

Schedule 14

Intellectual Property Rights

Part 1 - Inventions and Designs

1. The provisions of either of Clause 2 and Clause 3 hereof or of Clause 3, only as applicable to the Security Grading of the Contract, shall apply in relation to any invention or design made in the course of or resulting from work carried out by the Contractor under the Contract (hereinafter respectively referred to as 'the invention' and the 'design').

Part A - Contracts For Work Classified As 'Official-Sensitive' Or Higher

2. Where any invention or design, to which the provisions of this condition apply, is made outside the UK and where local laws so require, any application may, notwithstanding the provisions of sub-clause 3.c of this condition, be made under conditions of secrecy at the local Patent Office of the territory where the invention or the design was made. Where local laws so require, the supply of a copy of the application under sub-clause 6.a of this condition shall be subject to any necessary approval of the local Patent Office but the application number and date of filing shall be notified to the Authority in all cases.
3. The Contractor shall ensure that he and any Patent Agent or Attorney engaged by him shall treat the invention or design as bearing a Security Classification at least as high as the work to which it relates pending formal determination of its appropriate classification.
 1. The preparation and filing of applications to which this Clause 3 relates shall be handled by the Contractor's own Patent Department¹ under the conditions of security applicable under the Contract. If the Contractor does not have his own Patent Department he shall, before initiating the preparation of any application, secure the written Agreement of the Authority (1) as to the Patent Agent or Attorney that he proposes to employ for the preparation and filing of such an application.
 2. Every application to which this clause 3 relates, whether filed by the Contractor or by a Patent Agent or Attorney engaged by him, shall be filed direct with the Security Section of the UK Patent Office, who shall be notified at the time of filing that the invention or design forming the subject of the application is related to classified Government work. The notification shall also quote the number of the Contract and the name and address of the Authority.
4. For the purposes of Clause 47.3 of Terms and Conditions any patent application made in accordance with Clauses 2 and 3 shall be considered to have been made with the prior consent of the Authority.

Part B - All Contracts

5. The Contractor shall ensure, to the extent he is legally able to do so, that any invention to which this Condition relates and made by an employee of the Contractor in the course of duties as defined in Section 39(1) of the Patents Act 1977 and any design to which this Condition relates and made by an employee of the Contractor shall vest in the Contractor.
6.
 1. The Contractor shall within 45 days of filing a first patent application or any subsequent patent application claiming priority from a first patent application and directed towards obtaining protection in the UK (including a European Patent Application or an International Patent Application designating the UK) for the

¹ The agreement of the Authority is to be sought from and the information addressed to: Patent Security Unit, Directorate of Intellectual Property Rights, Poplar 2 #2214, MOD Abbey Wood, BRISTOL BS34 8JH

invention or any application for registration of the design provide the Authority (1) with a copy of that application together with the number of the Contract.

2. The Contractor shall promptly notify the Authority if he becomes aware of any application as aforesaid by any person who is, or has been, an employee or agent of the Contractor or a subcontractor and provide the Authority with relevant particulars insofar as he can obtain them and has the right to provide them.
7. If an employee of the Crown is a joint inventor of the invention or part author of the design to which any application as is referred to in Clause 6 above relates and the portion of or share in the invention or design made by that employee belongs to the Crown and neither the Crown nor that employee is the person, or one of the persons, making the application, the Contractor shall if so requested by the Authority take all such steps and do all such things as are in his power and as may be necessary to ensure either that the Authority or the employee concerned joins in the application or, at the option of the Contractor, and if the application is one for a patent, that it is either withdrawn or amended by the deletion from the application of any reference to that part of the invention made by the employee of the Crown, or, if the application is one for a Registered Design, that it is withdrawn.
8. If an employee of the Crown is a party to any such application as is mentioned in clauses 6 and 7 above and the Authority so requests, the Contractor shall at the expense of the Authority take such reasonable steps as are in his power and may from time to time be necessary to ensure that the Authority is substituted for the employee of the Crown as co-applicant and shall give all such consents and do all such things as may from time to time be necessary to enable the employee of the Crown to assign to the Authority his interest in the application and in any Patent or Registered Design granted pursuant thereto, provided that the Contractor is not required by this Condition to consent to any assignment other than that specifically referred to herein.
9. Subject to the provisions of clauses 7 and 8 above and to the rights of the Authority as set out in Clause 10 below the invention or design shall belong to the Contractor.
10. Any Government Department and any person authorised by a Government Department may in any part of the world do in relation to the invention any act as defined in Section 55(1) (a) to (e) of the Patents Act 1977 or use the design for the services of the Government of the United Kingdom.
11. Subject to Clause 18 the Contractor shall not be entitled to any payment whatsoever in respect of anything done in accordance with Clause 10 above (whether by the Authority, a Government Department or any person whomsoever) and if any directions relating to the invention are given under Section 22(1) or 22(2) of the Patents Act 1977 the Contractor shall not have any claim for any such compensation as is mentioned in Section 22(7)(b).
12. If any question under this Condition shall arise between the Contractor and the Authority as to whether an employee of the Crown is a joint inventor of the invention or a part author of the design or as to whether the invention or design was made in the course of or resulted from work carried out by the Contractor under the Contract, that question shall be referred for decision to such person as may be agreed upon between the Contractor and the Authority or in default of such agreement as may be appointed by the President for the time being of the Chartered Institute of Patent Agents, and the decision of any such person on that question shall be final and conclusive.
13. The Contractor shall at the request and expense of the Authority take all such reasonable steps as are within his power and may from time to time be necessary to enable the

Authority to register in the UK Patent Office or elsewhere its interest in the invention or design²

14. The rights conferred by this Condition shall be in addition to and not in derogation of the rights exercisable by virtue of Sections 55 to 59 of the Patents Act 1977 and Section 12 of the Registered Designs Act 1949.
15. In this Condition references to a Government Department are references to a Department of Her Majesty's Government in the United Kingdom.
16. The foregoing provisions of this Condition shall have effect both during the period the Contractor is carrying out the other provisions of the contract and at all times thereafter.
17. The Contractor shall include, in any subcontract which he may enter into for the purpose of the Contract, provisions as in this Condition, but with the substitution therein of references to the subcontractor for references to the Contractor, and of references to the subcontract for references to the Contract, and the Contractor shall at all times use all reasonable endeavours to secure the full and effectual observance by the subcontractor of those provisions and that the Authority and all Government Departments obtain the benefit thereof, and to advise the Authority if he becomes aware of any breach of the provisions. Provided that this Clause shall only apply to any subcontract for the carrying out of any work for research, design or development under the Contract.
18. Nothing herein shall prejudice the rights of either party arising otherwise than by virtue of this Condition

Part 2 - Intellectual Property Rights in Software

Ownership

2. The Contractor shall use all reasonable endeavours to ensure that all IPR in any Software generated under the Contract shall be the property of and vest in the Contractor, subject to any pre-existing rights of the Crown or of third parties

User Rights and Related Payments

3. The following user rights and related terms apply:
 - a. The Contractor grants to the Authority and all other United Kingdom Government Departments to the extent that he has the right to do so, the right, exercisable without payment to the Contractor:
 - i. to copy, modify and use any Deliverable Software for the services of the United Kingdom Government, whether by themselves, their agents or their contractors;
 - ii. to issue any Deliverable Software or copies of any Deliverable Software to any contractor or potential contractor to the United Kingdom Government for the purpose of use only in connection with a contract or the tendering for a proposed contract for a United Kingdom Government purpose.

