

Ministry of Defence

Electronic Information Sharing Agreement (EISA)

THIS AGREEMENT, relates to the use of the Shared Data Environment (SDE) Service to be provided under MOD contract number MCS/701578537 Maritime Sensors Enhancement Team (the Contract) between the Secretary of State for Defence (the Authority) and Thales UK Limited (the Contractor),

The Authority and the Contractor have entered into the Contract, which is subject to DEFCON 687A and, where applicable, DEFCON 687B, to provide a Shared Data Environment Service. The terms of this Agreement govern the use of the Service.

It is agreed as follows:

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Definitions and Interpretations

The following words and expressions shall have the meanings given to them. Words derived therefrom shall have the appropriate related meaning, except where the context requires a different meaning:

“Access” means communication with the SDE by Users, including Loading and Retrieval of Information;

“Agreement” means this agreement including its Annexes, Schedules and any other documentation expressly made part of the Agreement;

“Contracted Information” means Information which a User delivers or provides to another User or Users as a specific requirement of an underlying Project contract, including the Contract;

“Data” means Information represented in digital form;

“Disaster” means a significant unplanned event which causes the SDE to be unavailable, or which causes the Data to be corrupted, lost, or unavailable;

“Expunge” means the removal of Data from the SDE whilst ensuring that a record of its existence is maintained in the Log;

“Fidelity” means the extent to which the SDE System maintains Data without corruption or disturbance to its content as it is processed;

“Information” means any information, in any form, disclosed or acquired under or in connection with the Agreement;

“Integrity” means the extent to which the SDE System safeguards and properly processes Data;

“Load” means to place Information on the SDE or make it accessible to the SDE so that it can be Retrieved by one or more Users;

“Log” means the record of communication with the SDE involving Access;

“Mark” means a designation permanently associated with a piece of Information, whether in tangible or digital form;

“Non-Contracted Information” means all Information other than Contracted Information which a User makes available to another User or Users;

“Primary User” means a User so designated in Schedule 1;

“Project” means the project, of which the Contract forms a part, described in Annex A;

“Project Implementation” means all activities conducted for the purpose of implementing the Project;

“Project Purposes” means all activities conducted for the purposes of implementing the Project, but excluding use for competitive purposes or tendering, manufacture, repair, overhaul or maintenance purposes except as provided in any contract under which the Information is provided;

“Retrieve” means retrieval of Information or other communication with the SDE other than Loading;

“Secondary User” means a User sponsored by a Primary User and so designated in Schedule 1;

“Shared Data Environment (SDE)” means the SDE System together with

Information Accessed via the SDE System, and

any part of the computer and software infrastructure which is controlled by a User other than the Contractor;

“Shared Data Environment Service (SDE Service)” means the SDE Service specified in the Contract, including the provision of an SDE System by means of which Information may be Accessed;

“Shared Data Environment System (SDE System)” means the computer and software infrastructure required for the SDE Service including the computer systems, networks, software, business processes and rules but excluding:

Information Accessed via that infrastructure, and

any part of the computer and software infrastructure which is controlled by a User other than the Contractor;

“Supply” means to make Information available for Loading;

“User” means a party to the Agreement;

“User Protocol” means the document at Annex B which describes the overall architecture of the SDE, including the elements provided by the Contractor and those provided by other Users, the shared business processes, Information management arrangements, technical interface requirements and administrative procedures necessary for Users to operate effectively within the SDE; and

“Working Day” means any day excluding:

Saturdays, Sundays and public and statutory holidays in the jurisdiction of the User concerned, and

privilege days notified in writing by the Authority to the Users at least 10 Working Days in advance.

Scope

The Agreement is created for the purposes of establishing the SDE for the Project, providing for Users secure Access and assurance as to the security of Information.

The Agreement defines the responsibilities, rights and obligations of Users in relation to the SDE and the User Protocol.

Duration

The Agreement shall remain in force until:

the Contract expires or is terminated, or

[date]

whichever occurs soonest.

The Contractor shall notify all Users:

immediately on receipt of a notice of termination, of the date of termination of the Contract, and

in good time, and within not less than 30 calendar days, of the impending expiry of the Contract.

