**Air Commercial**

**Standardised Contracting Terms Reference: 705384450**

**Title: Provision of an Aerodrome Control (ADC) Simulator at RAF Odiham**

**First Issued: 17 January 2023**

**Standardised Contracting Terms**

# SC1B

## Definitions - In the Contract:

**Articles** means, in relation to Clause 9 and Schedule 3 only, an object which during production is given a special shape, surface or design which determines its function to a greater degree than does its chemical composition;

**The Authority** means the Secretary of State for Defence of the United Kingdom of Great Britain and Northern Ireland, (referred to in this document as "the Authority"), acting as part of the Crown;

**Business Day** means 09:00 to 17:00 Monday to Friday, excluding public and statutory holidays;

**Contract** means the agreement concluded between the Authority and the Contractor, including all terms and conditions, , specifications, plans, drawings, schedules and other documentation, expressly made part of the agreement in accordance with Clause 2.c;

**Contractor** means the person, firm or company specified as such in the Contract. Where the Contractor is an individual or a partnership, the expression shall include the personal representatives of the individual or of the partners, as the case may be;

**Contractor Deliverables** means the goods and / or services including packaging (and supplied in accordance with any QA requirements if specified) which the Contractor is required to provide under the Contract in accordance with the schedule of requirements.

**the Contract Price** means the price exclusive of Value Added Tax, payable to the Contractor by the Authority under the Contract for the full and proper performance by the Contractor of their part of the Contract as determined under the provisions of the Contract

**Effective Date of Contract** means the date stated on the Contract or, if there is no such date stated, the date upon which both Parties have signed the Contract;

**Firm Price** means a price, agreed for the Articles or Services, or both, which is not subject to variation;

**Government Furnished Assets (GFA)** is a generic term for any MOD asset such as equipment, information or resources issued or made available to the Contractor in connection with the Contract by or on behalf of the Authority;

**Hazardous Contractor Deliverable** means a Contractor Deliverable or a component of a Contractor Deliverable that is itself a hazardous material or substance or that may in the course of its use, maintenance, disposal, or in the event of an accident, release one or more hazardous materials or substances and each material or substance that may be so released;

**Issued Property** means any item of Government Furnished Assets (GFA), including any materiel issued or otherwise furnished to the Contractor in connection with the Contract by or on behalf of the Authority;

**Legislation** means in relation to the United Kingdom any Act of Parliament, any subordinate legislation within the meaning of section 21 of the Interpretation Act 1978, any exercise of Royal Prerogative or any enforceable community right within the meaning of Section 2 of the European Communities Act 1972.

**Loss** includes damage or destruction.

**Mixture** means a mixture or solution composed of two or more substances;

**Notices** means all notices, orders, or other forms of communication required to be given in writing under or in connection with the Contract;

**Parties** means the Contractor and the Authority, and Party shall be construed accordingly;

**PPT** means a tax called “plastic packaging tax” charged in accordance with Part 2 of the Finance Act 2021;

**PPT Legislation** means the legislative provisions set out in Part 2 and Schedules 9-15 of the Finance Act 2021 together with any secondary legislation made under powers contained in Part 2 of the Finance Act 2021. This includes, but is not limited to, The Plastic Packaging Tax (Descriptions of Products) Regulations 2021 and The Plastic Packaging Tax (General) Regulations 2022;

**Plastic Packaging Component(s)** shall have the same meaning as set out in Part 2 of the Finance Act 2021 together with any associated secondary legislation;

**Schedule of Requirements** means that part of the Contract which identifies, either directly or by reference, the Articles, Services or Contract Deliverables to be supplied or carried out, the quantities involved and the price or pricing terms in relation to each Article, Service or Contract Deliverable;

**Sensitive Information** means the information listed as such in Schedule 4 , being information notified by the Contractor to the Authority, which is acknowledged by the Authority as being sensitive, at the point at which the Contract is entered into or amended (as relevant) and remains sensitive information at the time of publication;

**Services** means all services (excluding the supply of Articles) which the Contractor is required under the Contract to perform or to fulfil;

**Substance** means a chemical element and its compounds in the natural state or obtained by any manufacturing process, including any additive necessary to preserve its stability and any impurity deriving from the process used, but excluding any solvent which may be separated without affecting the stability of the substance or changing its composition;

**Transparency Information** means the content of this Contract in its entirety, including from time to time agreed changes to this Contract, except for (i) any information which is exempt from disclosure in accordance with the provisions of the Freedom of Information Act 2000 (FOIA) or the Environmental Information Regulations Act 2004 (EIR), which shall be determined by the Authority, and (ii) any Sensitive Information.

## General

* 1. The Contractor shall comply with all applicable Legislation, whether specifically referenced in this Contract or not.
	2. Any variation to the Contract shall have no effect unless expressly agreed in writing and signed by both Parties.
	3. If there is any inconsistency between these terms and conditions and the associated documents expressly referred to therein, the conflict shall be resolved according to the following descending order of priority:
		1. the terms and conditions;
		2. the schedules; and
		3. the documents expressly referred to in the agreement.
	4. Neither Party shall be entitled to assign the Contract (or any part thereof) without the prior written consent of the other Party.
	5. Failure or delay by either Party in enforcing or partially enforcing any provision of the Contract shall not be construed as a waiver of its rights under the Contract.
	6. The Parties to the Contract do not intend that any term of the Contract shall be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a Party to it.
	7. The Contract and any non-contractual obligations arising out of or in connection with it shall be governed by and construed in accordance with English Law, and subject to Clause 15 and without prejudice to the dispute resolution procedure set out therein, the Parties submit to the exclusive jurisdiction of the English courts. Other jurisdictions may apply solely for the purpose of giving effect to this Clause 2.g and for enforcement of any judgement, order or award given under English jurisdiction.

## Application of Conditions

* 1. These terms and conditions, schedules and the specification govern the Contract to the entire exclusion of all other terms and conditions. No other terms or conditions are implied.
	2. The Contract constitutes the entire agreement and understanding and supersedes any previous agreement between the Parties relating to the subject matter of the Contract.

## Disclosure of Information

Information received or in connection with the Contract shall be managed in accordance with DEFCON 531 (SC1) and Clause 5.

## Transparency

* 1. Notwithstanding an other condition of this Contract, including 531 (SC1) ,the Contractor understands that the Authority may publish the Transparency Information to the general public.
	2. Subject to Clause 5.c, the Authority shall publish and maintain an up-to-date version of the Transparency Information in a format readily accessible and reusable by the general public under an open licence where applicable.
	3. If, in the Authority's reasonable opinion, publication of any element of the Transparency Information would be contrary to the public interest, the Authority shall be entitled to exclude such information from publication. The Authority acknowledges that it would expect the public interest by default to be best served by publication of the Transparency Information in its entirety. Accordingly, the Authority acknowledges that it shall only exclude Transparency Information from publication in exceptional circumstances and agrees that where it decides to exclude information from publication on that basis, it will provide a clear statement to the general public explaining the categories of information that have been excluded from publication and reasons for withholding that information.
	4. The Contractor shall assist and co-operate with the Authority as reasonably required to enable the Authority to publish the Transparency Information, in accordance with the principles set out above. Where the Authority publishes Transparency Information, it shall:
		1. before publishing redact any information that would be exempt from disclosure if it was the subject of a request for information under the FOIA and/or the EIR , for the avoidance of doubt, including the Sensitive Information.
		2. taking into account the Sensitive Information set out in Schedule 4, consult with the Contractor where the Authority intends to publish information which has been identified as Sensitive Information. For the avoidance of doubt the Authority, acting reasonably, shall have absolute discretion to decide what information shall be published or be exempt from disclosure in accordance with the FOIA and/or the EIR; and
		3. present information in a format that assists the general public in understanding the

relevance and completeness of the information being published to ensure the public obtain a fair view on how this Contract is being performed.

