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**NEC4 ENGINEERING AND  
CONSTRUCTION CONTRACT OPTION  
C: contract relating to Part 1 of the  
contract for the  
Royal Air Force Centre of Aviation  
Medicine Relocation  
Contract Number 701577386**

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**THIS contract** is made on

**BETWEEN:**

- (1) **MINISTRY OF DEFENCE** whose principal offices are at Whitehall, London, SW1A 2HB, United Kingdom ("**Client**" which expression shall include its successors in title and assigns); and
- (2) [**CONTRACTOR**] [(company number [insert number])] whose [registered] [principal] office is at [insert address] ("**Contractor**").

**WHEREAS:**

- (A) The *Client* wishes the *Contractor* to Provide the Works on the terms set out in this contract.
- (B) The *Contractor* has examined the *Client's* requirements identified in the Scope and is satisfied that it can meet those requirements.

**NOW IT IS AGREED THAT:**

**1 Introduction**

In this document, the following words and expressions have the following meanings unless the context requires otherwise:

"contract" means the contract concluded between the Client and the Contractor, including all specifications, plans, drawings, schedules and other documentation, expressly made part of the contract.

**2 Works**

2.1 The *Contractor* Provides the Works in accordance with:

- 2.1.1 this contract as amended by Part 4;
- 2.1.2 the Schedules specified in Part 5 as listed below:
  - (i) Schedule 1 –Insurance Provisions;
  - (ii) Schedule 2 – Annex N JSP 440;
  - (iii) Schedule 3 – GDPR Schedule;
  - (iv) Schedule 4 – Annexes A and–B - Minimum Requirement - Financial Management Reports to be Provided by Suppliers;
  - (v) Schedule 5 – Accounting for Property of the Client – Data & Format Requirements for PSA Records;
  - (vi) Schedule 6 – Security Measures;
  - (vii) Schedule 7 – Project Bank Account Trust Deed; and
  - (viii) Schedule 8 – Special Procedure for Initial Spares;

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- 2.1.3 the DEFFORMS specified in Part 6 as listed below:
  - (i) DEFFORM 10B;
  - (ii) DEFFORM 687C;
  - (iii) DEFFORM 701;
- 2.1.4 any X Secondary clauses referred to in Part 3, as applicable;
- 2.1.5 the standards specified in Schedule 9.

**3 Price**

- 3.1 The *Client* pays the *Contractor* the amount due under the Contract.

**4 Conditions**

- 4.1 The terms and conditions of the NEC4 Contract (June 2017 edition) have effect as modified by this contract (including the Core Clauses specified in Part 1, the Main Option Clauses specified in Part 2, the Z Clauses specified in Part 4, the Schedules specified in Part 5, the forms specified in Part 6 and any X Secondary clauses in Part 3 as applicable).
- 4.2 Where a reference is made to a Clause of the NEC4 Contract it shall be read and construed to be a reference to that Clause as amended by this contract.
- 4.3 Number not used.
- 4.4 If there is any ambiguity or inconsistency between the documents comprising the Contract, the priority of documents is in accordance with the following sequence:
  - 4.4.1 this contract (as amended);
  - 4.4.2 the completed Contract Data;
  - 4.4.3 the Scope;
  - 4.4.4 the tender documents, including DEFFORMS 10 and 47; and
  - 4.4.5 any other document forming part of the contract.

**5 The Defence and Security Public Contracts Regulations 2011 (“DSCPR”)**

- 5.1 Without prejudice to Clause 90 of the NEC4 Contract, the Client may terminate the Contractor’s obligation to Provide the Works if at any time the Contractor is convicted of any of the offences listed in regulation 23(1) DSPCR.
- 5.2 If the Client terminates in accordance with paragraph 5.1 as a result of information not disclosed by the Contractor at the Contract Date, the procedure and amounts due on termination are the same as if the Contractor has substantially failed to comply with his obligations.
- 5.3 If the Client otherwise terminates under the provisions of paragraph 5.1, the procedures and amounts due on termination are the same as if the Parties had

been released under the law from further performance of the whole of this Contract..

## **6 Complete agreement**

- 6.1 The contract is the complete and entire agreement between the Client and the Contractor in relation to the design, construction and commissioning of the Works, and supersedes all other oral and/or written communications. The parties are not bound, or liable for, any statement, representation, promise, inducement or understanding not contained in the Contract. No amendments or modifications of the Contract are valid unless recorded in writing and executed as a deed by both parties, save for instructions and any other changes permitted by the Contract.

## **7 Contracts (Rights of Third Parties) Act**

- 7.1 The Contracts (Rights of Third Parties) Act 1999 is excluded from applying to the Contract and nothing in it, save as expressly stated, confers or purports to confer on any third party, any benefit or right to enforce any of its terms and or conditions.

## **8 Governing law**

- 8.1 The contract is governed by, and construed and interpreted in accordance with, English law.
- 8.2 Any dispute arising out of or in connection with the Contract shall be determined within the English jurisdiction and to the exclusion of all foreign jurisdictions save that a foreign jurisdiction may apply solely for the purposes of giving full effect to this Condition and for the enforcement of any judgement order or award given under the English jurisdiction. Each party to the Contract irrevocably submits to the jurisdiction provided for under this Clause
- 8.3 Each party hereby warrants to each other that entry into the Contract does not and performance thereof will not in any way violate or conflict with any provision of law, statute, rule, regulation, judgement, writ, injunction, decree or order applicable to it; and that the Contract does not conflict with or result in a breach or termination of any provision of, or constitute a default under any mortgage, contract or other liability, charge or encumbrance upon any of its properties or other assets.
- 8.4 Each party hereby agrees with each other party that the provisions of this Condition shall survive any termination of the Contract for any reason whatsoever and shall remain fully enforceable as between the parties notwithstanding such a termination.
- 8.5 To the extent the Contractor's company registered office is outside the United Kingdom, the Contractor irrevocably appoints the solicitors or other persons in England and Wales, specified in the Contract as its agents to accept on its behalf service of all process and other documents of whatever description to be served on the Contractor in connection with any litigation or arbitration within the English jurisdiction arising out of or relating to the Contract or any issue connected therewith.

## **9 Dispute resolution procedure**

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- 9.1 Subject always to the right of either Party to refer any dispute to adjudication in accordance with Clause 11 (Adjudication), the Parties shall attempt in good faith to resolve any dispute or claim arising out of or relating to this Contract through negotiations between the respective representatives of the Parties having authority to settle the matter, which attempts may include the use of any Alternative Dispute Resolution (“ADR”) procedure on which the Parties may agree.
- 9.2 In the event that the dispute or claim is not resolved by negotiation, or where the Parties have agreed to use an ADR procedure, by the use of such procedure, the dispute shall be referred to arbitration.
- 9.3 The Party initiating the arbitration shall give a written notice of arbitration to the other Party. The notice of arbitration shall specifically state:
  - 9.4 that the dispute is referred to arbitration; and
  - 9.5 the particulars of this Contract out of or in relation to which the dispute arises.
- 9.6 Unless otherwise agreed in writing by the Parties, the arbitration and this Clause 10 (Dispute resolution procedure) shall be governed by the provisions of the Arbitration Act 1996.
- 9.7 It is agreed between the Parties 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.
- 9.8 For the avoidance of doubt it is agreed between the Parties that the arbitration process and anything said, done or produced in or in relation to the arbitration process (including any awards) shall be confidential as between the Parties, except as may be lawfully required in judicial proceedings relating to the arbitration or otherwise. No report relating to anything said, done or produced in or in relation to the arbitration process may be made beyond the tribunal, the Parties, their legal representatives and any person necessary to the conduct of the proceedings, without the concurrence of all the Parties to the arbitration.