² Any communication from the Authority to the Contractor on the subject of Clause 13 is to be addressed to the Contractor's address for service for the application.

- b. The Contractor shall notify the provisions of sub-Clause 3b) but notwithstanding the provisions of sub-Clause 6.b), the Contractor grants to the Authority the right to issue the Deliverable Software, in whole or in part, or a copy thereof, only to the government(s) of the nation(s) prescribed in the Contract, for information only, in pursuance of information exchange arrangements for defence purposes, provided that the recipient government is placed under an obligation not to use Deliverable Software so released for other than information purposes or to disclose it to a third party. Provided that, where the supply of Source Code is contemplated, and subject to any pre-existing rights of the Authority, this sub-Clause 3.e) shall Authority as soon as he becomes aware of any limitations as to the use of any Deliverable Software the IPR in which are owned by the Contractor or a third party. The Contractor shall also give to the Authority full details of the provisions of such limitations and any associated cost as soon as he becomes aware of them.
- c. Except as provided for by sub-sub-Clause 5.a)ii the Authority shall have a right to exercise any of the rights referred to at sub-Clause 3.a) in respect of Deliverable Software notified to the Authority in accordance with sub-Clause 3.b) the IPR in which are owned by the Contractor, subject to fair and reasonable terms. The exercising of any such right shall not be conditional upon prior agreement on the need for, the amount of or the making of any payment therefore.
- d. The Contractor shall, if requested to do so by the Authority, endeavour to secure for the Authority those rights listed at sub-Clause 3a) in Deliverable Software notifiable to the Authority in accordance with sub-Clause 3b) the IPR in which are owned by a third party on terms and conditions to be agreed with or approved by the Authority.
- e. Subject to the only apply to the work or any part of the work or any copy of the work or any part thereof if such work or part thereof is generated under the Contract.

Other Software Generated Under The Contract

- 4. In respect of other Software generated under the Contract
 - a. Should, during the Relevant Period, the Authority require the Contractor to deliver any Software generated under the Contract but which is not Deliverable Software:
 - i. where the Contract has yet to be priced or has been or is to be priced on a non risk basis, then such Software as is required by the Authority shall be delivered by the Contractor to the Authority within a reasonable period as a minimum as it exists at the date on which the Authority makes its requirement known in writing to the Contractor and from that date such Software shall be deemed to be Deliverable Software;
 - ii. where the Contract has been priced on a risk basis, whether by negotiation or under competition, then such Software as is required by the Authority shall be delivered by the Contractor to the Authority within a reasonable period and on fair and reasonable terms as a minimum as it exists at the date on which the Authority makes its requirements known in writing to the

Contractor and from that date such Software shall be deemed to be Deliverable Software (except for the purposes of Clause 9) provided always that the Authority shall not be liable to pay more than once for the supply of Software required by the Authority. Delivery to the Authority shall not be conditional upon prior agreement on the need for, the amount of, or the making of any payment therefor.

- b. Notwithstanding anything to the contrary herein, other than in respect of any actual or alleged infringement of copyright, breach of confidence or IPR-related breach of contract, the Contractor shall have no liability whatsoever in respect of any consequence arising from the possession or use by or on behalf of the Authority of any such Software which is deemed to be Deliverable Software pursuant to sub-Clause 4.a) above.

Subsequent Deliveries Of Software

5. In respect of subsequent deliveries of Software:

- a. During the Relevant Period, the Contractor shall at the request and to the requirements of the Authority and to the extent he is able to do so in relation to third party software:
 - i. deliver further copies of the Deliverable Software to the Authority at a reasonable charge based on the cost of providing such copies;
 - ii. where the Contractor is unable or unwilling to support, maintain or modify the Deliverable Software, deliver all Software, including such records as are specified in sub-Clause 5.c) necessary for the Authority, its contractors or agents to independently support, maintain or modify the Deliverable Software for the services of the United Kingdom Government. All such Software shall be supplied on fair and reasonable terms, but delivery shall not be conditional upon prior agreement on the need for, the amount of or the making of any payment therefor.
- b. The Contractor shall retain for the Relevant Period a copy of such Software as is required for the performance of his obligations under sub-Clause 5.a).
- c. If the Software generated under the Contract is subsequently modified by or on behalf of the Contractor for the Authority, the Software to be retained under sub-Clause 5.b) shall be the latest modified version and any other version that may be specified by the Authority no later than the time of delivery of the succeeding modified version. The Contractor shall additionally maintain sufficient records to enable the changes introduced by each such modification to be identified so as to provide traceability back to the version originally accepted by or for the Authority.

Confidentiality

6. In respect of confidentiality:

- a. The Authority undertakes to
 - i. receive and hold in confidence all Deliverable Software;
 - ii. enforce all reasonable regulations and precautions upon the officers, agents, contractors and employees of the Authority and of all other United Kingdom Government Departments in order to preserve the confidential nature of the Deliverable Software;
 - iii. not disclose the Deliverable Software outside United Kingdom Government Departments and Establishments, except as expressly permitted by any other provision of this Condition or otherwise expressly agreed in writing by the Contractor.
- b. The Authority shall, subject to sub-Clauses 6.c) and 6.d) before disclosing any Deliverable Software outside United Kingdom Government Departments and Establishments make it a pre-requisite of the disclosure, unless otherwise agreed in writing by the Contractor, that the recipient shall enter into a confidentiality agreement with the Contractor whereby the recipient's use of the Deliverable Software is limited to use for the services of the United Kingdom Government. A confidentiality agreement shall be concluded within 30 days, or whatever other period as may be mutually agreed by the Authority and the Contractor, of the Authority giving written notice to the Contractor of his intention to make the disclosure. If a confidentiality agreement is not concluded within that period then, notwithstanding the absence of a confidentiality agreement, the Authority shall have the right to make the disclosure on condition that in making the disclosure, the Authority shall place upon the recipient an obligation of confidence and a limitation of use as aforesaid. In these circumstances the Authority shall:
 - i. consult with the Contractor on the measures to be employed to protect any trade secrets, know-how or other information in the Deliverable Software;
 - ii. have regard to any representation made by the Contractor at any time before disclosure takes place as to the protection of any trade secrets, know-how or other information in the Deliverable Software;
 - iii. give consideration to any proposals the Contractor may make for:
 - i. the preparation of a special version of the Deliverable Software;
 - ii. the disclosure of the Deliverable Software in parts or stages;
 - iii. restrictions on the circulation, copying or use of the Deliverable Software to be disclosed
- c. The obligations imposed by sub-Clauses 6.a) and 6.b) of this Condition shall not apply to such of the Deliverable Software that:

- i. is, or becomes, rightfully in the possession of the Authority without relevant restrictions;
 - ii. is in or enters the public domain without breach of the Contract and is available for unrestricted use
 - iii. is received by the Authority from a third party who himself has the right to disclose without relevant restrictions;
 - iv. is or was independently developed by the Authority;
 - v. is approved by the Contractor, in writing, for unrestricted release by the Authority.
- d. Notwithstanding the provisions of this Condition relating to the disclosure of the Deliverable Software, the Authority shall be entitled to disclose the Deliverable Software after notification in writing to the Contractor by a Director of Contracts in person that he considers it to be in the national interest to do so. Save where the Authority considers the immediate disclosure is in the national interest, the Authority will endeavour to give the Contractor a reasonable opportunity to make representations about such disclosure. However, the Authority's decision shall be final and conclusive. In making the disclosure in this circumstance the Authority shall place upon the recipient an obligation of confidence and a limitation of use as set out in sub-Clauses 6.a) and 6.b)

Output

7. In respect of output from the Deliverable Software:

- a. Subject to the rights of the Contractor and third parties, the Authority shall have the right, free of charge, to use in any manner and for any purpose anything which has been produced by or for the Authority with the aid of any Deliverable Software provided that if the result so produced reproduces or discloses the whole or a significant part of any of the Software used or generated in the performance of this Contract then such shall be deemed to be Deliverable Software and subject to the provisions of the Contract. If, however, the material produced contains other information, the IPR in which are owned by the Contractor or a third party and in which the Authority has no user rights, then the conditions under which that information has been made available to the Authority shall prevail in respect of such other information.
- b. If Deliverable Software is required by the Authority under the Contract for the purpose of producing an output for incorporation in a data processing system, then, notwithstanding sub-Clause 7.a) of this Condition or any other provision of the Contract, the Authority shall have the right to use to have used, free of charge, such output for the services of the United Kingdom Government.

Marking

8. The Contractor may make or include in any Deliverable Software to which this Condition applies a copyright notice provided that such copyright notice acknowledges the Authority's rights under this Condition. Any such notice shall be perpetuated in any copies of the Deliverable Software made by the Authority or any other United Kingdom Government Department or its agents or contractors

Commercial Exploitation Levy

9. The Contractor shall agree with the Authority the sum or sums (if any) which shall be paid to the Authority in respect of Software generated under the Contract having regard to the amounts paid or payable to the Contractor by the Authority under the Contract before:
 - a. assigning, selling or otherwise disposing of any IPR subsisting in such Software;
 - b. disclosing, licensing or selling any material reproducing such Software;
 - c. using any such Software for the purpose of generating any Software for disclosure, licensing or sale to a third party.

Modified Software

10. Should Software generated under the Contract be modified at any time, then each party shall enjoy the same rights and be bound by the same obligations provided by this Condition in respect of any of those parts of the modified Software which were present in the Software prior to modification.

Liability and Indemnities

11. In respect of liabilities and indemnities:
 - a. The Contractor shall at all times indemnify and keep indemnified the Authority or any other United Kingdom Government Department in respect of all costs, claims, demands, damages, liabilities and expenses made against or incurred by the Authority or any other United Kingdom Government Department:
 - i. arising directly from any actual or alleged infringement of copyright or breach of confidence or IPR-related breach of contract;
 - ii. arising indirectly from any actual or alleged infringement of copyright or breach of confidence or IPR-related breach of contract;by the Contractor as a result of the copying, modification, use or possession of the Deliverable Software by or on behalf of the Authority or any other United Kingdom Government Department or their respective agents or contractors
 - b. In the event that any claim is made against the Authority in respect of which the Authority is entitled to be indemnified in accordance with the provisions of sub-Clause 11.a) above then:

- i. the Authority shall promptly notify the Contractor in writing of such costs, claims, demands, damages, liabilities and expenses of which it shall have notice and shall provide the Contractor with such information regarding the claim as the Contractor shall reasonably require provided that the Authority shall not be obliged to disclose any information the disclosure of which would prejudice any right or interest of the Crown;
 - ii. unless there is a statutory obligation to do so, the Authority shall not make any statement which may be prejudicial to the settlement or defence of such claim without the prior written consent of the Contractor;
 - iii. when requested by the Contractor the Authority shall allow the Contractor at the Contractor's expense to conduct all negotiations and litigation and shall give the Contractor all reasonable assistance in connection therewith provided that:
 - (1) the Contractor shall have first given to the Authority an unconditional written admission of his liability to indemnify the Authority in accordance with the provisions of sub-Clause 11.a
 - (2) at the request of the Authority the Contractor shall keep the Authority fully informed about the conduct and progress of such negotiations and proceedings;
 - (3) the Authority shall have the right to intervene or assume responsibility for the conduct of such proceedings or any consequent settlement thereof at any time provided that the Contractor shall not be liable to indemnify the Authority under this Clause 11 against any liability or any part of any damages costs or expenses to the extent that such liability or part is incurred by the Authority by reason of any breach by the Authority or sub-sub-Clause 11.b)ii or by the Authority acting unreasonably either in the conduct of any negotiations or legal proceedings or in the making of any settlement in relation to any claim or demand.
- c. If at any time an allegation of infringement of copyright or breach of confidence or breach of contract is made as a result of the copying, modification, use or possession of the Deliverable Software or any part thereof, the Contractor may, with the agreement of the Authority and at the Contractor's own expense, modify the Deliverable Software or any part thereof or replace the same with an item of equivalent functionality and performance so as to avoid infringement or breach.