## Notices

* 1. A Notice served under the Contract shall be:
		1. in writing in the English Language;
		2. authenticated by signature or such other method as may be agreed between the Parties;
		3. sent for the attention of the other Party’s representative, and to the address set out in the Contract;
		4. marked with the number of the Contract; and
		5. delivered by hand, prepaid post (or airmail), facsimile transmission or, if agreed in the Contract, by electronic mail.
	2. Notices shall be deemed to have been received:
		1. if delivered by hand, on the day of delivery if it is a Business Day in the place of receipt, and otherwise on the first Business Day in the place of receipt following the day of delivery;
		2. if sent by prepaid post, on the fourth Business Day (or the tenth Business Day in the case of airmail) after the day of posting;
		3. if sent by facsimile or electronic means:
			1. if transmitted between 09:00 and 17:00 hours on a Business Day (recipient’s time) on completion of receipt by the sender of verification of the transmission from the receiving instrument; or
			2. if transmitted at any other time, at 09:00 on the first Business Day (recipient’s time) following the completion of receipt by the sender of verification of transmission from the receiving instrument.

## Intellectual Property

* 1. The Contractor shall as its sole liability keep the Authority fully indemnified against an infringement or alleged infringement of any intellectual property rights or a claim for Crown use of a UK patent or registered design caused by the use, manufacture or supply of the Contractor Deliverables.
	2. The Authority shall promptly notify the Contractor of any infringement claim made against it relating to any Contractor Deliverable and, subject to any statutory obligation requiring the Authority to respond, shall permit the Contractor to have the right, at its sole discretion to assume, defend, settle or otherwise dispose of such claim. The Authority shall give the Contractor such assistance as it may reasonably require to dispose of the claim and will not make any statement which might be prejudicial to the settlement or defence of the claim**.**
	3. Notwithstanding any other provisions of the Contract and for the avoidance of doubt, award of the Contract by the Authority and placement of any contract task under it does not constitute

an authorisation by the Crown under Sections 55 and 56 of the Patents Act 1977 or Section 12 of the Registered Designs Act 1949. The Contractor acknowledges that any such authorisation by the Authority under its statutory powers must be expressly provided in writing, with reference to the acts authorised and the specific intellectual property involved.

## Notification of Intellectual Property Rights (IPR) Restrictions

* 1. Where any of the Conditions listed below (1 to 3) have been added to these Conditions of the Contract as Project Specific DEFCONs at Clause 21, the Contractor warrants and confirms that all Intellectual Property Rights restrictions and associated export restrictions relating to the use or disclosure of the Contractor Deliverables that are notifiable under those Conditions, or of which the Contractor is or should reasonably be aware as at Effective Date of Contract, are disclosed in Schedule 5 (Notification of Intellectual Property Rights (IPR) Restrictions):
		1. DEFCON 15 - including notification of any self-standing background Intellectual Property;
		2. DEFCON 90 - including copyright material supplied under clause 5;
		3. DEFCON 91 - limitations of Deliverable Software under clause 3b;
	2. The Contractor shall promptly notify the Authority in writing if they become aware during the performance of the Contract of any required additions, inaccuracies or omissions in Schedule 5.
	3. Any amendment to Schedule 5 shall be made in accordance with DEFCON 503 (SC1).

## Supply of Contractor Deliverables and Quality Assurance

* 1. This Contract comes into effect on the Effective Date of Contract.
	2. The Contractor shall supply the Contractor Deliverables to the Authority at the Firm Price stated in the Contract.
	3. The Contractor shall ensure that the Contractor Deliverables:
		1. correspond with the specification;
		2. are of satisfactory quality (within the meaning of the Sale of Goods Act 1979, as amended) except that fitness for purpose shall be limited to the goods being fit for the particular purpose held out expressly by or made known expressly to the Contractor and in this respect the Authority relies on the Contractor’s skill and judgement; and
		3. comply with any applicable Quality Assurance Requirements specified in the Contract.
	4. The Contractor shall apply for and obtain any licences required to import any material required for the performance of the Contract in the UK. The Authority shall provide to the Contractor reasonable assistance with regard to any relevant defence or security matter arising in the application for any such licence.

## Supply of Hazardous Substances, Mixtures and Articles in Contractor Deliverables

* 1. Nothing in this Clause 9 shall reduce or limit any statutory duty or legal obligation of the Authority or the Contractor.
	2. As soon as possible and in any event within the period specified in the Contract (or if no such period is specified no later than one month prior to the delivery date), the Contractor shall provide to the Authority’s representatives in the manner and format prescribed in the Contract:
		1. confirmation as to whether or not to the best of its knowledge any of the Contractor Deliverables contain hazardous Substances, Mixtures or Articles; and
		2. for each Substance, Mixture or Article supplied in meeting the criteria of classification as hazardous in accordance with the GB Classification, Labelling and Packaging (GB CLP) a UK REACH compliant Safety Data Sheet (SDS);
		3. where Mixtures supplied do not meet the criteria for classification as hazardous according to GB CLP but contain a hazardous Substance an SDS is to be made available on request; and
		4. for each Article whether supplied on its own or part of an assembly that contains a Substance on the UK REACH Authorisation List, Restriction List and / or the Candidate List of Substances of Very High Concern (SVHC) in a proportion greater than 0.1% w/w of the Article, sufficient information, available to the supplier, to allow safe use of the Article including, as a minimum, the name of that Substance.
	3. For substances, Mixtures or Articles that meet the criteria list in clause 9.b above:
		1. if the Contractor becomes aware of new information which may affect the risk management measures or new information on the hazard, the Contractor shall update the SDS/safety Information and forward it to the Authority and to the address listed in Schedule 3; and
		2. if the Authority becomes aware of new information that might call into question the appropriateness of the risk management measures identified in the safety information supplied, shall report this information in writing to the Contractor.
	4. If the Substances, Mixtures or Articles in Contractor Deliverables are Ordnance, Munitions or Explosives (OME), in addition to the requirements of the GB CLP and UK REACH the Contractor shall comply with hazard reporting requirements of DEF STAN 07-085 Design Requirements for Weapons and Associated Systems.
	5. If the Substances, Mixtures or Articles in Contractor Deliverables, are or contain or embody a radioactive substance as defined in the Ionising Radiation Regulations SI 2017/1075, the Contractor shall additionally provide details on DEFFORM 68 of:
		1. activity; and
		2. the substance and form (including any isotope).
	6. If the Substances, Mixtures and Articles in Contractor Deliverables have magnetic properties which emit a magnetic field, the Contractor shall additionally provide details on DEFFORM 68 of the magnetic flux density at a defined distance, for the condition in which it is packed.
	7. Failure by the Contractor to comply with the requirements of this Condition shall be grounds for rejecting the affected Substances, Mixtures and Articles in Contractor Deliverables. Any withholding of information concerning hazardous Substance, Mixtures or Articles in Contractor

Deliverables shall be regarded as a material breach of Contract under Condition 18 (Material Breach) for which the Authority reserves the right to require the Contractor to rectify the breach immediately at no additional cost to the Authority or to terminate the Contract in accordance with Condition 18.