Clauses 12 and 19 shall survive the expiry or termination of the Agreement.

Designation of Users

Each User shall be designated as a Primary User or a Secondary User and so identified in Schedule 1.

Each additional Secondary User must be sponsored by a Primary User with whom he has, or intends to establish, a Project-related contractual relationship. Notice of his sponsorship shall be sent to all Users by the Contractor and shall constitute an application for an additional User in accordance with the provisions of Sub Clause 13.b).

Withdrawal and Exclusion from the Agreement

Without prejudice to any contractual obligations a User, with the exception of the Authority or the Contractor, may withdraw from the Agreement on giving 15 calendar days' notice to the Contractor.

The Authority may require the exclusion of a User from the Agreement, after consultation with the Contractor and that User, in the following circumstances:

the underlying contract under which he was engaged with the Project has expired or is terminated; or

where there is no contractual relationship, his association with the Project has ceased; or

where a User's actions or omissions have caused him to have prejudiced the effective operation of the SDE.

A User may request the Authority to exclude another User if he has good cause to believe that a circumstance outlined in sub-Clause 5.b) applies.

The Contractor shall immediately notify all Users of any withdrawal or exclusion of a User.

In the event of exclusion under sub-Clause 5.b)iii), and on expiry of the notice period under sub-Clause 5.a), the Contractor shall immediately withdraw that excluded User's Access rights to the SDE.

If a User withdrawing or excluded from the Agreement under the provisions of this Clause 5 is a Primary User sponsoring a Secondary User, the withdrawal or exclusion of the Primary User shall include the withdrawal or exclusion of the Secondary User and the conditions of this Clause 5 shall apply to the Secondary User.

The Primary User with whom a Secondary User has had a project-related contractual relationship shall cause the Secondary User's Access rights to be discontinued as soon as the Project-related contractual relationship expires or is terminated.

In the event that a User is excluded or withdraws from the Agreement under this Clause 5, he shall be subject to the continuing obligations set out in Clauses 11 and 12. Withdrawal or exclusion from the Agreement shall have no effect on his liabilities arising under the Agreement.

Marking of Information

Prior to the Supply of Information, each User shall apply Marks to that Information, in accordance with Schedule 2.

In addition to the Marks in Schedule 2, the User may mark Information to be Supplied with a copyright and/or other proprietary legend.

No User shall remove or modify any Mark or legend on Information Loaded or Retrieved and each User shall retain those Marks or legends on any copies or extracts of the Information that he makes, unless otherwise agreed by the User who applied those Marks or legends.

Provision of Information

- a) Each originating User who Loads or Supplies Information shall ensure that:
- the Data conforms with the requirements specified in the User Protocol;
 - the Data has been verified in accordance with the virus control policy provided by the Contractor in accordance with DEFCON 687A;
 - the Information is Marked in accordance with the provisions of Clause 6 and Schedule 2; and
 - he has all necessary entitlements or permissions in respect of any material within the Information not originated by him, to Load the Information and permit its Retrieval and use under the terms of the Agreement by those Users to whom Access is permitted.

All requests by Users for further Information to be Loaded shall be directed to the Contractor and considered by the Authority. Where agreed with the originating User of that new Information, it shall be Loaded and subjected to the provisions of the Agreement.

Obligations of the Contractor

Subject to Users obtaining, where required, necessary licences from third parties, the Contractor grants Users the right to utilise the SDE System for Project Implementation and shall owe the following obligations to each of the other Users:

to enable Access exclusively for the Users who are from time to time parties to the Agreement;

to provide service support facilities to all Users;

to ensure that the SDE System operates and is operated in accordance with the security and confidentiality requirements set out in the Agreement;

to use all reasonable endeavours to ensure that the Information processing systems deployed to support the SDE System:

maintain Loaded Information without corruption to its content as it is processed,
and

properly process the Information;

to provide a secure user authentication method;

to provide the means for Users to establish Access permissions for their Information;

to provide Users with controlled Access;

to ensure, as far as is reasonably practical, that all Loaded Information, including associated marks and legends, is Accessible only by Users authorised to have Access and is not altered, lost or destroyed;

to implement and maintain a virus control policy and make details thereof available to all Users;

to ensure that, if any part of the SDE Service or SDE System is changed, the Users' ability to Access Information is not adversely affected; and

all Data, when stored in the SDE System, is maintained from the date of being loaded into the SDE for the period specified in the User Protocol, after which time it shall be Expunged unless:

a specific request for its retention in the SDE is made by any current User, or

it is withdrawn by a User in accordance with Clause 11, or

it is Archived.

