

SCHEDULE K: INTELLECTUAL PROPERTY – RIGHTS IN TECHNICAL DATA

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1. Definitions

Defined terms used in this Schedule shall have the meanings given to them in the Agreement and, unless the context otherwise requires, the following terms shall have the meanings given below:

1.1 “Technical Data” means information of a scientific or technical nature, or programme/project management information that is a Contractor Deliverable, which is recorded or documented in any medium and whether or not in human readable format, but excluding unrecorded information communicated solely by oral communications and excluding software subject to the provisions of DEFCON 91, DEFFORM 701 or as otherwise licensed to the Authority.

1.2 “Article” means, for the purposes of this Schedule, part or the whole of any item, component or process which the Contractor is required under an Approved Tasking Order to supply or in connection with which it is required under the Approved Tasking Order to carry out any service and any other article or part thereof to the same design as that article.

1.3 “Commercially-available Off-The-Shelf Item”, or “COTS Item” means an item that is freely available on the open market and is provided with sufficient information to enable it to be installed, operated and replaced, without reference to the Contractor or any Contractor Related Party.

1.4 “Interface Data” means Technical Data that describes the overall physical, functional and performance characteristics (for example, “form, fit and function” information) of an Article to the extent necessary to operationally replace the Article with interchangeable items, components or processes, or to interoperate with other items, components or processes.

1.5 “Intellectual Property Rights” or “IPR” means all patents, utility models, or rights (registered and unregistered) in any designs; applications for any of the foregoing; copyright; database rights; semiconductor chip topography rights; confidential information and trade secrets; and all rights and forms of protection of a similar nature to these or having equivalent effect anywhere in the world.

1.6 “HMG” means Her Majesty’s Government of the United Kingdom of Great Britain and Northern Ireland.

1.7 “Unlimited Rights” means rights to copy, use, modify, reproduce, perform, display, release, or disclose Technical Data in whole or in part, and to authorise third parties to do so, in any manner, and for any purpose; but such purposes shall not extend to commercial sales of Articles except for disposal of outworn or surplus items, nor to licensing of Contractor-owned IPR for revenue generation.

1.8 “Unlimited Rights Technical Data” means Technical Data in which the Authority has Unlimited Rights.

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1.9 “Limited Rights” means rights to copy, use, modify, reproduce, release, perform, display, or disclose Technical Data, in whole or in part, within HMG for any purpose.

1.10 “Limited Rights Technical Data” means Technical Data in which the Authority has Limited Rights.

2. Ownership of IPR

2.1 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 Approved Tasking Order shall, as between the Authority and the Contractor, belong to the Contractor.

3. Rights in Technical Data

3.1 Unlimited Rights

3.1.1 [REDACTED]

3.4 Modifications

3.4.1 [REDACTED]

3.5 Contractor Background Patents

3.5.1 [REDACTED]

3.6 Authority’s Quiet Enjoyment; and Embedded Software

3.6.1 [REDACTED]

3.7 COTS Items

3.7.1 [REDACTED]

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

4.1 [REDACTED]

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4.3 [REDACTED]

5. Marking of Technical Data

5.1 [REDACTED]

5.2 [REDACTED]

5.3 [REDACTED]

5.4 [REDACTED].

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6. Effect and Removal of Nonconforming and Incorrect Markings

6.1 The Authority shall notify the Contractor in writing of any incorrect markings on Technical Data and any markings that do not conform to the provisions of Paragraph 6. The Contractor shall remove or correct the markings within 30 calendar days of notification. Failure to remove or correct the markings may be a ground for non-acceptance of the Technical Data and withholding of an appropriate sum from the payment due under the Approved Tasking Order until resolved.

6.2 If the Contractor fails to remove or correct a marking within 30 calendar days of notification, the Authority shall be entitled to ignore the marking and use the Technical Data as if it had an Unlimited Rights licence in accordance with Paragraph 3.1.1 and, if the Authority considers it appropriate, remove or correct the marking.

7. Technical Data Provided By Contractor Related Parties

7.1 [REDACTED]

7.2 [REDACTED]

7.3 [REDACTED]

8. Contractor Retention of Records

8.1 The Contractor shall retain, for the duration of the Approved Tasking Order and for a period of six years thereafter, or such alternative period as may be specified in the Tasking Form, a record of the work performed under the Approved Tasking Order and of the results obtained, and the Technical Data generated, delivered or to be delivered to the Authority.

8.2 The Authority shall have the right to inspect the records maintained by the Contractor in accordance with Paragraph 8.1, within the period specified and on reasonable notice. The Authority shall further have the right to require additional deliveries, within 45 calendar days, of any Technical Data that was generated in the performance of work under the Approved Tasking Order whether or not contained in the Contractor Deliverables for so long as this Technical Data exists. 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.

8.3 Subject to the availability of the relevant expertise and on a request made by the Authority within the period specified in Paragraph 8.1, the Contractor shall provide assistance in understanding any Technical Data to the Authority or any other person to whom the Authority may provide it in accordance with its rights under Paragraph 3. The degree of assistance shall be limited to that required for a person competent in the relevant area of technology to interpret the results of the Approved Tasking Order. The assistance shall be made available within 60 calendar days of the request and on fair and reasonable terms and conditions, including the costs of providing the assistance, but shall not require any payment in respect of the use of Technical Data.

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8.4 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 delivering the Control Copy.

9. Liability

9.1 In the event that Technical Data to which this Schedule applies is used by or for the Authority otherwise than for the purpose for which it was supplied in accordance with the relevant Approved Tasking Order, 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

10.1 For the avoidance of doubt, nothing in this Schedule shall:

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

10.1.2 extinguish or diminish any statutory rights or common law rights of the Authority to use any Technical Data that is a Contractor Deliverable or any IPR covering such Technical Data or any rights of the Authority acquired under any separate contract or agreement.

10.2 Nothing in this Schedule shall affect the Authority’s rights under Section 48(2) of the Copyright, Designs and Patents Act 1988.

10.3 The terms of this Schedule shall survive the termination or expiry of this Agreement.