- d. Except as may be otherwise agreed, the foregoing provisions shall not apply in so far as any costs, claims, demands, damages, liabilities and expenses are in respect of:
 - i. any use of Deliverable Software not reasonably to be inferred from the specification requirements of the Authority;
 - ii. the refusal by the Authority or such other United Kingdom Government Department to use to have used a modified or replacement item supplied pursuant to sub-Clause 11.c)
 - iii. the use of any Deliverable Software made after and in contravention of a judicial decision relating to such Deliverable Software.
- e. The Contractor shall have no liability in respect of any Deliverable Software modified by or on behalf of the Authority, other than Deliverable Software modified under the direction and control of the Contractor himself, provided that the exclusion of liability contained in sub-Clause 11.2)) shall not apply in circumstances where the Contractor would be liable under the terms of the Contract whether or not the Deliverable Software has been modified.
- f. Where the Contractor is not liable under the provisions of sub-Clause sub-Clause 11.e)) then the Authority shall indemnify and keep indemnified the Contractor in respect of all costs, claims, demands, damages, liabilities and expenses made against or incurred by the Contractor:
 - i. arising directly from any actual or alleged infringement of copyright or breach of confidence or IPR-related breach of contract;
 - ii. arising indirectly from any actual or alleged infringement of copyright or breach of confidence or IPR-related breach of contract;

as a result of the copying, modification, use or possession of any modified Deliverable Software by or on behalf of the Authority or any other United Kingdom Government Department or their respective agents or contractors, or by any government which received it in accordance with the provisions of sub-Clause 3.e).(vi)

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

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

as a result of the copying, modification, use or possession of such Software by the Contractor solely for the performance of the Contract.

- h. In the event that any claim is made against the Contractor in respect of which the Contractor is entitled to be indemnified in accordance with the provisions of sub-Clauses 11.f) and Clause 11.g) above then:

- i. the Contractor shall promptly notify the Authority in writing of such costs, claims, demands, damages, liabilities and expenses of which he himself shall have notice and shall provide the Authority with such information regarding the claim as the Authority shall reasonably require;
- ii. the Contractor shall not make any statement which may be prejudicial to the settlement or defence of such claim without the prior written consent of the Authority;
- iii. when requested by the Authority the Contractor shall allow the Authority at the Authority's expense to conduct all negotiations and litigation and shall give the Authority all reasonable assistance in connection therewith provided that:

- (1) the Authority shall have first given to the Contractor an unconditional written admission of its liability to indemnify the Contractor in accordance with the provisions of sub-Clauses Clause 11.f) and 11.g)

- (2) at the request of the Contractor the Authority shall keep the Contractor fully informed about the conduct and progress of such negotiations and proceedings.

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

- i. the Deliverable Software by or on behalf of the Authority or any other United Kingdom Government Department;
 - ii. the Software referred to in sub-Clause 11.g) by the Contractor.

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

Part 3 - Rights in Technical Data

2. Ownership of IPR

- b. Subject to any existing rights of the Authority or any third party, the ownership of IPR in Technical Data and any other IPR generated by the Contractor in the

course of work under the Contract shall, as between the Authority and the Contractor, belong to the Contractor.

3. Rights in Technical Data

a. Unlimited Rights

- i. The Authority shall have a royalty-free, worldwide, non-exclusive, perpetual and irrevocable Unlimited Rights licence for all Technical Data, which is a Contractor Deliverable, or has otherwise been delivered to the Authority as part of the work carried out under the Contract, and has been generated under the Contract.
- ii. Notwithstanding the provisions of clause 3.a.i or any other provisions of this condition, the Authority shall have Unlimited Rights in the following Technical Data delivered or deliverable under the Contract:
 - (1) Interface Data (other than Interface Data for which the Crown is the owner of the IPR, or otherwise licensed, by virtue of another provision of the Contract);
 - (2) corrections or minor amendments made to Technical Data supplied to the Contractor as Government Furnished Assets
 - (3) Technical Data in which the Authority has obtained Unlimited Rights under another contract;
 - (4) Technical Data that has been made publicly available otherwise than in breach of obligations of confidence, or Technical Data that the Contractor has disclosed without restrictions on further use or disclosure; and
 - (5) any Technical Data specifically identified in the Schedule of Requirements as deliverable to the Authority with Unlimited Rights
- iii. The Authority shall have Unlimited Rights of use in the following Technical Data, including any Limited Rights Technical Data included in or associated with it, notwithstanding the provisions of clause 3.b
 - (1) studies, analyses, test data or similar data generated for the Contract, or for a response by the Contractor to an invitation to tender for the Contract, when the study, analysis, test or similar work is a Contractor Deliverable, but excluding test methodology to the extent that it consists of Limited Rights Technical Data
 - (2) Technical Data in data packs which are Contractor Deliverables; and
 - (3) Technical Data for installation, operation, routine maintenance or training purposes;

but the Unlimited Rights granted to the Authority under clause 3.a.iii shall not apply to any Technical Data in self-standing proprietary designs, processes and materials that forms any part of the Technical Data that is a Contractor Deliverable

and is notified to the Authority as Limited Rights Technical Data in accordance with the provisions of clause 4a of this condition

b. Limited Rights

- i. The Authority shall have royalty-free, worldwide, non-exclusive, perpetual and irrevocable Limited Rights in all Technical Data that is or forms part of a Contractor Deliverable, or has been otherwise been delivered to the Authority, and which has not been generated under the Contract, and which has been notified to the Authority in accordance with the provisions of clause 4a.
- ii. The Authority shall retain any rights that it has obtained in Technical Data by virtue of the provisions of another contract or other arrangement
- iii. Except as may be required or permitted by law or as otherwise permitted by the provisions of another contract or other arrangement, the Authority shall not disclose Limited Rights Technical Data outside HMG unless it has obtained the prior written permission of the Contractor or as permitted by the provisions of clause 3.c

c. Specific Disclosure Rights of the Authority in Limited Rights Technical Data

- i. Notwithstanding any restrictions on disclosure in clause 3.b, the Authority shall be permitted to disclose, and authorise the use of, Technical Data with Limited Rights for UK Governmental Purposes
 - (1) to an independent support contractor, solely for the purposes of the provision of a service to the Authority which, unless otherwise stated in the Contract, shall be limited to managing, monitoring, evaluating, assessing or auditing the work under the Contract; and
 - (2) where the Contract is for the supply of Services and the Limited Rights Technical Data concerns the processes and procedures concerned with the delivery of the Services, to a follow-on contractor only for the continued supply of the Services following termination or expiry of the Contract, or during any transitional period as may be specified in the Contract, and only to the extent necessary for the delivery of the follow-on Services; and
 - (3) where the Technical Data is necessary for repair, maintenance or overhaul of equipment for urgent operational or safety reasons, subject to the recipient (i) agreeing that the Technical Data shall only be used, or copied for those purposes, and (ii) agreeing to return the Technical Data to the Authority immediately on completion of the urgent operational or safety need without retaining a copy.
- ii. The Authority will have the right to disclose Limited Rights Technical Data for information and evaluation purposes in confidence to a foreign government for UK Governmental Purposes only and with the prior written permission of the Contractor
- iii. The Authority will have the right to disclose Limited Rights Technical Data for information and evaluation purposes in confidence to a foreign

government for UK Governmental Purposes only and with the prior written permission of the Contractor