## **10 Adjudication**

- 10.1 Either Party may at any time refer any dispute arising under this Contract to adjudication in accordance with Clause 19J (Adjudication) notwithstanding that any legal proceedings have been commenced in respect of such dispute. This includes insofar as the Housing Grants, Construction and Regeneration Act 1996 (as amended by the Local Democracy, Economic Development and Construction Act 2009) (“the Act”) applies.

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## SECONDARY OPTION CLAUSES

### PART 3 - X SECONDARY CLAUSES

- X7 Delay damages
- X7.1 *Contractor* pays delay damages at the rate stated in the Contract Data from the Completion Date until Completion.
- X7.2 If the Completion Date is changed to a later date after delay damages have been paid, the *Client* repays the overpayment of damages with interest. Interest is assessed from the date of payment to the date of repayment and the date of repayment.
- X7.3 If the *Client* takes over a part of the works before Completion, the delay damages are reduced from the date on which the part is taken over. The Project Manager assesses the benefit to the *Client* of taking over the part of the works as a proportion of the benefit to the *Client* of taking over the whole of the works not previously taken over. The delay damages are reduced in this proportion.
- X13 Performance bond
- X13.1 If so stated in the Contract Data, the *Contractor* gives the *Client* a performance bond, provided by a bank or insurer which the Project Manager has accepted, for the amount stated in the Contract Data and in the form set out in Part 3, Schedule 1 of this contract. A reason for not accepting the bank or insurer is that its commercial position is not strong enough to carry the bond. If the bond was not given by the Contract Date, it is given to the *Client* within four (4) weeks of the Contract Date. Notwithstanding any other provision of this Contract no payments shall become due to the *Contractor* under this Contract while the *Contractor* remains in default of his obligations under this Clause X13.1.
- X16 Retention
- X16.1 After the Price for Work Done to Date has reached the *retention free amount*, an amount is retained in each amount due. Until the earlier of
- Completion of the whole of the works and
  - the date on which the *Client* takes over the whole of the *works*
- the amount retained is the *retention percentage* applied to the excess of the Price for Work Done to Date above the *retention free amount*.
- X16.2 The amount retained is halved
- in the next assessment made after Completion of the whole of the *works* or
  - in the next assessment after the *Client* has taken over the whole of the works if this is before Completion of the whole of the *works*.
- The amount retained remains at this amount until the date when the Defects Certificate is due to be issued. No amount is retained in the assessments made after the Defects Certificate is due to be issued.

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- X16.3 If the stated in the Contract Data or agreed by the *Client*, the Contractor may give the *Client* a retention bond, provided by a bank or insurer which the *Project Manager* has accepted, for the total amount to be retained and in the form set out in the Scope. A reason for not accepting the bank or insurer is that its commercial position is not strong enough to carry the bond. Any amount retained after the *Contractor* gives the *Client* a retention bond is paid to the *Contractor* in the next assessment.
- X18.1 Limitations on Liability
- Unlimited liabilities
- X18.1.1 Neither Party limits its liability for:
- X18.1.1.1 death or personal injury caused by its negligence, or that of its employees, agents or sub-contractors (as applicable);
- X18.1.1.2 fraud or fraudulent misrepresentation by it or its employees;
- X18.1.1.3 breach of any obligation as to title implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982; or
- X18.1.1.4 any liability to the extent it cannot be limited or excluded by law.
- X18.1A For the avoidance of doubt any payments due from either of the Parties to the other in accordance with DEFCON 811 (Single Source: Profit and Loss Sharing on Firm/Fixed Price Contracts) or the Defence Reform Act 2014 and/or the Single Source Contract Regulations 2014, as amended from time to time, shall not be excluded or limited under the provisions of this clause x18.
- X18.1.2 The financial caps on the Contractor's liability set out in Clause X18.1.4 below shall not apply to the following:
- X18.1.2.1 for any indemnity given by the *Contractor* to the *Client* under this Contract, including but not limited to the Commercial Officer must include all Indemnities that are included in the Contract;
- X18.1.2.2 the Contractor's indemnity in relation to Clause 22 of this Contract (Intellectual Property Rights) and Clause 22 of this Contract (DEFCON 632) (Third Party IP - Rights and Restrictions);
- X18.1.2.3 number not used;
- X18.1.2.4 breach by the *Contractor* of the Commercial Officer to include as appropriate joint controller provisions and Data Protection Legislation;
- X18.1.2.5 for the avoidance of doubt, any payments due from the *Client* to the *Contractor* in accordance with the Defence Reform Act 2014 and/or the Single Source Contract Regulations 2014, as amended from time to time, shall not be excluded or limited under the provisions of Clause X18.1.5 below.

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- X18.1.3 The financial caps on the *Client's* liability set out in Clause X18.1.5 below shall not apply to any indemnity given by the *Client* to the *Contractor* under this Contract, including but not limited to Clause 90A of this Contract (DEFCON 656A). For the avoidance of doubt, any payments due from the Client to the Contractor in accordance with the Defence Reform Act 2014 and/or the Single Source Contract Regulations 2014, as amended from time to time, shall not be excluded or limited under the provisions of Clause X18.1.5 below

Financial limits

- X18.1.4 Subject to Clauses X18.1.1 and X18.1.2 and to the maximum extent permitted by Law:

X18.1.4.1 the Contractor's total liability in respect of losses that are caused by Defaults of the *Contractor* shall in no event exceed:

- (i) in respect of Clause 29E of this Contract (DEFCON 76), the amount in aggregate is £4 million;
- (ii) in respect of Clause 90B of this Contract (DEFCON 514) the amount in aggregate is £1.84 million;
- (iii) in respect of Clause 70B of this Contract (DEFCON 611) the amount in aggregate is £2.2 million;
- (iv) in respect of Clause 70D of this Contract (DEFCON 612) the amount in the aggregate is £2.2 million.

X18.1.4.2 without limiting Clause X18.1.4.1 and subject always to Clauses X18.1.1, X18.1.2, X18.1.2.5 and X18.1.4.3, the Contractor's total liability throughout the Term in respect of all other liabilities whether in contract, in tort (including negligence), arising under warranty, under statute or otherwise under or in connection with this Contract shall be £1.84 million.

X18.1.4.3 on the exercise of any and, where more than one, each option period or agreed extension to the Term, the limitation of the Contractor's total liability (in aggregate) set out in Clauses X18.1.4.1 and X18.1.4.2 above shall be fully replenished such that on and from each such exercise or extension of the Term, the *Client* shall be able to claim up to the full value of the limitation set out in Clauses X18.1.4.1 and X18.1.4.2 of this Contract.

- X18.1.5 Subject to Clauses X18.1.1, X18.1.3, X18.1.3.3 and X18.1.6, and to the maximum extent permitted by Law the *Client's* total liability (in aggregate) whether in contract, in tort (including negligence), under warranty, under statute or otherwise under or in connection with this Contract shall in respect of all liabilities (taken together) be limited to the Contract Price paid by the *Client* in the relevant Contract Year in respect of any and all claims in that Contract Year.

- X18.1.6 Clause X18.1.5 shall not exclude or limit the Contractor's right under this Contract to claim for the Charges.