* 1. Where delivery is made to the Defence Fulfilment Centre (DFC) and / or other Team Leidos location / building, the Contractor must comply with the Logistic Commodities and Services Transformation (LCST) Supplier Manual.

## Delivery / Collection

* 1. The Contract shall specify whether the Contractor Deliverables are to be delivered to the consignee by the Contractor or collected from the consignor by the Authority.
	2. Title and risk in the Contractor Deliverables shall pass from the Contractor to the Authority on delivery or on collection in accordance with Clause 10.a.
	3. The Authority shall be deemed to have accepted the Contractor Deliverables thirty (30) days after title and risk has passed to the Authority unless it has rejected the Contractor Deliverables within the same period.

## Marking of Contractor Deliverables

* 1. Each Contractor Deliverable shall be marked in accordance with the requirements specified in Contract, or if no such requirement is specified, the Contractor shall mark each Contractor Deliverable clearly and indelibly in accordance with the requirements of the relevant DEF-STAN 05-132 as specified in the contract or specification. In the absence of such requirements, the Contractor Deliverables shall be marked with the MOD stock reference, NATO Stock Number (NSN) or alternative reference number specified in the schedule of requirements.
	2. Any marking method used shall not have a detrimental effect on the strength, serviceability or corrosion resistance of the Contractor Deliverables.
	3. The marking shall include any serial numbers allocated to the Contractor Deliverable.
	4. Where because of its size or nature it is not possible to mark a Contractor Deliverable with the required particulars, the required information should be included on the package or carton in which the Contractor Deliverable is packed, in accordance with condition 12 (Packaging and Labelling (excluding Contractor Deliverables containing Ammunition or Explosives)).

## Packaging and Labelling of Contractor Deliverables (Excluding Contractor Deliverables Containing Ammunition or Explosives)

* 1. The Contractor shall pack or have packed the Contractor Deliverables in accordance with any requirements specified in the Contract and Def Stan 81-041 (Part 1 and Part 6).
	2. The Contractor shall establish if the Contractor Deliverables are, or contain, Dangerous Goods as defined in the Regulations set out in this Clause 12. Any that do shall be packaged for UK or worldwide shipment by all modes of transport in accordance with the following unless otherwise specified in the Contract.:
		1. the Technical Instructions for the Safe Transport of Dangerous Goods by Air (ICAO), IATA Dangerous Goods Regulations;
		2. the International Maritime Dangerous Goods (IMDG) Code;
		3. the Regulations Concerning the International Carriage of Dangerous Goods by Rail (RID); and
		4. the European Agreement Concerning the International Carriage of Dangerous Goods by Road (ADR).
	3. Certification markings, incorporating the UN logo, the package code and other prescribed information indicating that the package corresponds to the successfully designed type shall be marked on the packaging in accordance with the relevant regulation.

## Plastic Packaging Tax

* 1. The Contractor shall ensure that any PPT due in relation to this Contract is paid in accordance with the PPT Legislation.
	2. The Contract Price includes any PPT that may be payable by the Contractor in relation to the Contract.
	3. On reasonable notice being provided by the Authority, the Contractor shall provide and make available to the Authority details of any PPT they have paid that relates to the Contract.
	4. The Contractor shall notify the Authority, in writing, in the event that there is any adjustment required to the Contract Price in accordance with section 70 of the Finance Act 2021 and, on reasonable notice being provided by the Authority, the Contractor shall provide any such information that the Authority requires in relation to any such adjustment.
	5. In accordance with DEFCON 609 (SC1) the Contractor (and their sub-contractors) shall maintain all records relating to PPT and make them available to the Authority when requested on reasonable notice for reasons related to the Contract.
	6. Where the Contractor manufactures, purchases or imports into the UK any Plastic Packaging Component in relation to the Contract the Contractor shall, on reasonable notice being given, provide the Authority with such information and documentation that it requires to enable the Authority to carry out due diligence checks and satisfy itself that the Contractor has complied with the requirements of the PPT Legislation. This shall include, but is not limited to the Contractor providing:
		1. confirmation of the tax status of any Plastic Packaging Component;
		2. documents to confirm that PPT has been properly accounted for;
		3. product specifications for the packaging components, including, but not limited to, the weight and composition of the products and any other product specifications that may be required; and
		4. copies of any certifications or audits that have been obtained or conducted in relation to the provision of Plastic Packaging Components.
	7. The Authority shall have the right, on providing reasonable notice, to physically inspect or conduct an audit on the Contractor, to ensure any information that has been provided in accordance with clause 13.f above is accurate.
	8. In the event the Contractor is not required to register for PPT they (and to the extent applicable, their sub-contractors) shall provide the Authority with a statement to this effect and, to the extent reasonably required by the Authority on reasonable notice, supporting evidence for that statement.
	9. The Contractor shall provide, on the Authority providing reasonable notice, any information that the Authority may require from the Contractor for the Authority to comply with any obligations it may have under the PPT Legislation.

## Progress Monitoring, Meetings and Reports

The Contractor shall attend progress meetings and deliver reports at the frequency or times (if any) specified in the Contract and shall ensure that its Contractor’s representatives are suitably qualified to attend such meetings. Any additional meetings reasonably required shall be at no cost to the Authority.

## Payment

* 1. Payment for Contractor Deliverables will be made by electronic transfer and prior to submitting any claims for payment under clause 15b the Contractor will be required to register their details (Supplier on-boarding) on the Contracting, Purchasing and Finance (CP&F) electronic procurement tool.
	2. Where the Contractor submits an invoice to the Authority in accordance with clause 15a, the Authority will consider and verify that invoice in a timely fashion.
	3. The Authority shall pay the Contractor any sums due under such an invoice no later than a period of 30 days from the date on which the Authority has determined that the invoice is valid and undisputed.
	4. Where the Authority fails to comply with clause 15b and there is undue delay in considering and verifying the invoice, the invoice shall be regarded as valid and undisputed for the purpose of clause 15c after a reasonable time has passed.
	5. The approval for payment of a valid and undisputed invoice by the Authority shall not be construed as acceptance by the Authority of the performance of the Contractor’s obligations nor as a waiver of its rights and remedies under this Contract.
	6. Without prejudice to any other right or remedy, the Authority reserves the right to set off any amount owing at any time from the Contractor to the Authority against any amount payable by the Authority to the Contractor under the Contract or under any other contract with the Authority, or with any other Government Department.

## Dispute Resolution

* 1. The Parties will attempt in good faith to resolve any dispute or claim arising out of or relating to the Contract through negotiations between the respective representatives of the Parties having authority to settle the matter, which attempts may include the use of any alternative dispute resolution procedure on which the Parties may agree.
	2. In the event that the dispute or claim is not resolved pursuant to Clause 16.a the dispute shall be referred to arbitration and shall be governed by the Arbitration Act 1996. For the purposes of the arbitration, the arbitrator shall have the power to make provisional awards pursuant to Section 39 of the Arbitration Act 1996.
	3. For the avoidance of doubt it is agreed between the Parties that the arbitration process and anything said, done or produced in or in relation to the arbitration process (including any awards) shall be confidential as between the Parties, except as may be lawfully required in judicial proceedings relating to the arbitration or otherwise. No report relating to anything said, done or produced in or in relation to the arbitration process may be made beyond the tribunal, the Parties, their legal representatives and any person necessary to the conduct of the proceedings, without the concurrence of all the Parties to the arbitration.