- iv. The Authority shall not disclose Technical Data properly marked under clause 5 as being Limited Rights Data unless it has first provided the Contractor, or other party asserting Limited Rights, with the opportunity to enter into a direct confidentiality agreement in the form of DEFFORM 94 with the intended recipient. The Authority shall not be restricted from disclosing the Technical Data to the intended recipient if the Contractor or other party asserting Limited Rights has not signed a confidentiality agreement in the form of DEFFORM 94 within 30 (thirty) calendar days of its receipt provided that the Authority has placed the intended recipient under an obligation to keep the Technical Data confidential and to use it only for the purposes for which it is disclosed.

d. Modifications

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

e. Contractor Background Patents and Designs and other IPR

- i. Subject to clause 3.e.ii. and to any restrictions notified to the Authority in accordance with clause 4.a, the Unlimited Rights granted to the Authority under clauses 3.a.i, 3.a.ii and 3.a.iii and Limited Rights granted under clause 3 of this condition shall include licences under any Background Patents or Designs and other IPR owned by the Contractor solely in connection with, and to the extent necessary to exercise its rights in the Technical Data in accordance with such clauses
- ii. Subject to the rights of the Crown arising otherwise than under this condition, and provided that the Contractor has met in a timely manner any obligations included in the Contract to inform the Authority of the existence of any relevant United Kingdom patent or registered design, the Contractor shall be entitled to claim payment under the provisions of Sections 55-59 of the Patents Act 1977 or the First Schedule to the Registered Designs Act 1949 in respect of any Background Patents or Designs owned or controlled by the Contractor and used by the Authority, or any third party authorised by the Authority, in the exercise of the rights granted to the Authority under clause 3 of this condition. The terms to be agreed or settled for the use of any such patented invention or registered design shall not include payment of compensation under Section 57A of the Patents Act 1977 or paragraph 2A of the First Schedule to the Registered Designs Act 1949 in respect of any invention or design covering the Articles, or described in any Unlimited Rights Technical Data that is a Contractor Deliverable, and is subject to this condition.

f. Authority's Quiet Enjoyment; and Embedded Software

- i. Nothing in this condition shall act to prevent the Authority's quiet enjoyment of any Articles delivered to it under the Contract, including the right to operate, maintain, use and dispose of the Articles, and the Contractor shall not act to enforce rights in relation to any software that is provided as an integral part of such Articles to prevent the Authority's quiet enjoyment of the Articles. Nothing in this condition shall prevent the Authority from exercising its statutory rights, currently in force or hereinafter enacted, in respect of such software. This clause 3.f.i. shall not require the Contractor to deliver software to the Authority separate from the Article. No trade mark right or right against passing off shall be exercised against any deliverable Article, or any article made by or for the Authority in accordance with the rights granted under this condition, to a design incorporating a trade mark, recorded in deliverable Technical Data or embodied within any deliverable model, die or mould.

g. COTS Items

- i. Where the Contractor has, consistent with its obligations under the Contract, utilised one of its own COTS Items, or a COTS Item supplied by a third party, in its Contractor Deliverables, the Contractor shall not be required to grant, or procure the grant of, licence rights in any Technical Data relating to the COTS item to the Authority in accordance with this clause 3, provided that the Contractor notifies the Authority of the source of the COTS Item (including Original Manufacturer Part Numbers, NATO Stock Numbers or NCAGE Codes, as appropriate). The Contractor shall secure for the Authority any standard licence rights that the supplier of the COTS Item provides in relation to Technical Data concerning the COTS Item.

4. Restrictions on Authority's Use and Disclosure of Technical Data – Prior Identification by the Contractor

- a. All Technical Data to be delivered to the Authority under the Contract with restrictions on use or disclosure that are more restrictive than Unlimited Rights, shall be identified in an intellectual property rights restrictions form appended to the Contract at Annex D to this Schedule³. The Annex D may be updated from time to time during the course of the Contract with the express written agreement of the Authority.
- b. The Contractor shall not deliver to the Authority any Technical Data with any restrictive marking if that Technical Data is not identified in the Annex D. Subject to clause 4.c, any Technical Data delivered to the Authority without first being identified in the Attachment may be used by the Authority as if it is Unlimited Rights Technical Data, in accordance with the provisions of clause 3.a.i but subject to the provisions of clauses 3.d. and 3.e
- c. The Contractor shall notify the Authority of restrictions on the use or disclosure of Technical Data, due to IPR owned by a third party other than a subcontractor, after its delivery to the Authority where the

³ Bidder to populate the Notifications of IPR Restrictions Form as part of Tender Return which will be evaluated in accordance with the Commercial Evaluation Criteria.

identification of any such restrictions is based on information not available to the Contractor at the date of delivery, or where the Technical Data is identified in the Attachment and the omission of any restrictive marking is inadvertent. The Authority shall give prompt and reasonable consideration to any such notification and shall allow the Contractor to apply the appropriate restrictive marking to the Technical Data retrospectively if it is clear, in the circumstances, that the restrictive marking correctly reflects the Authority's rights in the relevant Technical Data as detailed in clause 3 of this condition. The Authority may continue any use of the Technical Data begun prior to the notification made in accordance with this clause 4.c notwithstanding that any such use may be contrary to any restrictive marking retrospectively applied to the Technical Data, but shall otherwise observe all restrictions on use and disclosure notified by the Contractor as are agreed in accordance with this sub-clause 4.c

5. Marking of Technical Data

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

“This Technical Data is delivered to the Authority by [state Contractor's name] under Contract [state MOD Contract No.]. The Authority has Unlimited Rights in the Technical Data in accordance with the provisions of 5.a of the Technical Data clause.”

- b. The Contractor shall mark any covering, packaging or cover page of Technical Data delivered with Limited Rights with the following legend
 - i. “This Technical Data is delivered to the Authority by [state Contractor's name] under Contract [state MOD Contract No.]. The Authority has Limited Rights in the Technical Data as marked in accordance with the provisions of 5.b of the Technical Data clause.”
- c. Any pages of documents including Technical Data subject to Limited Rights shall include the legend in clause 5.c at the top or bottom of the page and shall be clearly marked by the Contractor to identify the portions of those pages that are subject to those rights. The Technical Data shall be identified by marking, underlining or shading. The Authority shall have the right to remove any Technical Data subject to Limited Rights from a document and copy, use or disclose the edited document in accordance with the rights of the Authority in the resultant document.
- d. The Contractor may apply a copyright notice to any Technical Data delivered to the Authority to identify the owner of the copyright, but shall not mark the Technical Data with any description of the Authority's rights in it other than those set out in this clause 5.