Consequential loss

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X18.1.7 Subject to Clauses X18.1.1, X18.1.2 and X18.1.8, neither Party shall be liable to the other Party or to any third party, whether in contract (including under any warranty), in tort (including negligence), under statute or otherwise for or in respect of:

X18.1.7.1 indirect loss or damage;

X18.1.7.2 special loss or damage;

X18.1.7.3 consequential loss or damage;

X18.1.7.4 loss of profits (whether direct or indirect);

X18.1.7.5 loss of turnover (whether direct or indirect);

X18.1.7.6 loss of business opportunities (whether direct or indirect); or

X18.1.7.7 damage to goodwill (whether direct or indirect),

even if that Party was aware of the possibility of such loss or damage to the other Party.

X18.1.8 The provisions of Clause X18.1.7 shall not restrict the *Client's* ability to recover any of the following losses incurred by the *Client* to the extent that they arise as a result of a Default by the *Contractor*:

X18.1.8.1 any additional operational and administrative costs and expenses arising from the Contractor's Default, including any costs paid or payable by the *Client*:

(i) to any third party;

(ii) for putting in place workarounds for the *Contractor Deliverables* and other deliverables that are reliant on the *Contractor Deliverables*; and

(iii) relating to time spent by or on behalf of the *Client* in dealing with the consequences of the Default;

X18.1.8.2 any or all wasted expenditure and losses incurred by the *Client* arising from the Contractor's Default, including wasted management time;

X18.1.8.3 the additional cost of procuring and maintaining in place transitional assistance and replacement deliverables for the remainder of the Term and any option period or agreed extension to the Term (including legal and other consultants' fees, re-procurement project costs, other expenses associated with such exercise and any increase in the fees for the replacement services over and above the Contract Price that would have been payable for the relevant *Contractor Deliverables*);

X18.1.8.4 any losses arising in connection with the loss, destruction, corruption, inaccuracy or degradation of *Client* data, or other data or software, including, to the extent the *Client* data, other data or

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software can be recovered or reconstituted, the fees, costs and expenses of reconstituting such *Client* data, data or software;

- X18.1.8.5 damage to the *Client's* physical property and tangible assets, including damage under Clause 29E and 70B of this Contract (DEFCONS 76 and 611);
- X18.1.8.6 costs, expenses and charges arising from, or any damages, account of profits or other award made for, infringement of any third-party Intellectual Property Rights or breach of any obligations of confidence;
- X18.1.8.7 any additional costs incurred by the *Client* in relation to the *Client's* contracts with a third party (including any compensation or interest paid to a third party by the *Client*) as a result of the Default (including the extension or replacement of such contracts);
- X18.1.8.8 any fine or penalty incurred by the *Client* pursuant to Law and any costs incurred by the *Client* in defending any proceedings which result in such fine or penalty; or
- X18.1.8.9 any savings, discounts or price reductions during the Term and any option period or agreed extension to the Term committed to by the *Contractor* pursuant to this Contract.

Invalidity

- X18.1.9 If any limitation or provision contained or expressly referred to in this Clause X18.1 is held to be invalid under any Law, it will be deemed to be omitted to that extent, and if any Party becomes liable for loss or damage to which that limitation or provision applied, that liability will be subject to the remaining limitations and provisions set out in this Clause X18.1.

Third party claims or losses

- X18.1.10 Without prejudice to any other rights or remedies the *Client* may have under this Contract (including but not limited to any indemnity claim under DEFCONS 91 and 632 or at Law), the *Client* shall be entitled to make a claim under this Contract against the *Contractor* in respect of any losses incurred by the *Client* which arise out of a claim made against the *Client* by a third party under any contract with that third party provided that such third party claim:
  - X18.1.10.1 arises naturally and ordinarily as a result of the Contractor's failure to provide the *Contractor* Deliverables or failure to perform any of its obligations under this Contract; and
  - X18.1.10.2 is a type of claim or loss that would have been recoverable under this Contract if the third party were a party to this Contract (whether as the *Client* or the *Contractor*), such claim to be construed as direct losses for the purpose of this Contract.

No double recovery

- X18.1.11 Neither Party shall be entitled to employ such rights and remedies available to it so as to seek to recover more than once in respect of the same loss, but the

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*Client* shall be entitled to use (singly or together) such rights and remedies available to the *Client* so as to recover the full extent of any recoverable losses suffered or incurred, including any remedies the *Client* may have against any guarantor.

- X18.2 The *Contractor* is not liable to the *Client* for a matter unless details of the matter are notified to the *Contractor* before the end of liability date.
- X21 Whole life cost
- X21.1 The *Contractor* may propose to the *Project Manager* that the Scope is changed in order to reduce the cost of operating and maintaining an asset.
- X21.2 If the *Project Manager* is prepared to consider the change, the *Contractor* submits a quotation which comprises
- a detailed description,
  - the forecast cost reduction to the *Client* of the asset over its whole life,
  - an analysis of the resulting risks to the *Client*,
  - the proposed changes to the Prices and
  - a revised programme showing any changes to the Completion Date and Key Dates.
- X21.3 The *Project Manager* consults with the *Contractor* about a quotation. The *Project Manager* replies within the *period for reply*. The reply is acceptance of the quotation or the reasons for not accepting it. The *Project Manager* may give any reason for not accepting the quotation.
- X21.4 The *Project Manager* does not change the Scope as proposed by the *Contractor* unless the *Contractor's* quotation is accepted.
- X21.5 When a quotation to reduce the costs of operating and maintaining an asset is accepted the *Project Manager* changes the Scope, the Prices, the Completion Date and the Key Dates accordingly and accepts the revised programme. The change to the Scope is not a compensation event.
- X22 These additional clauses are to be used along with the NEC4 Engineering and Construction Contract (as amended by this contract) where early contractor involvement is required.

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X22.2 Additional ECC Contract Data entries

X22.3 Guidance on this additional Clause

- X22.1 Additional Clause for use with the NEC4 Engineering and Construction Contract (ECC) Option C

#### X22.1.1 Definitions

- (1) Budget is the items and amounts stated in the Contract Data unless the amounts are later changed in accordance with this Contract.
- (2) Project Cost is the total paid by the Client to the Contractor and Others for the items included in the Budget.
- (3) Stage One and Stage Two have the meanings given to them in the Scope.
- (4) Pricing Information is information which specifies how the Contractor prepares his assessment of the Prices for Stage Two, and is in the document which the Contract Data states it is in.

#### X22.1.2 Forecasts

X22.1.2.1 The *Contractor* provides detailed forecasts of the total Defined Cost of the work to be done in Stage One for acceptance by the Project Manager. Forecasts are prepared at the intervals stated in the Contract Data from the starting date until the issue of a notice to proceed to Stage Two.

Within one week of the *Contractor* submitting a forecast for acceptance, the Project Manager either accepts the forecast or notifies the *Contractor* of his reasons for not accepting it. A reason for not accepting the forecast is that:

- it does not comply with the Scope or
- it includes work which is not necessary for Stage One.

The *Contractor* makes a revised submission taking account of the Project Manager's reasons.

Any cost that is not included in the accepted forecast is treated as a Disallowed Cost.

X22.1.2.2 The *Contractor* prepares forecasts of the Project Cost in consultation with the Project Manager and submits them to the Project Manager. Forecasts are prepared at the intervals stated in the Contract Data from the starting date until Completion of the whole of the works. An explanation of the changes made since the previous forecast is submitted with each forecast.

