [...] % on cost has been reached, and thereafter in a ratio to be agreed between the Ministry and the Contractor.
15. Once a request to apply the abatement scheme has been approved by the Ministry it shall not thereafter be revised by either party for the Supply in question. The Contractor shall provide on request and in a specified form a certified statement of costs and profitability and such facilities as may be necessary for the Ministry, if it is so desired, to verify the statement. Where the value of the supply is less than [REDACTED] pounds sterling ([REDACTED]) any abatement levy may at the discretion of the Ministry be settled (before the Supply Contract is entered into) on the basis of the expected outturn profitability provided the request for abatement is supported by adequate evidence and reasonable notice is given to the Ministry.
16. Where an abatement scheme has been approved in accordance with Clauses 13 to 15 of this Agreement the Contractor shall be liable for an interim payment of levy in accordance with the provisions of Clause 20 of this Agreement at one-half the appropriate unabated levy rate unless the Ministry agrees otherwise. A final adjustment to or from the Ministry shall be made as soon as it is practicable after completion of the Supply. The Ministry reserves the right to review and alter interim rates of levy from time to time and agrees to carry out such a review upon request by the Contractor.

**Cancelled Orders**

17. Where a Supply is cancelled and the Contractor has received any payments, whether from his customer or otherwise, which he is entitled to retain, in respect of work done or in hand, or in respect of any claim arising out of the cancellation, levy shall also be due on a fair and reasonable basis having regard to the reasonable costs and claims which the Contractor may have to meet therefrom. The Contractor shall notify any such cancellation to the Ministry acquisition team named in the Contract and shall provide such information as may be necessary or reasonably required for the determination of the levies payable under this clause. If a supply is entered into which involves any Contract(s) System Design or any adaptation, extraction, translation or enhancement thereof which was involved in the said cancelled Supply levy will again be due on the above-mentioned basis.

**Accounting**

18. The liability of the contractor to the Ministry for any sum due under this Agreement shall accrue:
- (a) in respect of Supplies on the date of delivery.
  - (b) in respect of cancelled Supplies, six (6) months after the date of termination or such longer period as may be agreed between the Contractor and the Ministry.
  - (c) in the case of licences, assignment or other disposition of rights in the Contract(s) System Design on the date of receipt by the Contractor of each payment.

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19. The Contractor shall prepare statements which contain information concerning every Supply, licence, assignment or disposition of rights or other Leviable Transaction in respect of which levy accruing during the period to which the statement relates is payable, and in particular shall specify:
  - (a) The nature of the Leviable Transaction (making clear under which of the Clauses 2 to 12 hereof it falls), and the date thereof and the name and address of the other party or parties thereto;
  - (b) In the case of a Supply the number of copies of the Contract(s) System Design supplied, the supply price and in any other case, the gross receipts in money by the Contractor and the nature and value of any consideration other than money in respect thereof;
  - (c) In the case of any other Leviable Transaction, the gross receipts in money by the Contractor and the nature and value of any consideration other than money in respect thereof;
  - (d) Any other matters relevant to determining the levy payable; and
  - (e) The sum (to the nearest pound) computed to be payable by the Contractor to the Ministry in respect of each transaction (including a provisional sum in any case in which the sum depends upon a reasonable figure yet to be agreed with the Ministry).
20. The Contractor shall supply to DBS [REDACTED] two copies of the Statement at six (6) monthly intervals commencing with the first Supply or licensing, assignment or disposition of rights arrangements.
21. The statement shall be provided not later than two (2) months after the close of the period to which it relates and 'nil' statements shall thereafter be provided whenever appropriate. Where there are 'nil' returns over a number of years and no evident prospect of a future leviable activity or receipt the Contractor should approach the Ministry acquisition team commercial officer regarding future reporting arrangements.
22. Each statement shall be accompanied by a payment covering the accrued levy calculated by the Contractor to be due and set out in the statement (plus VAT where applicable). Invoices in respect of any other accrued levy will be issued to the Contractor by DBS FIN-IR-IPCM1-13g, Ministry of Defence. Payments (including VAT where applicable) shall be made to the Secretary of State for Defence at the address to which statements are to be supplied, or at the address stated on the invoice, as appropriate.
23. Should the Contractor fail to provide Statements within a reasonable time the Ministry reserves the right to assess the levy payable and to recover the same.
24. Two copies of an annual certificate that the sum reported on the Statements are correct and complete in accordance with the Contractor's books of account and records, or that no Supply has been made or licence assignment or disposition of rights in the Contract System Design granted or other Leviable Transactions entered into, shall be obtained by the Contractor from his auditor and shall be forwarded to DBS FIN-IR-IPCM1-13g not later than six (6) months after the end of the Contractor's financial year.

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25. The Contractor shall maintain proper books of accounting records at his premises and shall make them available for inspection at all reasonable times by the representatives of the Ministry and of the National Audit Office for the purpose of verifying that the terms and conditions of this Agreement are being complied with.
26. Whenever under this Agreement any sum of money shall be recoverable from or payable by the Contractor, the same may be deducted from any sum then due, or which at any time thereafter may become due, to the Contractor under any contract with the Ministry or with any Department of Her Majesty's Government.
27. The Contractor shall notify the Ministry acquisition team named in the Contract(s), quoting the number of the Contract, of details of all transactions involving the Contract(s) System Design as set out in (a), (b) and (c) below:
  - (a) Immediately it becomes apparent to the Contractor that a Supply (or contemporaneous Supply of the same system designs to the same Contractor) which is of value above [REDACTED] pounds sterling ([REDACTED] (or such higher value as may be notified by the Ministry from time to time) to the Contractor may arise, and the Contractor shall notify the said Ministry acquisition team of the estimated value.
  - (b) In the event of negotiations for the grant of a licence, assignment or other disposition of rights relating to the Contract(s) System Design, immediately a draft licence, assignment or other such document pertaining to the said disposition has been prepared, and shall supply a copy of the said document to the Ministry acquisition team.
  - (c) Immediately it becomes apparent to the Contractor that any change in the situations referred to in sub-clause (a) and (b) of this clause is likely to occur.

**Export Licence**

28. Nothing in this Agreement shall be construed as relieving the Contractor from responsibility for:
  - (a) obtaining the necessary export licences as applicable to any overseas supply;or
  - (b) obtaining any necessary release for security restrictions in force for the Contract(s) System Design.
29. The Contractor is advised to consult the [REDACTED], [REDACTED], on a case by case basis, before making offers to supply or licence the Contract(s) System Design overseas.

**Arbitration**

30. All disputes, differences or questions between the parties to this agreement with respect to any matter arising out of or relating to this Agreement shall be referred to the arbitration of two persons (one to be appointed by the Ministry and one by the Contractor) or their Umpire, in accordance with the Arbitration Act 1996.

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Law

31. This Agreement shall be construed as a contract made in England and shall be subject to English Law.

Signed:

(MOD Contracts)

Signed:

(Contractor)

Date:

Date:

**Annex 6**

**Approved document markings**

**Authority Background IPR documents**

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