These obligations are to be implemented in accordance with Annex B.

User Obligations

Each User, other than the Contractor, shall designate an individual in his organisation who shall be the principal point of contact for matters relating to the management and organisation of Information within his organisation's control.

Users shall comply with the requirements set out in the User Protocol.

Originating Users shall establish the Access permissions for their Information and, without prejudice to their contractual commitments, have the right to change or require the Contractor to change those Access permissions at any time.

If the Contractor determines that a User is in breach of any of the obligations under the Agreement which prejudices the effective operation of the SDE, then he may deny the provision of the SDE Service to that User.

If a User gains Access to any Information which he has reason to believe is not intended for his Access he shall, without delay, inform the Contractor and request that the Access permission is referred to the originating User for confirmation or alteration.

If a User becomes aware of an instance of unauthorised Access or a breach of the Agreement in relation to any associated procedures or systems (including, but without limitation, unauthorised Access to his own systems or accidental Access to another User's systems), he shall immediately notify the Authority and the Contractor.

If notification is given under sub-Clause 9.f) Users shall, on request, provide reasonable assistance to the Authority and the Contractor in respect of any investigation and rectification that may be necessary.

In the event that a User is unable to Access the SDE through no fault of his own, or he becomes aware of any fault or inaccessibility of his own system which may affect Loading or Retrieval, he shall immediately inform the Contractor.

Within the scope of the Agreement, sponsoring Primary Users shall be responsible for the actions of their Secondary Users.

Disaster Recovery Plan

Users other than the Contractor shall participate in a disaster recovery plan for parts of the SDE within their control as required by the User Protocol.

Withdrawal of Information

Except as provided in sub-Clause 11.b) and upon giving 15 calendar days' notice, any originating User shall have the right to withdraw his Information from the SDE.

An originating User shall have no right to withdraw from the SDE Contracted Information which has been Supplied or Loaded, unless the Authority or other User to whom Information was provided consents to that withdrawal.

Where an originating User has the right under sub-Clause 11.a) to withdraw his Information and where Information which that User Supplied or Loaded is contained in the Data under the direct control of another User, the originating User may require that other User to Expunge the Data to the extent that it contains the Information which he is entitled to withdraw.

Subject to giving 15 calendar days' notice, a withdrawing or excluded User shall have the right to require the denial of Access to Contracted Information for those Users having no contractual right to hold or use that Information.

Intellectual Property, Confidentiality and Protection of Information

The Supply or Loading of Information shall not create or imply any of the following:

- any transfer of ownership of Information or of underlying IPR or any collective ownership of the same;

- any grant of a licence permitting use of Information or of underlying IPR other than a permission to use Information for Project Purposes, but this shall not prejudice any pre-existing or separately acquired rights of any User; or

- any limitation on the right of any User to exert his rights in Information he has originated and in underlying IPR for any breach of the terms of the Agreement.

No User shall claim, or exert against another User, IPR of any description in respect of any database or collective work resulting from the Loading or ordering of Data within the SDE.

All Information that is Loaded is provided in confidence by the originating User to one or more other Users to whom he has granted Access, for use solely as identified below:

- Contracted Information – for use in accordance with the contractual arrangement under which it is provided or if no use is stated in the underlying contract arrangement, or there is no underlying contract with the User Accessing Information, then use shall be solely for Project Purposes;

- Non-Contracted Information – for use by Users for Project Purposes.

Each User who Retrieves Information shall be bound by an obligation of confidence under the Agreement, in respect of the Information, to the originating User and/or third party owner identified in the Marking or any IPR legend, subject to the exclusions in sub-Clause 12.f) and subject to any pre-existing or separately acquired rights.