#### X22.1.3 Proposals for Stage Two

X22.1.3.1 The Contractor submits his design proposals for Stage Two (for the avoidance of doubt, this will be to RIBA Stage 3) to the Project Manager for acceptance in accordance with the submission procedure stated in the Scope.

X22.1.3.2 The submission includes the *Contractor's* forecast of the effect of the design proposal on the Project Cost and the Accepted Programme.

X22.1.3.3 If the Project Manager does not accept a submission he gives his reasons. A reason for not accepting a *Contractor's* submission is that:

- it does not comply with the Scope;

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- it will cause the Client to incur unnecessary costs to Others; or
- the Project Manager is not satisfied that the Prices or any changes to the Prices have been properly assessed.

The *Contractor* makes a revised submission taking account of the Project Manager's reasons.

X22.1.3.4 The total of the Prices for Stage Two is assessed by the *Contractor* using the Pricing Information stated in the Contract Data.

The *Contractor* submits the total of the Prices for Stage Two to the Project Manager in the form of revisions to the Activity Schedule. The Activity Schedule includes the Price for Work Done to Date in Stage One.

X22.1.3.5 The *Contractor* obtains approvals and consents from Others as stated in the Scope.

X22.1.3.6 Any additional Scope provided by the *Contractor* for his design in Stage One becomes Scope for the *Contractor's* design.

X22.1.3.7 The Contractor completes any outstanding design during Stage Two.

X22.1.4 Key People

X22.1.4.1 The *Contractor* does not replace any key person during Stage One unless:

- he is instructed by the Project Manager to do so; or
- the person is unable to continue to act in connection with this Contract.

X22.1.4A Allowable Cost Review

X22.1.4A.1 Regarding the total of the Prices for Stage Two, but only in relation to changes to or variances from the Budget agreed for Stage One ("Changes and/or Variances"), the Client shall conduct an Allowable Cost Review ("ACR") under the Single Source Contract Regulations.

X22.1.4A.2 Any Changes and/or Variances must be:

- linked to the assumptions underpinning the Pricing Information in the Contract Data; and
- appropriate, attributable to this Contract and reasonable in the circumstances as those principles are explained in the most up-to-date guidance issued by the Single Source Regulations Office.

X22.1.4A.3 The total of the Prices for Stage Two can change from the figure in the Budget by inflation or deflation (as evidenced by the relevant ICIN – Construction – Infrastructure indices published by the Office for National Statistics) which has occurred between the date of the Contract and the submission of the total of the Prices for Stage Two to the ACR. No other inflationary increase shall be considered or permitted by the ACR.



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X22.1.4A.4 Annually, the Single Source Regulations Office reviews the Baseline Profit Rate used in the Fee (“Annual Review”). Where agreement is reached on Changes and/or Variances after an Annual Review has resulted in a new or revised Baseline Profit Rate, the Fee (in relation to those Changes and/or Variances only) shall be amended to reflect the new or revised Baseline Profit Rate. The Fee shall not be altered in relation to any other element of the total of the Prices for Stage 2.

X22.1.4A.5 The *Client* may agree to any:

- Changes and/or Variances which comply with clause X22.1.4A.2;
- any inflationary increase or deflationary decrease as provided for in clause X22.1.4A.3; and
- any changes to the Prices resulting from a change to the Fee in accordance with X22.1.4A.4.

X22.1.4A.6 The *Client* shall reject any Changes and/or Variances which do not comply with clause X22.1.4A.2 and any inflationary increase which is not as provided for in clause X22.1.4A.3. In these instances, the *Client* shall negotiate with the *Contractor* and/or propose a reduced total for the Prices for Stage Two for the *Contractor* to accept.

X22.1.5 Notice to proceed to Stage Two

X22.1.5.1 The *Project Manager* issues a notice to proceed to Stage Two when:

- the *Contractor* has obtained such approvals and consents as required for the works to proceed;
- changes to the Budget have been assessed and agreed by the *Client* during the ACR;
- the *Client* and the *Contractor* have agreed the total of the Prices for Stage Two;
- the total of the Prices for Stage Two has only been altered to reflect Changes and/or Variances which comply with clause X22.1.4A.2, any inflationary increase or deflationary decrease as provided for in clause X22.1.4A.3 and any change to the Fee provided for by X22.1.4A.4; and
- the *Client* has confirmed the works are to proceed.

X22.1.5.2 If the *Project Manager* does not issue a notice to proceed to Stage Two for any reason, he issues an instruction that the work required in Stage Two is removed from the Scope. This instruction is not a compensation event.

X22.1.5.3 If the *Project Manager* does not issue a notice to proceed to Stage Two because:

- the *Client* and the *Contractor* have not agreed the total of the Prices for Stage Two;
- the *Contractor* has failed to achieve the performance requirements stated in the Scope; or

the *Client* may appoint another contractor to complete the Stage Two works.

X22.1.6 Changes to the Budget

X22.1.6.1 If one of the following events happens, the Project Manager and the *Contractor* discuss different ways of dealing with changes to the Budget which are practicable.

- The Project Manager gives an instruction changing the *Client's* requirements stated in the Scope.
- Additional events stated in the Contract Data.

X22.1.6.2 The Project Manager and the *Contractor* agree changes to the Budget within four weeks of the event arising which changes the Budget. If the Project Manager and the *Contractor* cannot agree the changes to the Budget the Project Manager assesses the change and notifies the *Contractor* of his assessment.

X22.1.7 The Parties 'use of material

X22.1.7.1 The *Client* has the right to use the material provided by the *Contractor* for the purpose stated in the Scope. The *Contractor* obtains from a Subcontractor equivalent rights for the *Client* to use material prepared by the Subcontractor.

X22.1.7.2 The *Contractor* has the right to use material provided by the *Client* only to Provide the Works. The *Contractor* may make this right available to a Subcontractor. On Completion of the whole of the works, the *Contractor* returns the material provided by the *Client* to him.

X22.1.7.3 The *Contractor* may use the material provided by him under this Contract for other work unless stated otherwise in the Scope.

X22.1.8 Incentive payment

X22.1.8.1 At the end of Stage Two (and not before), the *Project Manager* assesses the *Contractor's* share of the difference between the Budget and the final Project Cost. If the final Project Cost is less than the Budget, the *Contractor* is paid his share of the saving as stated in the Contract Data.

X22.1.8.2 The *Project Manager* makes a preliminary assessment of the forecast *Contractor's* share at Completion of the whole of the works. This share is included in the amount due following Completion of the whole of the works.

X22.1.8.3 The *Project Manager* makes a final assessment of the *Contractor's* share and includes this in the final amount due.

X22.2 Additional ECC Contract Data entries

**Add the following to the Contract Data part one**

The Budget is:

**Total** \_\_\_\_\_

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The *Contractor* does not prepare forecasts of the total Defined Cost of the work to be done in Stage One because there are no intervals

The *Contractor* prepares forecasts of the total Project Cost at intervals no longer than 12 weeks.

**If there are additional reasons to change the Budget**

These are additional reasons to change the Budget: none

The *Contractor* provides these additional insurances

Insurance against liability of the *Contractor* for claims made against him arising out of his failure to use the skill and care normally used by professionals providing services similar to those required in the Scope.

The minimum amount of cover is five million pounds (£5,000,000) in respect of each claim, without limit to the number of claims and to be maintained for the period of 12 years following Completion of the whole of the *works* or earlier termination.

**Add the following to the Contract Data part two**

- The Stage One key people are

(1) Name .....

Job .....

Responsibilities .....