6. Effect and Removal of Nonconforming and Incorrect Markings

- a. The Authority shall notify the Contractor in writing of any markings on Technical Data that it reasonably believes are incorrect or do not conform to the provisions of clause 5. The Contractor shall remove or correct any incorrect or non-conforming markings within 30 (thirty) calendar days of notification. Failure to remove or correct any such markings may be a ground for non-acceptance of the Technical Data by the Authority and withholding of Contract payment until resolved.
- b. If the Contractor fails to remove or correct a non-conforming marking within 30 (thirty) calendar days after receipt of notification by the Authority, then the Authority shall be entitled to ignore the marking and treat the Technical Data as Unlimited Rights Technical Data in accordance with clause 3 of this condition and, if the Authority considers it appropriate, remove or correct the marking.

7. Technical Data Provided By Subcontractors

- a. The Contractor shall ensure that the Authority's rights in Technical Data which is to be supplied by the Contractor's subcontractors, and which will be included in Technical Data that is a Contractor Deliverable, shall be in accordance with the provisions of clause 3 together with any other rights of the Authority as set out in this condition. The Contractor shall be responsible for determining with the subcontractor prior to the award of any subcontract the appropriate contractual arrangements, as between the Contractor and subcontractor, to provide the required Authority user rights in such Technical Data
- b. If the Contractor becomes aware that it will be unable to meet its clause 7.a. obligations to the Authority in respect of Technical Data that will be delivered by a potential subcontractor to the Authority (regardless of whether that delivery is directly from the potential subcontractor to the Authority or through the Contractor to the Authority), then the Contractor shall promptly notify the Authority, providing evidence that the Contractor has used all reasonable endeavours to secure the necessary rights for the Authority, and that the subcontractor is unwilling to provide the necessary rights to the Authority, and request the potential subcontractor to negotiate directly with the Authority regarding the Authority's user rights in Technical Data arising from a potential subcontract. Upon receipt of such notice the Authority shall use all reasonable endeavours to conclude any direct agreement promptly. The Contractor shall not enter into a subcontract with the potential subcontractor in respect of the relevant Contract requirement of the Authority unless and until the Authority notifies the Contractor that the potential subcontractor has entered into a direct agreement with the Authority to provide the necessary rights for the Authority in Technical Data to be delivered by the subcontractor.
- c. If the Contractor enters into a subcontract with a subcontractor that fails to secure the rights for the Authority as required by the provisions of clause 7.a , and has not received prior written authorisation from the Authority to place the subcontract in accordance with the provisions of clause 7.b the Authority shall be entitled, to the extent allowed by law and without prejudice to any other contractual remedy, to use any of the subcontractor's Technical Data delivered to the Authority as if the Contractor had secured rights for the Authority and obligations from the

subcontractor consistent with the nature of the Technical Data and the relevant provisions of clause 3; and the Contractor shall indemnify the Authority and be liable for any damages or costs incurred by the Authority for so long as the Contractor fails to secure the rights as aforesaid.

8. Contractor Retention of Records

- a. The Contractor shall retain, for the duration of the Contract and for a period of six years thereafter, or such alternative period as may be specified in the Schedule of Requirements, a record of the work performed under the Contract and of the results obtained, and the Technical Data generated, delivered or to be delivered to the Authority under the Contract.
- b. The Authority shall have the right to inspect the records maintained by the Contractor in accordance with clause 8.a. within the period specified in that clause and on reasonable notice. The Authority shall further have the right during that period or for so long as the Technical Data is known to still exist, to require additional deliveries of any Technical Data that was generated in the performance of work under the Contract whether or not it is contained in the Contractor Deliverables. This right shall be exercisable by separate order and on agreement of a fair and reasonable price based solely on the costs of compiling and delivering the Technical Data. Technical Data required to be delivered under this clause 8.b shall be delivered within 45 (forty-five) calendar days of receipt by the Contractor of any order from the Authority and shall only be used by the Authority (or on its behalf) in accordance with the rights granted in such Technical Data under this condition.
- c. At the written request made by the Authority within the period specified in clause 8.a and subject to the availability of the relevant expertise, the Contractor shall provide to the Authority, or to any other person to whom the Authority may provide Technical Data in accordance with its rights under clause 3, assistance in understanding the Technical Data. The assistance shall be limited to that required by a person competent in the relevant area of technology to interpret the results of the Contract. The assistance shall be made available within 60 (sixty) calendar days of the request and on fair and reasonable terms and conditions, including the costs of providing the assistance, but excluding any payment in respect of the right to use the Technical Data.
- d. The Contractor shall maintain one copy of all Technical Data that is a Contractor Deliverable (hereinafter called the "Control Copy"). The Control Copy shall be the property of the Authority, and shall be marked accordingly, and the Authority may take possession of it notwithstanding any administration, receivership, winding-up or liquidation of the Contractor or any transfer of its assets to any third party; and copies of any Technical Data from the Control Copy shall be supplied as required from time to time by the Authority at the Authority's expense, the cost of which shall be based solely on the cost of copying and delivering the Control Copy.

9. Liability

- a. In the event that Technical Data to which this Condition applies is used by or for the Authority otherwise than for the purpose for which it was supplied in accordance with the relevant provisions of this Contract, the Contractor shall have no liability whatsoever for any direct or indirect consequences, including losses, damages or injuries caused to the Authority or any third party, arising from its use

10. General

- a. For the avoidance of doubt, nothing in this condition shall:
 - i. restrict the entitlement of either party to make use of Technical Data once it enters the public domain otherwise than as a result of the Authority or any person supplied with the Technical Data by the Authority disclosing it in breach of any obligations of confidence relating to such Technical Data; or
 - ii. extinguish or diminish any statutory rights or common law rights of the Authority to use any Technical Data or any IPR covering such Technical Data or any rights of the Authority acquired under any separate contract or agreement.

11. The terms of this condition shall survive the termination or expiry of the Contract

1. Commercial Exploitation Levy

- i. The Contractor shall not sell any Articles developed under the Contract, otherwise than for the purposes of the United Kingdom Government, or grant any licence to manufacture such Articles or any materials or processes the design or development of which was called for in the Schedule of Requirements of the Contract without first agreeing with the Authority the sum or sums (if any) which should reasonably be paid to the Authority by the Contractor in respect of such sale or grant having regard, among other things, to the amounts paid or payable to the Contractor by the Authority under the Contract.

Part 4- Third Party Intellectual Property – Rights and Restrictions

Notifications

1. As he becomes aware, the Contractor shall promptly notify the Authority of:

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

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

This Clause 1 does not apply in respect of Articles or Services normally available from the Contractor as a commercial off the shelf (COTS) item or service.

- 2. If the information required under this Condition has been notified previously, the Contractor may meet his obligations by giving details of the previous notification.