## Termination for Corrupt Gifts

The Authority may terminate the Contract with immediate effect, without compensation, by giving written notice to the Contractor at any time after any of the following events:

* 1. where the Authority becomes aware that the Contractor, its employees, agents or any sub- contractor (or anyone acting on its behalf or any of its or their employees):
		1. has offered, promised or given to any Crown servant any gift or financial or other advantage of any kind as an inducement or reward;
		2. commits or has committed any prohibited act or any offence under the Bribery Act 2010 with or without the knowledge or authority of the Contractor in relation to this Contract or any other contract with the Crown;
		3. has entered into this or any other contract with the Crown in connection with which commission has been paid or has been agreed to be paid by it or on its behalf, or to its knowledge, unless before the contract is made particulars of any such commission and of the terms and conditions of any such agreement for the payment thereof have been disclosed in writing to the Authority.
	2. In exercising its rights or remedies to terminate the Contract under Clause 17.a. the Authority shall:
		1. act in a reasonable and proportionate manner having regard to such matters as the gravity of, and the identity of the person committing the prohibited act;
		2. give due consideration, where appropriate, to action other than termination of the Contract, including (without being limited to):
			1. requiring the Contractor to procure the termination of a subcontract where the prohibited act is that of a Subcontractor or anyone acting on its or their behalf;
			2. requiring the Contractor to procure the dismissal of an employee (whether its own or that of a Subcontractor or anyone acting on its behalf) where the prohibited act is that of such employee.
	3. Where the Contract has been terminated under Clause 17.a.the Authority shall be entitled to purchase substitute Contractor Deliverables from elsewhere and recover from the Contractor any costs and expenses incurred by the Authority in obtaining the Contractor Deliverables in substitution from another supplier.

## Material Breach

In addition to any other rights and remedies, the Authority shall have the right to terminate the Contract (in whole or in part) with immediate effect by giving written notice to the Contractor where the Contractor is in material breach of their obligations under the Contract. Where the Authority has terminated the Contract under Clause 18 the Authority shall have the right to claim such damages as may have been sustained as a result of the Contractor’s material breach of the Contract.

## Insolvency

The Authority shall have the right to terminate the contract if the Contractor is declared bankrupt or goes into liquidation or administration. This is without prejudice to any other rights or remedies under this Contract.

## Limitation of Contractor’s Liability

* 1. Subject to Clause 20.b the Contractor's liability to the Authority in connection with this Contract shall be limited to £5m (five million pounds).
	2. Nothing in this Contract shall operate to limit or exclude the Contractor's liability:
		1. for:
1. any liquidated damages (to the extent expressly provided for under this Contract);
2. any amount(s) which the Authority is entitled to claim, retain or withhold in relation to the Contractor’s failure to perform or under-perform its obligations under this Contract, including service credits or other deductions (to the extent expressly

provided for under this Contract);

1. any interest payable in relation to the late payment of any sum due and payable by the Contractor to the Authority under this Contract;
2. any amount payable by the Contractor to the Authority in relation to TUPE or pensions to the extent expressly provided for under this Contract;
	* 1. under Condition 7 of the Contract (Intellectual Property), and DEFCONs 91 or 638 (SC1) where specified in the contract;
		2. for death or personal injury caused by the Contractor’s negligence or the negligence of any of its personnel, agents, consultants or sub-contractors;
		3. For fraud, fraudulent misrepresentation, wilful misconduct or negligence;
		4. in relation to the termination of this Contract on the basis of abandonment by the Contractor;
		5. for breach of the terms implied by Section 2 of the Supply of Goods and Services Act 1982; or
		6. for any other liability which cannot be limited or excluded under general (including statute and common) law.
	1. The rights of the Authority under this Contract are in addition to, and not exclusive of, any rights or remedies provided by general (including statute and common) law.

## Option Years

The Option Periods detailed in the pricing Schedule for maintenance fees will be subject to a Firm Price and not subject to variation.

* 1. The Contractor hereby grants the Authority the irrevocable Option to purchase the above service in accordance with the Terms and Conditions set out in the Contract.
	2. The Authority shall have the right to exercise each Option Period up to **3 months** prior to the tasking completion date. The Authority shall have the right to exercise all 2 Option Periods at the same time or by one Option Period at a time.
	3. The Authority shall not be obliged, or under any obligation, to exercise any of the Option Periods detailed.

## Project specific DEFCONs and DEFCON SC variants that apply to this Contract:

**DEFCON 076 (SC1) (Edn. 06/21)** - Contractor's Personnel at Government Establishments

**DEFCON 113 (Edn. 02/17)** - Diversion Orders

**DEFCON 129J (SC1) (Edn. 06/17)** - The Use Of The Electronic Business Delivery Form

**DEFCON 503 (SC1) (Edn. 06/22)** - Formal Amendments To Contract

**DEFCON 524A (SC1) (Edn. 08/20)** – Counterfeit Materiel

**DEFCON 531 (SC1) (Edn. 09/21)** - Disclosure of Information

**DEFCON 532A (Edn. 05/21)** - Protection Of Personal Data (Where Personal Data is not being processed on behalf of the Authority)

**DEFCON 534 (Edn. 06/21)** - Subcontracting and Prompt Payment

**DEFCON 537 (Edn. 12/21)** - Rights of Third Parties

**DEFCON 538 (Edn. 06/02)** – Severability

**DEFCON 566 (Edn. 12/18)** - Change of Control of Contractor

**DEFCON 606 (SC1) (Edn. 07/21)** - Change and Configuration Control Procedure

**DEFCON 621B (Edn 10/04)** – Transport (If Contractor Is Responsible For Transport)

**DEFCON 646 (Edn. 10/98)** - Law and Jurisdiction (Foreign Suppliers)

## Schedule 1 – Statement of Requirement

Attached as separate document.

Delivered by Micro Nav Limited as per Schedule 1 Annex A.

Where there is discrepancy between Schedule 1 and Schedule 1 Annex A, Schedule 1 will supersede.

**Schedule 1 Annex A**

**Schedule 2 – Schedule of Requirements**

**Schedule 3 - Contract Data Sheet**

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| --- | --- |
| **Contract Period** | Effective Start Date of Contract: Date Contract signed by both parties.The Contract expiry date shall be: Two years from Start Date, unless extended via Option Year/s uptake. |
| **Clause 6 - Notices** | Notices served under the Contract can be transmitted by electronic mail |
| **Clause 8 – Supply of Contractor Deliverables and Quality Assurance** | No Specific Quality Management System requirements are defined. This does not relieve the Supplier of providing conforming Products under this Contract. |
| **Clause 9 – Supply of Data for Hazardous Substance, Articles and Materials in Contractor Materials** | A completed DEFFORM 68 (Hazardous and Non-Hazardous Substances, Mixtures or Articles Statement), and if applicable, UK REACH Article 31 compliant Safety Data Sheet(s) (SDS) including any related information to be supplied in compliance with the Contractor’s statutory duties under Clauses 9.b, and any information arising from the provisions of Clause 9 are to be provided by e-mail with attachments in Adobe PDF or MS WORD format to:The Authority’s Representative (Commercial) by the following date:So that the safety information can reach users without delay, the Authority shall send a copy preferably as an email with attachment(s) in Adobe PDF or MS WORD format.1. Hard copies to be sent to:

Hazardous Stores Information System (HSIS) Spruce 2C, #1260MOD Abbey Wood (South)Bristol, BS34 8JH1. Emails to be sent to:
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| --- | --- |
|  | DESEngSfty-QSEPSEP-HSISMulti@mod.gov.ukSDS which are classified above OFFICIAL including Explosive Hazard Data Sheets (EHDS) for Ordnance, Munitions or Explosives (OME) are not to be sent to HSIS and must be held by the respective Authority Delivery Team.: |
| **Clause 10 – Delivery/Collection** | Contract Deliverables are to be: Delivered by the Contractor Special Instructions:As per Schedule 1 – Statement of Requirement. |
| **Clause 12 – Packaging and Labelling of Contractor Deliverables** | Additional packaging requirements: N/A |
| **Clause 14 – Progress Meetings** | The Contractor shall be required to attend the following meetings:Upon request. |
| **Clause 14 – Progress Reports** | The Contractor is required to submit the following Reports: Upon request. |

# DEFFORM 111

**DEFFORM 111**

## Appendix - Addresses and Other Information

1. **Commercial Officer**
2. **Project Manager, Equipment Support Manager or PT Leader** (from whom technical information is available)
3. **Packaging Design Authority** Organisation & point of contact:

N/A

## (a) Supply / Support Management Branch or Order Manager: Branch/Name: N/A

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**(b) U.I.N.** N/A

1. **Drawings/Specifications are available from** N/A
2. **Intentionally Blank**
3. **Quality Assurance Representative:**

No Specific Quality Management System requirements are defined. This does not relieve the Supplier of providing conforming Products under this Contract.

1. **AQAPS** and **DEF STANs** are available from UK Defence Standardization, for access to the documents and details of the helpdesk visit <http://dstan.uwh.diif.r.mil.uk/> [intranet] or https[://w](http://www.dstan.mod.uk/)ww.[dstan.mod.uk/](http://www.dstan.mod.uk/) [extranet, registration needed].
2. **Consignment Instructions** The items are to be consigned as per the Project Manager’s instruction.
3. **Transport.** The appropriate Ministry of Defence Transport Offices are:
	1. **DSCOM**, DE&S, DSCOM, MoD Abbey Wood, Cedar 3c, Mail Point 3351, BRISTOL BS34 8JH

Air Freight Centre

IMPORTS  030 679 81113 / 81114 Fax 0117 913 8943

EXPORTS  030 679 81113 / 81114 Fax 0117 913 8943

Surface Freight Centre

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

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

# JSCS

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

JSCS Fax No. 01869 256837

[www.freightcollection.com](http://www.freightcollection.com/)

## The Invoice Paying Authority

Ministry of Defence, DBS Finance, Walker House, Exchange Flags Liverpool, L2 3YL

 0151-242-2000 Fax: 0151-242-2809

**Website is:** https://[www.gov.uk/government/organisations/ministry-of-](http://www.gov.uk/government/organisations/ministry-of-) defence/about/procurement#invoice-processing

## Forms and Documentation are available through \*:

Ministry of Defence, Forms and Pubs Commodity Management PO Box 2, Building C16, C Site, Lower Arncott, Bicester, OX25 1LP (Tel. 01869 256197 Fax: 01869 256824)

**Applications via fax or email:** Leidos-FormsPublications@teamleidos.mod.uk

# \* NOTE

1. Many **DEFCONs** and **DEFFORMs** can be obtained from the MOD Internet Site: <https://www.kid.mod.uk/maincontent/business/commercial/index.htm>
2. If the required forms or documentation are not available on the MOD Internet site requests should be submitted through the Commercial Officer named in Section 1.

## Schedule 4 - Contractor's Sensitive Information Form (i.a.w. Clause 5)

## Schedule 5 – DEFFORM 711 - Notification of IPR restrictions (IAW Clause 7)

**PART B – System / Product Breakdown Structure (PBS)**

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**Schedule 6 - DEFFORM 701 – Head Agreement for Licence Terms for Commercial Software Purchased By The Secretary of State for Defence**

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

This Agreement is made this 17th day of January in the year 2023.

BETWEEN

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

AND

Micro Nav Limited, Company Registration Number (as per Companies House) 03014347, 41-47 Seabourne Road, Bournemouth, BH5 2HU (afterwards referred to as the COMPANY);

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

1. The AUTHORITY wishes to agree standard terms of licence with the COMPANY which will apply to ”Commercial Software” products it procures from the COMPANY in order to avoid the need to negotiate individual terms each time those products are purchased; and
2. The COMPANY is prepared to agree standard terms of licence with the AUTHORITY in order to facilitate sales of Commercial Software to the AUTHORITY.

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

THE HEAD AGREEMENT

* 1. The Parties agree that they will adopt the terms of licence set out in the Annex to this Head Agreement (the “Annex”), as the standard terms of licence for the procurement of Commercial Software by the AUTHORITY from the COMPANY and from any of their wholly owned subsidiaries for which the COMPANY is entitled to make this Head Agreement. This shall not imply that either Party may not propose other conditions for any particular licence or that either Party shall be bound to accept any particular licence in the terms set out in the Annex.
	2. Each software licence which is to be procured subject to the standard terms of licence set out in the Annex, shall be established by a schedule (the “Schedule”) which incorporates those terms by making reference to this Head Agreement and the Annex. Each licence so concluded shall be

legally separate from this Head Agreement.

* 1. Each Schedule will take the format provided in the Attachment to the Annex. Individual Schedules may include special conditions adding to, varying, or setting aside any condition set out in the Annex and in the event of any conflict between the terms of the Annex and the special conditions of a Schedule the latter shall prevail.
	2. Either Party shall be entitled to terminate this Head Agreement at any time on written notice to the other Party but the termination shall not vary the conditions of or terminate any extant Licences.
	3. This Head Agreement shall be subject to and construed and interpreted in accordance with the Laws of England and shall be subject to the jurisdiction of the Courts of England. Other jurisdictions may apply solely for the purpose of giving effect to this Agreement and for the enforcement of any judgement, order or award given under English jurisdiction.

**DEFFORM 701 Annex**

**ANNEX TO THE HEAD AGREEMENT FOR LICENCE TERMS FOR COMMERCIAL SOFTWARE BETWEEN THE SECRETARY OF STATE FOR DEFENCE AND MICRO NAV LIMITED DATED 17 JANUARY 2023**

**AGREED STANDARD CONDITIONS**

* + 1. **DEFINITIONS**
			1. “AUTHORITY” shall mean the Secretary of State for Defence.
			2. “LICENSOR” shall mean the Company identified in the Head Agreement or the wholly owned subsidiary of the Company identified in the Schedule as being the Party granting the Licence to the AUTHORITY.
			3. "Licensed Software" means the computer programs listed in Part I of the Schedule together with any user documentation, update programs and anything else furnished to the AUTHORITY by the LICENSOR under the Licence in connection with those listed programs, and any portion and copy of any of them.
			4. "Use" (or "to Use") in relation to the Licensed Software means copying the software from a store unit or medium into equipment, customising it within its existing functionality and consistent with the user documentation, running or processing it, operating upon it, all of these acts either alone or with other programs, and producing copies including, where appropriate, in eye- readable form.
			5. "Designated Equipment" means that equipment in respect of which Use of the Licensed Software is licensed. It shall be the equipment specified in Part II of the Schedule unless changed to alternative equipment in accordance with the provisions of Clauses 2.3 or 2.4.
			6. "Designated Site" means that site for which the Licensed Software is licensed. It shall be the site specified at Part III of the Schedule unless changed to an alternative site in accordance with the provisions of Clause 2.3.
			7. "Licence" means the rights granted by the LICENSOR to the AUTHORITY in respect of the Licensed Software and all the conditions associated with it, as set out in the Standard Conditions in combination with a relevant Schedule.
			8. “Schedule” means a schedule to the Head Agreement (in the format provided in the Attachment to this Annex) established by signature of the AUTHORITY and the LICENSOR, under which the LICENSOR undertakes to supply the Licensed Software for Use by the AUTHORITY under the conditions of the Licence. Each Schedule, in combination with these Standard Conditions, constitutes a distinct Licence independent of any other Licence existing by operation of the Head Agreement.
			9. “Standard Conditions” means the conditions set out in this Annex to the Head Agreement, comprising Clauses 1 to 15.
			10. “Special Conditions” means those conditions (if any) specified in Part VIII of the Schedule.