Qualifications .....

Experience .....

(2) Name .....

Job .....

Responsibilities .....

Qualifications .....

Experience .....

- The Pricing Information is in .....

**1 Schedule 1 - Performance Bond**

**BOND GIVEN BY A BANK AS A DEED IN RESPECT OF A PROJECT CONTRACT**

Name of Issuing Bank: .....

Address: .....

To: The Secretary of State for Defence

We refer to Project Contract [*insert Ref. Number*] for [*insert title of Project Contract*] to be awarded on [*insert Project Contract date*] to [*insert Contractor's full corporate name*] whose registered number is [*insert Co. reg number*] (the '*Contractor*') following the *Contractor's* tender for the above requirement dated [*insert Tender date*] and we hereby irrevocably and unconditionally agree:

- 1 to pay you any amount or amounts not exceeding in aggregate the sum of £[*insert sum*] upon receipt by us at [*insert address*] of your first demand in writing certifying that any one or more of the following has occurred:
  - a) the *Contractor* has failed in any respect duly to perform and observe, or is otherwise in breach of any of its obligations in and arising from the Project Contract; or
  - b) any of the *Contractor's* obligations in and arising from the Project Contract are or become void, voidable, unenforceable or otherwise ineffective; or
  - c) the Project Contract has been terminated owing to a breach or an event of default on the part of the *Contractor*; or
  - d) a receiver, administrative receiver, administrator, liquidator or similar officer is appointed over any or all of the *Contractor's* undertaking or assets;

For the purposes of this bond any such demand and certification(s) shall be conclusive evidence (and admissible as such) of the statements and the amounts claimed therein;

- 2 that this bond shall not be affected by any insolvency (including, without limitation, winding up, administration, receivership or administrative receivership), amalgamation, reconstruction, change of name, ownership, control or status or any legal limitation relating to, by or of the *Contractor* or any other person or, where the *Contractor* is a partnership, by any change in the partners;
- 3 that we shall not be discharged or released from our obligations under this bond by any arrangement or agreement made between you and the *Contractor* or a receiver, administrative receiver, administrator, liquidator or similar officer of the *Contractor*, or by any renegotiation, substitution, alteration, amendment or variation (however fundamental) and whether or not to our disadvantage, to or of, the obligations imposed upon the *Contractor* or any other person or by any forbearance granted by you to the *Contractor* or any other person as to payment, time, performance or otherwise or by any release or variation (however fundamental) of, any invalidity in, or any failure to take, perfect or enforce any other indemnity, guarantee or security in respect of the obligations to which this bond relates or by any other matter or thing which but for this provision might exonerate us and this notwithstanding that such arrangement, agreement, renegotiation, substitution, alteration, amendment, variation, forbearance,

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matter or thing may have been made, granted or happened without our knowledge or assent;

- 4 that no failure to exercise or any delay in exercising on your part any right or remedy under this bond or under the Project Contract or any other agreement shall operate as a waiver of such right or remedy;
- 5 that no settlement or discharge between you and us or the *Contractor* shall be effective if any payment to you in respect of the *Contractor's* or our obligations to you is avoided or reduced by virtue of any provisions or enactments relating to bankruptcy, insolvency, liquidation or similar laws of general application from time to time and if such payment is so avoided or reduced, you shall be entitled to recover from us the amount of such payment as if such settlement or discharge had not occurred;
- 6 that you shall not be obliged, before exercising any of your rights under this bond, to take any action against, or make any demand from, the *Contractor* or any other person;
- 7 that our obligations under this bond are continuing obligations and shall not be considered satisfied, settled or terminated by your giving of any approvals, or taking delivery of any goods, or accepting any performance under the Contract and no single, cumulative or partial exercise by you of any right or remedy under or arising from this bond shall prevent any further exercise;
- 8 that any demand(s) complying with all the requirements hereof must be received by us on or before [insert date];
- 9 that all payments under this bond shall be made without set-off, counter claim or other deduction;
- 10 that this bond shall be governed by and construed in accordance with English law. The Parties irrevocably submit to English jurisdiction to the exclusion of all foreign jurisdiction, save that foreign jurisdictions may apply solely for the purposes of giving effect to this paragraph and for the enforcement of any judgement, order or award given under English jurisdiction.

**[The following Clause should only be used where the bank is outside of England and Wales)**

We irrevocably appoint Messrs .. *insert name and address of firm of Solicitors in England or Wales.*, Solicitors as our agents to accept on our behalf service of all process and other documents of whatever description to be served on us in connection with this bond or any related matter.]

Dated this       day of 20x.

Executed as a deed by:

(Name)..... as Attorney and on behalf of.....*bank*.....

(Signature) ..... (Attorney)

in the presence of

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(Name)..... (Witness)

(Signature)..... (Bank Official)

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**PART 4 - OPTION Z: ADDITIONAL CONDITIONS OF CONTRACT**

**Insert z clauses here.**

## PART A – NEC4

### Contract Data Part: 1 - Data provided by the *Client* (missing information to be inserted at contract award)

The following details the Contract Data which will be provided by the *Client* for each Delivery Agreement,

Certain defined terms and information in the Contract Data will be common to all Delivery Agreements; other information included in the Contract Data will be specific to individual Projects.

#### Part one – Data to be provided by the *Client*

##### 1. General

The *conditions of contract* are the core clauses and the clauses for main option (A, B, C, D or E) of the NEC4 Engineering and Construction Contract June 2017.

- The *works* are as set out in the Scope.;
- The *Client* is the Ministry of Defence whose principal offices are at Whitehall, London, SW1A 2HB, United Kingdom
- The *Project Manager* is  
**[Name and organisation] of [address]**
- The Supervisor is  
**[Name and organisation] of [address]**
- The Scope is the Scope Document For the Royal Air Force Centre of Aviation Medicine (RAF CAM) Relocation Project Version 3.2 Part 1 for Contract 701577386.
- The Site Information is in the **Scope (Annex 1, Pre-Construction Information Pack (PCIP))**;
- The *boundaries of the site* are in the **Scope (Annex 1, Pre-Construction Information Pack (PCIP))**;
- The *language of this Contract* is **English**;
- The *law of the Contract* is the law of **England and Wales**;
- The *period for reply* is 5 Business Days unless otherwise set out in the Scope
- The following matters will be included in the Early Warning Register **[to be agreed on a project specific basis]**.
- Early warning meetings are to be held at intervals no longer than **20 Business Days as per Annex 4 to the Scope (Meetings)**.

##### 2. Number not used



### 3. Time

- The starting date is ***Contract award (date tbc)***
- The access dates are
 

Part of the Site	Date
1 RAF Henlow	Contract award (date tbc)
2 RAF Cranwell	Contract award (date tbc)
- The *Contractor* submits revised programmes at intervals no longer than 20 Business Days.
- If the Client has decided the completion date for the whole of the works.
  - The Completion date for the whole of the works is 30 November 2025.
- Taking over the works before the Completion Date
  - The Client is/is not willing to take over the works before the Completion Date.
- If no programme is identified in part two of the Contract Data
  - The period after the Contract Date within which the Contractor is to submit a first programme for acceptance is 60 Business Days from Contract award.

### 4. Quality management

- The period after the Contract Date within which the *Contractor* is to submit a Deliverable Quality Management Plan is 60 Business Days from Contract award.
- The period between Completion of the whole of the works and the defects date is a **maximum of 12 months**.
- The *defect correction period* is set out in the Scope.