Each User shall ensure that Information he Retrieves is disclosed to his employees, only to the extent necessary for the purposes permitted by Clause 12 and is treated in confidence by them. He shall ensure that his employees are aware of his arrangements for discharging the obligations at sub-Clause 12.d) before Retrieving Information and shall take reasonable steps to enforce them.

The limitations imposed by sub-Clauses 12.c) and 12.d) in regard to Information shall not apply to any Information Retrieved by a User to the extent that he can show:

- that the Information was or has become publicly available for use otherwise than in breach of any provision of the Agreement or any agreement which he has with the originating User;

- that the Information was already known to him (without restrictions on disclosure or use) prior to Retrieving it from the SDE;

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that the Information was received without restriction on further disclosure from a third party who lawfully acquired it and who is himself under no obligation restricting its disclosure; or

from his records that the same Information was derived independently of that Retrieved from the SDE;

provided that the relationship to any other Information is not revealed.

The provision of sub-Clauses 12.a) through to 12.f) shall continue to apply to withdrawn Information and Expunged Data.

Additional Users

Applications for additional Users shall be made to the Contractor, who shall consult the Authority on each application.

With the approval of the Authority, additional Users may enter into the Agreement, subject to each existing User being notified by the Contractor of the proposed introduction and having the opportunity to raise any objection with the Authority. Failure by a User to respond to that notification within 15 calendar days of receipt shall be deemed to signify consent by that User to the addition of the proposed User.

The Authority and the Contractor in deciding whether to admit the proposed User to the Agreement shall take objections into account. An objection shall not constitute a right of veto, except in relation to Access to or Retrieval of Information in which the User raising objection has rights or shall be entitled to claim rights.

Amendments

Amendments to the Agreement, except for the addition of a User under Clause 13, may be made only with the express agreement of all Users. Changes to the User Protocol shall not be unreasonably refused. Any proposals to amend the Agreement shall, in the first instance, be submitted to the Authority, who shall consult all other Users.

The authoritative version of the Agreement shall be maintained by the Contractor in the SDE System for Retrieval by all Users.

Notices

All notices, orders, or other forms of communication required to be given in writing ("Notices") under or in connection with the Agreement shall:

be given in writing;

be authenticated by signature, either physical or electronic, as appropriate;

be marked for the attention of the appropriate department or officer; and

be marked in a prominent position with the Agreement reference or relevant contract number.

Notices should be delivered by:

hand;

first-class prepaid post (or airmail, in the case of Notices to or from overseas);

facsimile;

telex; or

electronic mail, including the delivery of a message by means of the SDE.

Notices shall be deemed to have been received if;

delivered by hand, on the day of delivery if it is the recipient's Working Day and otherwise on the first Working Day of the recipient immediately following the day of delivery;

sent by first-class prepaid post (or airmail, if appropriate), on the third Working Day (or on the tenth Working Day, in the case of airmail) after the day of posting; or

sent by facsimile, telex or other electronic means;

if transmitted between 09.00 and 17.00 hours on a Working Day (recipient's time) on completion of receipt by the sender of verification of the transmission from the receiving instrument; or

if transmitted at any other time, at 09.00 on the first Working Day (recipient's time) following the completion of receipt by the sender of verification of the transmission from the receiving instrument.

The address (including electronic addresses) of each User to which all Notices shall be sent is that specified in the Agreement, or such other address as a User may by written Notice specify to the other Users for the purpose of this Clause 15.

Where a User requests written confirmation of any communication which does not constitute a Notice such request shall not unreasonably be refused.

Audit

A User may, at any time, and upon giving a reason, request the Authority to audit the Integrity, Fidelity, infrastructure and organisation of the SDE. The Authority shall not unreasonably refuse a request and shall make the conclusions of the audit report available to the User within [10] Working Days of completion of the audit.

A User may, at any time, request from the Contractor a certified extract from the Log relating to his own Access to Information or Access by other Users to Information Supplied by him.

Liability

The liability of the originating User to another User, in respect of Contracted Information Supplied, shall be determined by reference solely to the express terms of the contract or subcontract under which the Information is provided.