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

- 3. In respect of any question arising (by way of an allegation made to the Authority or Contractor, or otherwise) that the manufacture or supply under the Contract of any Article or Service normally available from the Contractor as a COTS item or service is an infringement of a United Kingdom Patent or Registered Design not owned or controlled by the Contractor or the Authority, the Contractor shall, subject to the agreement of the third party owning such Patent or Registered Design, be given exclusive conduct of any and all negotiations for the settlement of any claim or the conduct of any litigation arising out of such question. The Contractor shall indemnify the Authority, its officers, agents and employees against any liability and cost arising from such allegation. This Clause will not apply if:
 - a. the Authority has made or makes an admission of any sort relevant to such question;
 - b. the Authority has entered or enters into any discussions on such question with any third party without the prior written agreement of the Contractor;
 - c. the Authority has entered or enters into negotiations in respect of any relevant claim for compensation in respect of Crown Use under Section 55 of the Patents Act 1977 or Section 12 of the Registered Designs Act 1977;
 - d. legal proceedings have been commenced against the Authority or the Contractor in respect of Crown Use, but only to the extent of such Crown Use that has been properly authorised.
- 4. The indemnity in Clause 3 does not extend to use by the Authority of anything supplied under the Contract where that use was not reasonably foreseeable at the time of the Contract.
- 5. In the event that the Authority has entered into negotiation in respect of a claim for compensation, or legal proceedings in respect of the Crown Use have commenced, the Authority shall forthwith authorise the Contractor for the purposes of performing the Contract (but not otherwise) to utilise a relevant invention or design in accordance with

Sections 55 and 56 of the Patents Act 1977 or Section 12 of the Registered Designs Act 1949 and to use any model, document or information relating to any such invention or design which may be required for that purpose.

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

6. a relevant invention or design has been notified to the Authority by the Contractor prior to the date of the Contract, then unless it has been otherwise agreed, under the provisions of Sections 55 and 56 of the Patents Act 1977 or Section 12 of the Registered Designs Act 1949, the Contractor is hereby authorised to utilise that invention or design, notwithstanding the fact that it is the subject of a United Kingdom Patent or United Kingdom Registered Design, for the purpose of performing the Contract.
7. If, under Clause 1, a relevant invention or design is notified to the Authority by the Contractor after the date of Contract, then:
 - e. if the owner (or his exclusive licensee) takes or threatens in writing to take any relevant action against the Contractor, the Authority shall issue to the Contractor a written authorisation in accordance with the provisions of Sections 55 and 56 of the Patents Act 1977 or Section 12 of the Registered Designs Act 1949, and
 - f. in any event, unless the Contractor and the Authority can agree an alternative course of action, the Authority shall not unreasonably delay the issue of a written authorisation in accordance with the provisions of Sections 55 and 56 of the Patents Act 1977 or Section 12 of the Registered Designs Act 1949.

Patents, Utility Models and Registered Designs outside the UK

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

Royalties and Other Licence Fees

10. The Contractor shall not be entitled to any reimbursement of any royalty, licence fee or similar expense incurred in respect of anything to be done under the Contract, where:
 - g. a relevant discharge has been given under Section 2 of the Defence Contracts Act 1958, or relevant authorisation in accordance with

Sections 55 or 57 of the Patents Act 1977, Section 12 of the Registered Designs Act 1949 or Section 240 of the Copyright, Designs and Patents Act 1988 in respect of any intellectual property, or

- h. any obligation to make payments for intellectual property has not been promptly notified to the Authority under Clause 1 of this Condition.

11. Where an authorisation is given by the Authority under Clause 5, Clause 6 or Clause 7, to the extent permitted by Section 57 of the Patents Act 1977, Section 12 of the Registered Designs Act 1949 or Section 240 of the Copyright, Designs and Patents Act 1988, the Contractor shall also be:

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

Copyright, Design Rights etc.

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

- k. infringement or alleged infringement by the Contractor or his suppliers of any copyright, database right, design right or the like protection in any part of the world in respect of any item to be supplied under the Contract or otherwise in the performance of the Contract;
- l. misuse of any confidential information, trade secret or the like by the Contractor in performing the Contract;
- m. provision to the Authority of any information or material which the Contractor does not have the right to provide for the purpose of the Contract.

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

- n. infringement or alleged infringement by the Contractor or his suppliers of any copyright, database right, design right or the like protection in any part of the world in respect of any item provided by the Authority for the purpose of the Contract but only to the extent that the item is used for the purpose of the Contract;
- o. alleged misuse of any confidential information, trade secret or the like by the Contractor as a result of use of information provided by the Authority for the purposes of the Contract, but only to the extent that Contractor's use of that information is for the purposes intended when it was disclosed by the Authority.

Authorisation and Indemnity - General

14.

- a. The above represents the total liability of each party to the other under the Contract in respect of any infringement or alleged infringement of Patent or other Intellectual Property Right owned by a third party
- b. Neither party shall be liable, one to the other, for any consequential loss or damage arising as a result, directly or indirectly, of a claim for infringement or alleged infringement of any Patent or other Intellectual Property Right owned by a third party.
- c. A party against whom a claim is made or action brought, shall promptly notify the other party in writing if such claim or action appears to relate to an infringement which is the subject of an indemnity or authorisation given under this Condition by such other party. The notification shall include particulars of the demands, damages and liabilities claimed or made of which the notifying party has notice.
- d. The party benefiting from the indemnity or authorisation shall allow the other party, at its own expense, to conduct any negotiations for the settlement of the same, and any litigation that may arise therefrom and shall provide such information as the other party may reasonably require.
- e. Following a notification under sub-Clause 14c., the party notified shall advise the other party in writing within 30 days whether or not it is assuming conduct of the negotiations or litigation. In that case the party against whom a claim is made or action brought shall not make any statement which might be prejudicial to the settlement or defence of such a claim without the written consent of the other party.
- f. The party conducting negotiations for the settlement of a claim or any related litigation shall, if requested, keep the other party fully informed of the conduct and progress of such negotiations.

15.

- a. If at any time a claim or allegation of infringement arises in respect of copyright, database right, design right or breach of confidence as a result of the provision of any item by the Contractor to the Authority, the Contractor may at its own expense replace the item with an item of equivalent functionality and performance so as to avoid infringement or breach;
- b. The parties will co-operate with one another to mitigate any claim or damage which may arise from use of third party intellectual property rights.

Subcontracts

- 16. The Contractor shall secure from any subcontractor, the prompt notification to the Authority of the information required by Clause 1 of this Part 4. On receipt of any such notification the Authority will issue a written authorisation to the subcontractor in accordance with Clause 7 of this Part 4. Any such authorisation will be subject always to Clauses 10, 11 and 14 as though the subcontractor was the Contractor. If any claim or action relevant to such authorisation arises, it shall be promptly notified to the Authority. The Contractor is not authorised to enter into any substantive correspondence in such matter nor in any way to act on behalf of the Authority in such claim or action. Any arrangement between the Contractor and subcontractor to enable the Contractor to underwrite his indemnities to the Authority under this Condition is a matter between the Contractor and the subcontractor.