### 5. Payment

- The *currency of this Contract* is the pound sterling (£).
- The *assessment interval* is Monthly.
- The *interest rate* is 3% per year above the base rate in force from time to time of the Bank of England and the *Contractor* acknowledges that this is a substantial contractual remedy for the purposes of the Late Payment of Commercial Debts (Interest) Act 1998.
- If the period in which payments are made is not three weeks and Y(UK)2 is not used
  - The period within which payments are made is set out in clause X50..

### OPTION C OR D ONLY

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- The *Contractor's* share percentages and the share ranges are as follows:
  - Where the Price for Work Done to Date is less than the Prices by up to 5%, the *Contractor* is paid 50% of that saving and the *Client* retains the other 50%.
  - Where the Price for Work Done to Date is less than the Prices by more than 5%, the *Contractor* does not receive any payment for any of the saving.
  - Where the Price for Work done to Date is greater than the Prices, the *Contractor* pays 100% of the excess.

### 6. Compensation events

- The place where weather is to be recorded is RAF Cranwell.
- The *weather measurements* to be recorded for each calendar month are:
  - the cumulative rainfall (mm);
  - the number of days with rainfall more than 5 mm;
  - the number of days with minimum air temperature less than 0 degrees Celsius; and
  - the number of days with snow lying at 0900 hours GMT.
- The *weather measurements* are supplied by the Meteorological Office.
- The *weather data* are the records of past *weather measurements* for each calendar month which were recorded at RAF Cranwell and which are available from the Meteorological Office.
- Where no recorded data are available:
  - Assumed values for the ten-year return *weather data* for each *weather measurement* for each calendar month are: does not apply.

### 7. Number not used.

### 8. Liabilities and Insurance

- Subject to Part 5, Schedule 1, the minimum limit of indemnity for insurance in respect of loss of or damage to property (except the *works*, Plant and Materials and Equipment) and liability for bodily injury or to death of a person (not an employee of the *Contractor*) caused by activity in connection with this Contract for any one event is £50,000,000 (fifty million pounds).
- Subject to Part 5, Schedule 1, the amount of the minimum limit of indemnity for insurance in respect of death of or bodily injury to employees of the *Contractor* arising out of and in the course of their employment in connection with this Contract for any one event is £10,000,000 (ten million pounds).
- Subject to Part 5, Schedule 1, the minimum level of indemnity for insurance for claims made against him arising out of the *Contractor's* failure to use the skill

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and care normally used by professionals providing services similar to the Services in respect of each claim is £5,000,000 (five million pounds) on an each and every claims basis.

- **If Option X7 is used (but not if Option X5 is also used)**
  - Delay damages for Completion of the whole of the works are £12,328.77 per day up to a maximum of £4,500,000.
- **If Option X13 is used (where a parent company guarantee cannot be provided)**
  - The amount of the performance bond is TBC.
- **If Option X18 is used**
- The end of liability date is 12 years after the Completion of the whole of the works.

**Option Z**

- The additional Conditions of Contract are identified by this contract apply and take priority over the standard form Engineering and Construction Contract Option C.

**Part 2 - Data provided by the Contractor**

The following details the Contract Data which will be provided by the *Contractor* for each Delivery Agreement.

Certain defined terms and information in the Contract Data will be common to all Delivery Agreements other information included in the Contract Data will be specific to individual Projects.

**Part two - Data provided by the Contractor**

**1. General**

- The *Contractor* is:  
Name .....  
Address .....  
.....
- The *fee percentage* is [ ].
- The *working areas* are .....
- The key people are:  

(1)	Name	.....
	Job	.....
	Responsibilities	.....

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Qualifications .....  
Experience .....

- The following matters will be included in the Early Warning Register

.....

**2. The Contractor's main responsibilities**

- **If the Contractor is to provide Scope for his design**

- The Scope for the *Contractor's* design is in

.....

**3. Time**

- **If a programme is to be identified in the Contract Data**

- The programme identified in the Contract Data is

.....

- **If the Contractor is to decide the *completion date* for the whole of the *works***

- The completion date for the whole of the works is

.....

**5. Payment**

- **If Option A or C is used**

- The activity schedule is .....

- **If Option A, B, C or D is used**

- The tendered total of the Prices is .....

**Data for the Schedule of Cost Components (only used with Options C, D or E)**

- The listed items of Equipment purchased for work on the contract, with an on cost charge, are

Equipment	Time-related on cost charge	Per time period
.....	.....	.....
...	...	.
.....	.....	.....
...	...	.

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- The rates for special equipment are

Equipment	rate
.....	.....
.....	.....

- The rates for Defined Cost of manufacture and fabrication outside the Working Areas by the *Contractor* are

category of person	rate
.....	.....
.....	.....

- The rates for Defined Cost of design outside the Working Areas are

category of person	rate
.....	.....
.....	.....

- The categories of design employees whose travelling expenses to and from the Working Areas are included as a cost of design of the works and Equipment done outside the Working Areas are

.....  
.....  
.....  
.....

## PART 4 – PERFORMANCE MANAGEMENT REGIME

### Introduction

#### **1 Purpose**

- 1.1 In this Schedule, references to:
- 1.1.1 the Authority are to the *Client*;
  - 1.1.2 the Contractor are to the *Contractor*;
  - 1.1.3 the Authority's Representative are to the *Project Manager*; and
  - 1.1.4 Contractor Deliverables are to Providing the Works.
- 1.2 This Schedule 4 (*Performance Management Regime*) sets out what key elements of the Contractor Deliverables will be monitored and measured within this Part 1 of the Contract through a series of KPIs which are set out in Appendix 1 (*Key Performance Indicators*) to this Schedule 4 (*Performance Management Regime*).
- 1.3 There are also obligations regarding Quality Performance Indicators (QPIs) and Performance Indicators (PIs) with which the Contractor also has to comply.
- 1.4 The Contractor shall comply with the provisions set out in this Schedule 4 (*Performance Management Regime*) in relation to the monitoring and reporting of the Contractor Deliverables referred to in paragraph 1.2

### Key Performance Indicators

#### **2 Performance Monitoring and Reporting**

- 2.1 The Authority and the Contractor shall operate a Performance Management Regime ("PMR") to monitor and measure performance of the Contractor in meeting the KPIs. The performance measures and performance levels against each KPI are as set out in Appendix 1 (*Key Performance Indicators*) to this Schedule 4 (*Performance Management Regime*).
- 2.2 Performance against each of the KPIs shall cover a rolling period of twelve (12) months. The shall be measured each month, using the data from the month just ended.
- 2.3 Under the Government's Transparency Agenda, KPIs will be published on a quarterly basis. Only in the case of the published quarterly basis will the KPI results be averaged for each publishable period. Under the Government's Transparency Agenda, KPIs will be published on a quarterly basis. Only in the case of the published quarterly basis will the KPI results be averaged for each publishable period. The following percentage metrics shall be applied in respect of each publishable KPI per Quarter :
- 2.3.1 Majority Green = 100%