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# LICENCE GRANT

* + - 1. The AUTHORITY may Use the Licensed Software on the Designated Equipment at the Designated Site in accordance with the Licence from the date of receipt of the Licensed Software by the AUTHORITY.
			2. The AUTHORITY may allow contractors of the AUTHORITY and their sub-contractors to Use the Licensed Software on the Designated Equipment at the Designated Site on AUTHORITY contracts only, provided that the AUTHORITY ensures or procures that those contractors and sub-contractors are bound by the conditions of the Licence and that, unless prevented by security considerations, the AUTHORITY shall notify the LICENSOR of the identity of those contractors or sub-contractors as soon as is reasonably practical. The AUTHORITY shall not charge for that Use.
			3. The AUTHORITY may specify alternative Designated Equipment or an alternative Designated Site by notification to the LICENSOR, in which case Clause 2.1 shall apply only to the alternative Designated Equipment or Designated Site as notified. However, in the event that the alternative Designated Equipment shall be equipment of a greater processing capacity or capability or a different operating system outside the parameters of the original Designated Equipment the LICENSOR may require the AUTHORITY to pay a fair and reasonable additional fee which will not exceed the difference between the corresponding fees shown in respect of Use of the Licensed Software on the existing and alternative Designated Equipment respectively in the LICENSOR's price list current at the time when the AUTHORITY has specified the alternative Designated Equipment.
			4. The AUTHORITY may Use the Licensed Software on alternative equipment if the Designated Equipment is temporarily inoperative until the Designated Equipment is again operative without notification or additional payment to the LICENSOR.
			5. Notwithstanding the above, the AUTHORITY may copy the Licensed Software in machine- readable form for back-up purposes for Use of the Licensed Software. The AUTHORITY may also create eye readable copies of documentation solely for utilisation by operating personnel of the Licensed Software. All copyright in such copies shall remain the property of the LICENSOR.

# DELIVERY AND ACCEPTANCE

* + - 1. The LICENSOR shall deliver the Licensed Software at a time and to a place agreed with the AUTHORITY.
			2. The LICENSOR or the AUTHORITY as mutually agreed shall install each program of the Licensed Software on the Designated Equipment and test it against acceptance tests if agreed between the LICENSOR and the AUTHORITY.
			3. The AUTHORITY may reject the Licensed Software within the acceptance period specified in Part IV of the Schedule only (which period starts on receipt of the Licensed Software by the

AUTHORITY) if it fails an agreed acceptance test or if it does not perform on the Designated Equipment in accordance with the functionality set out in an agreed statement or user document provided by the LICENSOR. The AUTHORITY shall be understood to have accepted the Licensed Software if it has not been validly rejected before the expiry of the acceptance period.

* + - 1. If the AUTHORITY rejects the Licensed Software in accordance with Clause 3.3 the Licence for it shall terminate and the AUTHORITY shall be entitled to reimbursement of any fees paid in respect of the Licensed Software.
			2. The AUTHORITY and the LICENSOR may mutually agree to extend the acceptance period, or to amend the Schedule appropriately, for any Licensed Software that would otherwise have been rejected under Clause 3.3.

# PAYMENT

* + - 1. The LICENSOR will invoice the AUTHORITY for the agreed licence fees in the amount and in accordance with the invoice arrangements set out respectively in Parts V and VI of the Schedule on or after receipt by the AUTHORITY of the Licensed Software.
			2. The AUTHORITY shall pay the invoice value within 30 days from the later of delivery of the Licensed Software or the date of receipt of a valid invoice related to that Licensed Software. Payment does not constitute acceptance of the Licensed Software.

# CONFIDENTIALITY

* 1. Subject to Clause 5.2 and except as otherwise agreed in writing, the AUTHORITY and the LICENSOR shall each hold in confidence and shall not use, disclose or otherwise make available, except in accordance with the Licence, all the following information received from the other under or in connection with the Licence:
		1. the Licensed Software;
		2. details of the AUTHORITY’s use and application of the Licensed Software;
		3. any other information which is identified as being disclosed in confidence at the time of disclosure

provided that:

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

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

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

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

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

# IPR ACTIONS AND LIABILITIES FOR IPR INFRINGEMENT

* + - 1. The LICENSOR declares that they are entitled as either owner or licensee to provide the Licensed Software to the AUTHORITY on the terms and conditions of the Licence.

6.2 Subject to the limitations imposed in Clauses 6.3 and 6.4, the LICENSOR shall assume all liability and indemnify the AUTHORITY against all costs or liabilities arising under any valid claim or action brought by a third party against either Party, or against any of its contractors (which expression shall include any sub-contractor) engaged in tasks relevant to the provision of the Licensed Software or to the AUTHORITY’s exercise of the Licence, in respect of any third party intellectual property right, including a patent, registered or unregistered design right, trade mark, copyright, trade secret or confidential information, which relates to the supply of the Licensed Software or the Use of the Licensed Software in accordance with the Licence by the AUTHORITY or its contractor, then:

1. If the claim or action is brought against the LICENSOR they shall take full responsibility for dealing with settling or defending the claim or action;
2. If any claim is made against the AUTHORITY or its contractors the LICENSOR shall be given full responsibility for dealing with settling or defending the claim as appropriate in their judgement;
3. If legal action is taken against the AUTHORITY or its contractor that Party shall be entitled to join the LICENSOR in the action.
	1. Clause 6.2 shall not apply, and the AUTHORITY shall assume all liability for and indemnify the LICENSOR and its contractors, against all costs and liabilities under the claim or action in the event that it arises as a consequence of any of :
		1. Use of the Licensed Software by the AUTHORITY, or by a contractor permitted to use the Licensed Software pursuant to Clause 2.2, outside the LICENSOR’s specification or user documentation on the Designated Equipment or in a manner outside the reasonable knowledge or expectation of the LICENSOR or in circumstances particular to the AUTHORITY as distinct from other customers for the equivalent Licensed Software;
		2. Use of modifications to the Licensed Software not provided or not approved in writing by the LICENSOR;
		3. infringement by the LICENSOR of any third party intellectual property right by reason only of use of any material provided by the AUTHORITY for the purposes of the Licence, but only to the extent that this material is held and used within the terms under which it was provided and used solely for the purposes of the Licence.
	2. Clause 6.2 shall not apply in the event that, without the consent of the LICENSOR (which shall not be unreasonably withheld) the AUTHORITY:
		1. has made or makes an admission of any sort to the third party relevant to the claim or action;
		2. the AUTHORITY has entered or enters into negotiations with the third party relevant to the claim or action;
		3. the AUTHORITY has made or makes an offer to the third party for settlement of the claim oraction.
	3. 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 them or their contractor or the Parties jointly, which relates to infringement of any third party intellectual property right in connection with the supply or Use of the Licensed Software under the Licence. By joint agreement, the AUTHORITY may take the lead in dealing with settling and defending any such enquiry claim or action made against it directly in consultation with the LICENSOR and, subject to the LICENSOR’s agreement as to the terms of any settlement, this shall not displace any liability of the LICENSOR arising under Clause 6.2. If any claim is made against the AUTHORITY under Section 55 of the Patents Act 1977 as a result of the AUTHORITY's use of the Software, and if the AUTHORITY offers a settlement of the claim, otherwise than as a result of a Court order and without the agreement of the LICENSOR, the LICENSOR shall be relieved of any liability which might otherwise arise under Clause 6.2.
	4. In the event that any claim or action is made which is subject to Clause 6.2 or if in the