General

- 17. In this Condition:

- p. 'design right' has the meaning ascribed to it by Section 213 of the Copyright, Designs and Patents Act 1988
 - q. 'Crown Use' in relation to a patent means the doing of anything by virtue of Sections 55 to 57 of the Patents Act 1977 which otherwise would be an infringement of the patent and in relation to a Registered Design has the meaning given in paragraph 2A(6) of the First Schedule to the Registered Designs Act 1949.
18. Nothing in this Condition shall be taken as an authorisation or promise of an authorisation under Section 240 of the Copyright, Designs and Patents Act 1988.
19. The Contractor shall promptly notify the Authority in writing of such costs, claims, demands, damages, liabilities and expenses of which he himself shall have notice and shall provide the Authority with such information regarding the claim as the Authority shall reasonably require;

Annex A

Form of Confidentiality Agreement

Ministry of Defence

Confidentiality Agreement

THIS AGREEMENT is made the day of 20 .

BETWEEN

[hereinafter called "the Holder"] of the one part, AND

[hereinafter called "the Recipient"] of the other part.

WHEREAS:

- A. The Holder owns certain valuable property and equitable rights in information identified or referenced in Appendix 1 to this Agreement (hereinafter referred to as "the Information");
- B. The Holder has agreed, by contract or otherwise with the Secretary of State for Defence (hereinafter called "the Authority") that Information may be disclosed to the Recipient for the purpose as identified in Appendix 1 to this Agreement (hereinafter referred to as "the Purpose"). The Authority has agreed that such disclosures will only be made to parties who have signed an appropriate confidentiality agreement with the Holder;
- C. The Recipient is willing to receive and hold the Information subject to the terms of this Agreement;

NOW the parties to this Agreement agree that in consideration of the disclosure of Information by the Holder or the Authority to the Recipient:

- 1. The Recipient shall, subject to the following provisions of this Agreement, hold the Information under conditions of strict confidence and shall not use, copy, or disclose the Information other than to the Authority, in whole or in part in any manner or form for other than for the Purpose.
- 2. The Recipient may disclose the Information under an obligation of confidence only to those of its officers and employees as need to know the Information for the Purpose. If the Recipient needs to disclose the Information to potential sub-contractors the Recipient shall first inform the Authority and the Holder for approval, obtain from the potential sub-contractor an agreement on behalf of the Holder in the same form as this Agreement, and forward it promptly to the Holder.
- 3. The restrictions and obligations in paragraphs 1 and 2 shall not apply to any of the Information which the Recipient can show:
 - a. is already known to the Recipient (without restrictions on disclosure or use) prior to its disclosure to the Recipient directly or indirectly from the Authority or the Holder; or
 - b. is received by the Recipient without any obligation of confidence from a third party having a right to disclose it; or
 - c. has been generated independently by the Recipient; or
 - d. is in or enters the public domain otherwise than by breach of this or another undertaking;

provided the relationship to the remainder of the Information is not revealed.

4. Any disclosure by the Recipient, as required by an act of law, shall be to the minimum extent necessary and shall not constitute a breach of this Agreement.

5. On completion or termination of the Purpose or on written instruction from the Authority to the Recipient, the Recipient shall at the discretion of the Authority either, promptly return the Information, and any copies of it, to the Authority, or destroy the Information taking all reasonable steps to permanently expunge all electronic copies of the Information, and this Agreement shall terminate except for the restrictions and obligations in paragraphs 1 and 2.

6. In the event that the Recipient is awarded the contract pursuant to its response to an ITT as part of the Purpose, the Recipient agrees that the terms of this Agreement shall apply to the Information disclosed (and any amended or extended versions of it) to the Recipient under the contract supplemented only by those requirements in the contract which relate to the use of the Information by the Recipient for the duration of the contract. On completion or termination of the contract the Recipient shall promptly return or destroy the Information in accordance with paragraph 5 above.

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

8. This Agreement does not include, constitute or imply any transfer, assignment or licence or rights in any information, whether or not identified in Appendix 1, owned by the Holder, other than that specified in paragraph 1.

9. The Recipient hereby acknowledges that the Information is disclosed to the Recipient by or on behalf of the Authority on the basis that the Holder shall have no liability whatsoever to the Recipient arising from any use of the Information by the Recipient and the Recipient will bring no claim against the Holder in relation to the Information or any use of it.

10. The Recipient shall notify both the Authority and the Holder if it becomes aware of, or reasonably suspects, any loss or actual compromise of any of the Information.

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

12. This Agreement (including Appendix 1) sets out the entire agreement between the Holder and the Recipient in connection with the subject matter of this Agreement. However, nothing in this Agreement shall affect the rights or obligations of either party in relation to the Authority in respect of the Information.

13. Neither this Agreement nor any of its provisions shall be amended or waived unless agreed to in writing by duly authorised representatives of the Holder and the Recipient. No waiver of any provision of this Agreement shall constitute a waiver of any other provision(s) or of the same provision on another occasion.

14. This Agreement is made subject to English [Scottish] law and to the exclusive jurisdiction of the English [Scottish] courts, and shall be effective as from the date of signature by the Recipient, and despatch to the Holder.

Signed on behalf of
the Recipient by:

In the capacity of:
Date:

Signed on behalf of
the Holder by:

In the capacity of:
Date:

[This Appendix is to be completed and signed before signature of the Agreement. If new material is to be transferred under an existing agreement, a new Appendix must be drawn up, to include the original Information together with the new Information and re-signed under an incremented Appendix number, for example Appendix 2 to DEFFORM 94.]

1. **THE PURPOSE**

[Delete as Applicable]

- a. To allow the Recipient to respond to an Invitation to Tender (including performance of a subsequent contract) No [].
- b. To allow the Recipient to provide the Authority with an assessment of Invitation to Tender No [].
- c. To allow the Recipient to provide the Authority with a service and/or contract for the following purpose [].

2. **INFORMATION TO BE PROTECTED UNDER THIS AGREEMENT**

[Insert a narrative covering the entirety of the Information to be disclosed]

Signature below hereby invokes agreement to the terms of DEFFORM 94 in respect of the Information described herein.

Signed on behalf of
the Recipient by:

Signed on behalf of
the Holder by:

In the capacity of:

In the capacity of:

Date:

Date:

Annex B - DEFFORM 701⁴

See Separate Document Entitled DEFFORM701

⁴ Bidder to provide response to DEFFORM701 as part of Tender Return and response will be included in the Contract.

Annex C – Contract Technical Data Requirement⁵

⁵ Authority has provided Contract Technical Data Requirements as part of the ITN and upon Contract Finalisation this will be included within this Annex to Schedule 14.

Annex D - NOTIFICATIONS OF INTELLECTUAL PROPERTY RIGHTS (IPR)
RESTRICTIONS

(See Separate Document entitled Annex D – Notification of Intellectual Property Rights (IPR) Restrictions).