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- 2.3.2 Majority Amber = 80%
- 2.3.3 Majority Red = 60%
- 2.3.4 If the Contractor is awarded a Green, Amber, Red for each Contract Month of the Quarter, the publishable performance level will be Amber (80%).
- 2.4 The Contractor shall monitor and record performance against all KPIs for the relevant KPI Reporting Period and shall provide the Authority's Representative with a report in respect of the Contractor's performance against the KPIs for each and any future and/or continuing failure of the Contractor to comply with its obligations referred to in the Rectification Plan (a "**KPI Report**"). The Contractor shall submit the KPI Report to the Authority within ten (10) Business Days of the end of each month.
- 2.5 The KPI Report shall be used by the Authority to assess the level of performance the Contractor has achieved for the relevant month.
- 2.6 If the Authority notifies the Contractor that it disputes the content of the KPI Report, the Parties shall attempt in good faith to resolve such dispute.
- 2.7 The Authority's Representative may undertake routine checks and random verification audits of any KPI Report and the Contractor shall provide all information, documents or records as may reasonably be requested by the Authority's Representative to support any such activity.
- 2.8 Except as otherwise stated in the relevant KPI, if the Contractor:
  - 2.8.1 achieves a Green Performance Indicator for the relevant KPI, it shall be classified as performing against that KPI;
  - 2.8.2 achieves an Amber Performance Indicator for the relevant KPI, it shall be classified as underperforming against that KPI; and
  - 2.8.3 achieves a Red Performance Indicator for the relevant KPI, it shall be classified as significantly underperforming against that KPI.
- 2.9 If the Contractor fails to submit the KPI Report within the period stated in paragraph 2.4, the Contractor shall be deemed to have achieved a Red rating for each of those Key Performance Indicators during that month.
- 2.10 If the Contractor's performance for any KPI for a month is assessed as a Red Performance Indicator, or is foreseen to be at this level, then:
  - 2.10.1 the Contractor shall immediately take all steps to minimise the adverse effects of the Contractor's performance, and return the performance to Green (performing against the KPI);
  - 2.10.2 the Authority may direct the Contractor to take any measures the Authority considers necessary to remedy the Contractor's performance and the Contractor shall comply with the direction at no additional cost to the Authority.

### **3 Rectification Plans**

- 3.1 The Contractor shall, within five (5) Business Days after becoming aware that its performance for a KPI for the month will be, or is likely to be, assessed as a Red Performance Indicator for any reason, or there are two consecutive months of Amber performance, notify the Authority's Representative, in writing, of the matter and submit a rectification plan in accordance with Appendix 2 of this Part 4 (*Performance Management Regime*) (the "**Rectification Plan**").
- 3.2 The Rectification Plan shall include as a minimum, the information as follows:
  - 3.2.1 the Contractor's actual or anticipated performance against the KPI during the month;
  - 3.2.2 the events of circumstances which affected or are likely to affect the Contractor's performance during the month;
  - 3.2.3 the Contractor's plan to rectify and meet the KPI in future, including timescales, responsible person(s), and actions taken to prevent further delays or underperformance.
- 3.3 The Authority shall consider any Rectification Plan submitted by the Contractor in accordance with paragraph 3.1 and, within ten (10) Business Days of submission, notify the Contractor whether:
  - 3.3.1 the Authority approves such Rectification Plan, and following such notification of approval, the Contractor shall expeditiously carry out and complete such actions contained within the Rectification Plan; or
  - 3.3.2 the Authority rejects such Rectification Plan including the reasons for such rejection, and following such notification of rejection, the Contractor shall, within five (5) Working Days, resubmit to the Authority an amended Rectification and the provisions of paragraph 3.4 shall apply.
- 3.4 The Authority shall consider any amended Rectification Plan to be proposed by the Contractor in accordance with paragraph 3.3.2 and, within ten (10) Business Days, notify the Contractor whether:
  - 3.4.1 the Authority approves such amended Rectification Plan, and following such notification of approval, the Contractor shall expeditiously carry out and complete such actions contained within the Rectification Plan; or
  - 3.4.2 the Authority rejects such amended Rectification Plan, the Authority may require the Contractor to take such relevant action as the Authority considers reasonable and provide a further Rectification Plan or Plans until such time as the Contractor meets the Authority's reasonable requirements.

### **4 Incorrect Reporting**

- 4.1 Subject to paragraphs 4.2 below, the KPI Report shall be the source of the factual information regarding the performance of the Contractor Deliverables.
- 4.2 If there is any error in or omission from the KPI Report for any month, the Contractor and the Authority shall agree (through any subsequent Quarterly Performance Meeting) the amendment to the KPI Report or, failing agreement within ten (10)



Business Days of notification of the error or omission, either Party may refer the matter to the Dispute Resolution Procedure.

## 5 **KPI Review**

- 5.1 A more detailed review of the application, trends and approach to Key Performance Indicators shall be held at the Quarterly Performance Meetings.

### Quality Performance Indicators

A Quality Performance Indicator (QPI) is a quantifiable measure of an element of the management approach being used or planned to be used in meeting an organisation's objectives. QPIs are used to mitigate the risk of contractual deliverables not meeting requirements and selected from: generic requirements from the quality requirements of the Schedule of Requirements (SOR), specific requirements of the SOR, or requirements of an organisation's processes as directed by the plans to realise those processes by performing work. Evidence to support QPIs could be management planning artefacts, output work products, interim work products or by-products of the work.

### **QPI Scoring**

Quality Performance Indicators

The Contractor shall comply with the Quality Performance Indicators (QPIs) for AQAP 2110.

As detailed below, the Contractor shall score themselves against the QPIs on a quarterly basis and shall provide a report detailing each of their QPI scores to the Government's Quality Assurance Representative (GQAR) ten (10) Business Days in advance of the Quality Assurance Group (QAG) meeting.

Where, in any quarterly period, the Contractor receives a QPI score of 1 or below in respect of any QPIs, the Contractor shall:

as soon as reasonably practicable following the QPI meeting where such score was validated, provide the Authority with details of the remedial action that the Contractor intends to increase the QPI score to 2 or above and provide evidence that the Contractor has implemented such remedial action and provide details of the effect of such remedial action at least ten (10) Business Days prior to the next QPI meeting.

<b>QPI Score</b>	<b>Criteria</b>	<b>Outcome</b>
<b>4</b>	The QPI is being met, is optimised, and can improve the delivery of the project.	HIGH VALUE ADDED
<b>3</b>	The QPI is being met, managed, and demonstrates clearly that a SET of requirements are being met.	VALUE ADDED
<b>2</b>	The QPI is being met and demonstrates achievement of a SINGLE/LIMITED requirement.	VALUED
<b>1</b>	The QPI is being met and continues in place. The QPI provides some evidence that a requirement is or will be met.	LIMITED VALUE

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-1	The QPI is only an indicator and has limited ability to demonstrate that a requirement is being or will be met.	LOW VALUE
-2	The QPI is only an indicator and has no ability to demonstrate that a requirement will be met.	MINIMAL VALUE
-3	The QPI is established but there is conflicting evidence that it is being met or does not help demonstrate requirements are being or will be met.	NO VALUE
-4	The QPI has not been met and there is an increasing risk that the contract requirement(s) will not be met, or the QPI has not been established and remedial action needs to be put in place.	RISK INCREASES