An originating User shall have no liability to other Users whether in contract, tort or otherwise except as provided in sub-Clause 17.a), including liability for negligence to any other User in respect of any loss or damage incurred by a User whether:

directly or indirectly as a result of use of Loaded Information, or
as a result of reliance on that Information

- c) No User shall have any liability to another User in respect of any breach of this Agreement except:
 - (i) as provided in sub-Clause 17.a);
 - (ii) in respect of Clause 12; or
 - (iii) in cases of wilful misconduct.
- d) Nothing in sub-Clauses 17.b) and 17.c) shall exclude any liability in respect of personal injury or death arising from negligence which may not by law be excluded.

Law

The Agreement shall be considered as an agreement made in England and subject to English Law.

Subject to Clause 19 and without prejudice to the dispute resolution process set out in that Clause, each User hereby irrevocably submits and agrees to the exclusive jurisdiction of the Courts of England to resolve, and the laws of England to govern, any actions, proceedings, controversy or claim of whatever nature arising out of or relating to the Agreement or breach thereof.

Other jurisdictions may apply solely for the purpose of giving effect to this Clause 18 and for the enforcement of any judgement, order or award given under English jurisdiction.

Dispute Resolution

Users in dispute will attempt in good faith to resolve any dispute or claim arising out of or relating to the Agreement through negotiations between the respective representatives of the Users in dispute having authority to settle the matter, which attempts may include the use of any Alternative Dispute Resolution (ADR) procedure on which the Users in dispute may agree.

In the event that the dispute or claim is not resolved by negotiation, or where the Users in dispute have agreed to use an ADR procedure, by the use of such procedure, the dispute shall be referred to arbitration.

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The User or Users initiating the arbitration shall give a written Notice of Arbitration to the other User or Users party to the dispute, specifically stating that the dispute is in relation to the Agreement and is referred to arbitration.

Unless otherwise agreed in writing by the Users in dispute, the arbitration and the Agreement shall be governed by the provisions of the Arbitration Act 1996.

It is agreed between the Users that for the purposes of the arbitration, the arbitrator shall have the power to make provisional awards as provided for in Section 39 of the Arbitration Act 1996.

For the avoidance of doubt it is agreed between the Users 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 Users in arbitration, 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 Users in dispute, their legal representatives and any person necessary to the conduct of the proceedings, without the concurrence of all the parties to the arbitration.

Entire Agreement

The Agreement represents the entire agreement between the Users with respect to its subject matter and no other agreement between Users or action of a User shall be taken to amend, alter or exclude any part of the Agreement.

Severability

If any term, condition or provision contained in the Agreement shall be held to be invalid, unlawful or unenforceable to any extent, that term, condition or provision shall not affect the validity, legality or enforceability of the remaining parts of the Agreement.

Transfer

No User shall give, bargain, sell, assign, or otherwise dispose of the Agreement or any part of it, or the benefit or advantage of the Agreement or any part of it, without the previous consent in writing of the other Users.

Waiver

No act or omission of any User shall by itself amount to a waiver of any right or remedy unless expressly stated by that User in writing. In particular, no reasonable delay in exercising any right or remedy shall by itself constitute a waiver of that right or remedy.

No waiver in respect of any right or remedy shall operate as a waiver in respect of any other right or remedy.

AGREED

For and on behalf of the Secretary of State for Defence (“the Authority”)

Signature

Name

Position

Date

For and behalf of (“the Contractor”)

Signature

Name

Position

Date

For and behalf of (“a User”)

Signature

Name

Position

Date

Annex A

Project Description

Information Redacted

Annex B

User Protocol

Information Redacted

Schedule 1

Primary and Secondary Users

User Type	User	Organisation	Location	Comments

Schedule 2

Marking Scheme

the name of the User originating the Information;

the national security classification ;

a commercial privacy designation;

the Information type;

the Data category, ie. Contracted or Non-Contracted Information. In the case of Contracted Information, the User to whom the contractual obligation is owed must be specified;

an identification number;

the name of each Primary User to whom Access is granted;

any other Marks