LICENSOR's reasonable opinion such claim or action is likely to be made, the LICENSOR shall promptly utilise all reasonable endeavours to:

* + 1. establish or secure the AUTHORITY's right to continue to Use the Licensed Software or, failing to do so,
		2. avoid that claim or action by, and after consultation with the AUTHORITY as to how to minimise the AUTHORITY's loss of Use of the Licensed Software, replacing or modifying the Licensed Software without significant change to the specification of the Licensed Software all at the LICENSOR's expense, including installation and testing.
	1. In the event of the LICENSOR being unable to satisfy the requirements of sub-Clauses 6.6a. or 6.6b. the LICENSOR may terminate the Licence relating to the Licensed Software upon not less than three months written notice unless a lesser period is determined by any court order, and the LICENSOR shall make a refund of the licence fee to the AUTHORITY, either in full or with the agreement of the AUTHORITY (which shall not be unreasonably withheld) of a portion of the licence fee representing the lost portion of the Licence.
	2. The conditions set forth in clauses 6.2 to 6.7 represent 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.

# WARRANTY

* + - 1. LICENSOR warrants that discrepancies between Licensed Software and the LICENSOR's specification or user documentation current at the time of delivery reported and demonstrated by the AUTHORITY during the warranty period stated in Part VII of the Schedule will be remedied by LICENSOR without unreasonable delay in a manner commensurate with good software industry practice and without payment by the AUTHORITY. During the warranty period the LICENSOR undertakes to provide to the AUTHORITY free of charge corrections to material errors known to the LICENSOR.
	1. All warranties in the Licensed Software and its user documentation other than that given under Clause 7.1 are hereby excluded including, without limitation, the implied warranty and conditions of satisfactory quality and fitness for a particular purpose, but this shall not prejudice the right of the AUTHORITY to reject the Licensed Software in accordance with Clause 3.3.
	2. No oral or written information or advice given by the LICENSOR, its agents or employees shall create a warranty or extend the scope of the warranty given under Clause 7.1.

7.4 The LICENSOR shall utilise all reasonable endeavours to ensure that any Licensed Software supplied, irrespective of the mode of delivery, is free from any published computer virus. In the event that it can be shown that, at the time of delivery, the Licensed Software incorporated such a virus then the AUTHORITY may require the LICENSOR to remove the virus and within the limits of backup data provided by the AUTHORITY to restore any computer system incorporating the Designated Equipment to its pre-infected state or bear the cost of the necessary restoration work.

# GENERAL LIABILITY CONDITIONS

* + - 1. The LICENSOR shall have no liability to the AUTHORITY for any indirect or consequential damages or losses which might arise by reason of Use of the Licensed Software by or for the AUTHORITY including, without limitation, loss of profit, loss of revenue, loss of use, loss of business information produced by Use of the Licensed Software.
			2. The exclusion provided under

Clause 8.1 shall not apply where the AUTHORITY suffers loss because of a defect within the Licensed Software which defect is known to the LICENSOR at the time the Licensed Software is furnished to the AUTHORITY unless the AUTHORITY has previously been made aware of and accepted the presence of the defect and its relevance to the AUTHORITY’s application of the Licensed Software.

* + - 1. The total of the LICENSOR’s

liability under or in connection with this Agreement (whether arising from contract, negligence or any other basis) is limited in respect of each event or series of connected events to the value given in Part IX of the Schedule, provided that no limitation shall apply in respect of liability for death of or injury to persons arising from the LICENSOR's negligence, as provided by the Unfair Contracts Act 1977, and, except in relation to sub-Clause 13.2.2, no limitation shall apply in respect of any liability arising under the provisions of Clause 6.2.

# TERM AND TERMINATION OF THE LICENCE

* 1. Each Licence shall continue until the AUTHORITY terminates it by written notification to the LICENSOR, or it is terminated pursuant to Clauses 3.4 or 6.7.
	2. The AUTHORITY shall within thirty days of termination of a Licence, through all reasonable endeavours and to the best of its knowledge, return or destroy, at the LICENSOR's option, all originals and destroy all copies of the Licensed Software including partial copies and modifications except that the AUTHORITY may on prior written authorisation from the LICENSOR retain one copy for archival purposes only. The AUTHORITY shall promptly certify in writing once it has so done.
	3. In the event of the LICENSOR drawing the attention of the AUTHORITY to a breach of any condition of a Licence then:
		1. where the breach is of a nature that cannot be remedied, the AUTHORITY undertakes to settle with the LICENSOR on fair and reasonable terms and to utilise all reasonable endeavours to ensure that a further breach does not occur,
		2. where the breach is capable of being remedied, the AUTHORITY shall promptly remedy the breach and where appropriate put in place measures to ensure that a further breach does not occur. The AUTHORITY shall indemnify the LICENSOR for all loss and damage incurred by it as a result of the breach.

9.4 The termination of any Licence shall be without prejudice to the continuation of the Head Agreement or any other Licence under it.

# COMBINATION OF SOFTWARE

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

# OUTPUT

11.1. The AUTHORITY may freely copy and utilise any output resulting from Use in accordance with LICENSOR - supplied documentation of the Licensed Software.

# DISPUTES

* + - 1. Other than for any claim arising from non payment of a valid invoice should any question, dispute or difference whatsoever arise between the AUTHORITY and LICENSOR in relation to or in connection with this Agreement or the Schedule of any Licence granted under it, the AUTHORITY or the LICENSOR may give notice to the other in writing of the existence of that question, dispute or difference and both Parties will attempt to reach a solution. If no mutually acceptable solution is found the AUTHORITY or the LICENSOR may give notice to the other in writing (the ADR notice) that the matter is to be referred to Alternative Dispute Resolution (ADR).
			2. Upon receipt of the ADR notice and subject to sub-Clause 12.3, the Parties shall define the type of ADR to be adopted and the rules for its implementation. Failing agreement to adopt, or to achieve, resolution by one such type, the Parties may decide to adopt a second type of ADR. The Parties agree that after a period of two (2) months from the date of receipt of the ADR notice, or such other date as may be agreed by the Parties, and provided that the dispute remains unresolved, it shall finally be settled by arbitration by a sole arbitrator at the request in writing by either party to the other. Failing agreement on the appointment of the arbitrator within 14 days of receipt of such request, the arbitrator shall be appointed by the President for the time being of the Law Society, in accordance with the Arbitration Act 1996 or any statutory modification or re-enactment of it. The costs of any ADR shall be shared equally by the AUTHORITY and the LICENSOR, however, the costs of arbitration shall be settled by the arbitrator.
			3. Where a Party rejects the referral of the matter to ADR he shall promptly notify the other Party in writing of that rejection and the reasons for it.

# TRANSFER

* + - 1. The LICENSOR shall not assign his interest in any Licence or the intellectual property licensed thereunder without providing for the continuance of the AUTHORITY’S rights under the Licence and without notifying the AUTHORITY in writing of the identity of the assignee.
			2. Unless prevented by law or national regulation the AUTHORITY shall have the right to novate any Licence to a separate legal entity, without charge to itself or the legal entity, upon two months written notice to the LICENSOR, as provided below:
				1. following a transfer from the AUTHORITY to the legal entity of any function of the

AUTHORITY for which the Licensed Software has been obtained; or

* + - * 1. on disposal to the legal entity of surplus Designated Equipment where the Licensed Software is essential to the running of that equipment, whether or not it is embedded in the equipment, provided that all warranties (whether express or implied) and all indemnities shall be void, the Licensed Software shall be supplied “as is”, and the liability referred to in Clause 8.3 shall be ten pounds sterling only.

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

# DISCONTINUANCE OF BUSINESS

* + - 1. The AUTHORITY shall have the right to secure from the LICENSOR, or from the authorised trustees or receivers acting on behalf of the LICENSOR, in the event of the LICENSOR permanently ceasing to maintain the Licensed Software or the LICENSOR permanently discontinuing in business because of bankruptcy, receivership, dissolution, or other form of permanent business disruption and that business is not continued by a successor in interest to the LICENSOR to whom the benefits and obligations of this Agreement and any licence granted under it have been assigned, Licensed Software documentation including program source code in the possession and control of the LICENSOR, but no more than the LICENSOR uses themselves, as the AUTHORITY shall consider necessary for it to maintain and continue its normal Use of the Licensed Software for the duration of the Licence but for no other purpose.
			2. If so required by a Special Condition, the LICENSOR shall compile and maintain, at a price or in accordance with a price formula identified in the Special Condition, an up to date copy of the Licensed Software documentation to which the AUTHORITY is entitled under Clause 14.1 which copy shall be held by the LICENSOR as a bailee without lien for the AUTHORITY and be made available to the AUTHORITY without additional charge. In the absence of such a Special Condition, the copy shall be prepared on the AUTHORITY’s demand and it shall be made available to the AUTHORITY at a fair and reasonable price based on the cost of compilation, reproduction and dispatch.
			3. The AUTHORITY shall have the right to utilise the Licensed Software documentation to which it is entitled under Clause 14.1 for the purpose of maintaining its Use of the Licensed Software for the duration of the Licence but for no other purpose. The AUTHORITY shall hold in confidence all information in the documentation.

# GENERAL

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

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

**SCHEDULE TO THE HEAD AGREEMENT BETWEEN THE AUTHORITY AND MICRO NAV**

**LIMITED** DATED 17 January 2023 Version Number: 1 CONTRACT REFERENCE NUMBER: 705384450

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

PART I - LICENSED SOFTWARE PROGRAMS

As per Schedule 1 Annex A.

PART II - DESIGNATED EQUIPMENT

As per Schedule 1 Annex A. PART III - DESIGNATED SITE

As per Schedule 1.

PART IV – ACCEPTANCE PERIOD & TEST

The acceptance period for the softwares shall be 90 days. Acceptance Testing Data shall be provided by the Authority on agreed appropriate timescales.

The Licensor shall be responsible for the installation of each programme of the Licenses software on the designated equipment (as per Schedule 1 Annex A) and aligned to Schedule 1 - Statement of Requirement.

PART V - LICENCE FEES

As per Schedule 2, Maintenance Fees. PART VI - INVOICE ARRANGEMENTS

If there should be any payment issues or delays, the Licensor shall contact both the Commercial Officer and Project Manager for expedition of payment.

Invoicing shall be enacted as per this Contract. PART VII - WARRANTY PERIOD

The Licensor warrants that the Software will confirm in all material respects to Schedule 1 for a period of 180 days.

PART VIII - SPECIAL CONDITIONS

N/A

PART IX – LIMITS OF LICENSOR’s LIABILITY

The liability of this agreement shall align with the liability outlined within this Contract. Any change in insurance shall be sought by the Licensor if required to maintain its obligations under Contract 705384450.

## Offer and Acceptance

**Contract 705384450 for the Provision of an Aerodrome Control (ADC) Simulator at RAF Odiham**

This Contract shall come into effect on the date of signature by both parties.

**Deliverables**

**Deliverables Note**

This matrix is intended to provide an overview of the parties’ contractual obligations to assist with contract management. It does not form part of the contract and should not be relied upon to aid interpretation of the contract. In the event of any conflict, inconsistency or discrepancy between this matrix and the contract, the terms of the contract shall take precedence.

## Supplier Contractual Deliverables

Supplier Contractual Deliverables

|  |  |  |  |
| --- | --- | --- | --- |
| Name | Description | Due | Responsible Party |
| Commercial Exploitation Levy- Reminder that Statements of Sales and AuditorCertificate are required annually | Applicable to contracts with Commercial Exploitation Agreements. A reminder to Suppliers that Statements of Sales along with Auditor Certificate are required annually. | 01-JAN-2024 | Supplier Organization |
| Payment Condition 14.b | Submission of Invoices |  | Supplier Organization |
| Import Licences Condition 8.d | Apply for and obtain all necessary licences |  | Supplier Organization |
| Marking of HazardousDeliverables Condition 9.b | Ensure packaging is marked in accordance with the contract |  | Supplier Organization |
| Contract Data Sheet Condition 9.c | provide a Safety Data Sheet in respect of each Dangerous/Hazardous Material or substance supplied or deliverablecontaining such. |  | Supplier Organization |
| Obligation DEFCON 91 (Edn 11/06) Clause - 5b - Software asrequired | A copy of the Software as is required for performance of obligations to be retained. |  | Supplier Organization |
| Progress MeetingsCondition 13 | Attendance at progress meetings in accordance withthe contract |  | Supplier Organization |
| Obligation DEFCON 21 (Edn 10/04) Clause - 3a - Maintenance of | To maintain at least one copy of all deliverable information to which DEFCON 21 applies duringthe period of the Contract |  | Supplier Organization |

|  |  |  |  |
| --- | --- | --- | --- |
| Deliverables (reminder) | and for at least two years after the Contract, or period as may be specified in thecontract. |  |  |
| Payment Condition 14.c | Payment |  | Supplier Organization |
| Marking of Articles Condition 11 | Articles to be marked in accordance with the contract. |  | Supplier Organization |
| Closure Activity - Assets on MoDProperty | Contractor assets on MOD property dealt with inaccordance with the contract |  | Supplier Organization |
| Obligation DEFCON 21 (Edn 10/04) Clause - 3a - Maintenance of Deliverables (reminder) | To maintain at least one copy of all deliverable information to which DEFCON 21 applies during the period of the Contract and for at least two years after the Contract, or period as may be specified in thecontract. |  | Supplier Organization |

## Buyer Contractual Deliverables

|  |  |  |  |
| --- | --- | --- | --- |
| Name | Description | Due | Responsible Party |
| Transparency Condition 5.b | Redact documents prior topublishing in line with contract. |  | Buyer Organization |
| Notification of Claim Condition 7.b | Notify contractor of any third party claim and assist thecontractor to dispose of said claim |  | Buyer Organization |
| Import Licences Condition 8.d | Assist application for licences that are defence/security related |  | Buyer Organization |
| Termination Condition 16, 17,18 | Written notice of Termination due to corrupt Gifts asstipulated in the contract |  | Buyer Organization |

**Specific QMS**

No Specific Quality Management System requirements are defined. This does not relieve the Supplier of providing conforming Products under this Contract.