*Table 1: QPI Scoring*

**QPIs Against the Primary AQAP 2110**

<b>QPI Serial Number</b>	<b>QPI Title</b>	<b>Description</b>	<b>Criteria</b>	<b>Indicator</b>	<b>Continued Performance</b>	<b>Performance Measure +4 to -4</b>
1	GQAR	AQAP para 5.1.1 requires top management to appoint a representative for government Quality Assurance (GQA).	Resource Nominated.	Yes	Resource is Effective in role.	
2	Supplier's Quality Plan (SQP)	AQAP para 5.4.1.1 requires an SQP to be in place.	An SQP is available prior to start of work. (AQAP 2105 does apply)	Yes	SQP is effective	
3	Risk Approach	AQAP para 5.2.1 requires evidence of risks including external Supplier risks to be planned for.	A method of risk identification is in place.	Yes	Risk Approach is effective.	
4	Configuration Management Plan (CMP)	AQAP para 5.4.1.2.2 requires a contract CMP to be in place.	A CMP is available. (Def Stan 05-057 applies).	Yes	CMP is being implemented and is effective.	
5	Post Award GQA	AQAP para 5.4.2 has an option for a Post Award GQA Meeting.	A Post Award GQA Meeting is planned for or has taken place.	Yes	GQA Meetings are regular valued and planned.	
6	Critical Characteristics (CC)	AQAP para 5.4.3 requires Health, Safety, Performance, and dependability CC to be identified.	CC are identified.	Yes	CC are regularly reviewed and managed.	
7	Purchasing Information	AQAP para 5.4.6.1 requires flow down of relevant AQAP(s) to the supply chain.	Purchase orders and sub-contracts include all applicable AQAP(s).	Yes	Considered decisions on applicability are effective.	
8	Counterfeit Material (CMat)	Def Stan 05-135 requires a process for the avoidance, detection, mitigation, and disposition of CMat.	A description for the avoidance, detection, mitigation, and disposition of CMat is provided. (Def Stan 05-135 applies)	Yes	Process is Effective.	

OFFICIAL-SENSITIVE

<b>QPI Serial Number</b>	<b>QPI Title</b>	<b>Description</b>	<b>Criteria</b>	<b>Indicator</b>	<b>Continued Performance</b>	<b>Performance Measure +4 to -4</b>
9	Communications	AQAP para 5.4.6.3 requires that the Acquirer/GQAR is notified of products that are rejected, reworked, or repaired including Government Furnished Equipment (GFE).	An agreed time limit and method of notification is in place.	Yes	Communications are being managed and are effective.	
10	Traceability	AQAP para 5.4.8 requires items or components to be traceable where failure could lead to loss of equipment or life. AQAP 2110 also requires the Supplier to retain documented info for traceability of components across the entire supply chain from origin to final assembly.	Components that present risk to equipment loss or loss of life are identified.	Yes	Regular reviews are in place that enable traceability requirement to be determined.	
11	Certificate of Conformity (CofC)	AQAP para 5.4.11 provides option on a CofC at point of release.	The need and format for a CofC is agreed. (Defcon 627 may apply)	Yes	Where CofCs are requested, they continue to be delivered.	
12	Product Verification	AQAP para 5.4.11 requires a minimum of 10 working days notification to Acquirer/GQAR for any final inspection or formal acceptance activities. This must include deliverable documentation.	A delivery plan is in place including the 10-day notification period for Acquirer/GQAR.	Yes	Deliverable items, including documents, are made available with a minimum of 10 days.	
13	Control of Non-Conforming Product (NCP)	AQAP para 5.4.12 requires a documented procedure which identifies, controls, and segregates all NCP.	An NCP procedure is in place. (Def Stan 05-061 Pt1 applies)	Yes	The procedure for control of NCP effective.	
14	Supply Chain Management	AQAP para 5.4.12 requires the Supplier to notify the Acquirer/GQAR of any NCP from an External provider that has been subject to GQA	An agreed time limit and method of notification is in place.	Yes	NCP, including documents, are notified to Acquirer/GQAR within the timescales agreed.	

OFFICIAL-SENSITIVE

OFFICIAL-SENSITIVE

<b>QPI Serial Number</b>	<b>QPI Title</b>	<b>Description</b>	<b>Criteria</b>	<b>Indicator</b>	<b>Continued Performance</b>	<b>Performance Measure +4 to -4</b>
15	Internal Audit	AQAP para 5.5.2 requires the Supplier to identify contract related critical processes and activities.	Critical Processes and Activities are identified and included in an annual audit plan.	Yes	Audits are being conducted to plan. Risks are mitigated.	
16	Improvement	AQAP para 5.6.1 requires the Supplier to define process and tool and techniques to support Root Cause Analysis (RCA) for N/C's.	A description for RCA process including tool and techniques are provided.	Yes	Root cause analysis is effective.	

OFFICIAL-SENSITIVE

Performance Indicators – Social Value

The Contractor shall Reporting on progress of Model Award Criteria (MAC) 2.3,3.1,3.2,3.3 (annually) in accordance with the table below.

MAC Reference	Description	Report
2.3	Support educational attainment relevant to the contract, including training schemes that address skills gaps and result in recognised qualifications.	Number of people-hours of learning interventions delivered under the contract, by UK region (Covered by KPI 2)
3.1	Create a diverse supply chain to deliver the contract including new businesses and entrepreneurs' start-ups, SMEs, VCSEs and mutuals.	For each of the following categories: start-ups, SMEs, VCSEs and mutuals identify the total spend under the contract, as a percentage of the overall contract spend.
3.2	Support innovation and disruptive technologies throughout the supply chain to deliver lower cost and/or higher quality goods and services	Outcomes-based specifications enabling alternative approaches to be offered
3.3	Support the development of scalable and future-proofed new methods to modernise delivery and increase productivity	Activities that promote collaboration to access new technologies/green technologies and/or approaches

Appendix 1Key Performance Indicators**KPI Infrastructure (NEC) Part 1**

<b>KPI 1: Infrastructure – Transparency Reportable</b>	
<b>(Category: Delivery)</b>	
<b>KPI first applied from date</b>	Contract award plus 3 months
<b>KPI Reporting Period</b>	Monthly. KPI Ends when Completion Milestone has been achieved
<b>PERFORMANCE MEASUREMENT</b>	
<b>Performance Measurement</b>	<b>Source of Measurement</b>
The <i>Client</i> requires that the Infrastructure schedule baselined in the PEP remains on target for Completion.	Monthly reporting of the Earned Value Management (EVM) Schedule Performance Indicator (SPI)
<b>PERFORMANCE LEVELS</b>	
<b>Level</b>	<b>Rate of Performance to be agreed</b>
<b>GREEN</b> (good)	SPI is equal to 1 or greater (implying that the Project is on schedule or ahead of schedule)
<b>AMBER</b> (approaching target)	SPI is between 0.9 and 1
<b>RED</b> (inadequate)	SPI is below 0.9
<b>Incentive</b>  <u>Green (Good)</u> : No further action required.  <u>Amber (Approaching Target)</u> : The <i>Contractor</i> is required to provide the <i>Client</i> with a monthly explanation of the cause, short term implications, and recovery action.  <u>Red (Inadequate)</u> : After each Red SPI the <i>Contractor</i> will present a detailed report on the causes and impacts of the delays. After 3 successive Red SPI the <i>Contractor</i> is required to provide the <i>Client</i> with a detailed Recovery Plan.	

**Notes:** A Recovery Plan will assess the full impact of the delays on the schedule and recommend a revised baseline schedule for agreement by the *Client*. The revised baseline will explain how the cause of the original delays has been addressed.

For the purposes of Cabinet Office Reporting: The *Client* will use the average performance across the previous quarter to publish *Contractor* performance in accordance with the Government Transparency Data Requirements for KPI Reporting.

KPI 2: Social Value Infrastructure	
(Category: Tackling Economic Inequality (Model Award Criteria (MAC) 2.3) Policy Outcome: Create new businesses, new jobs and new skills	
KPI first applied from date	Construction Commencement
KPI Reporting Period	Monthly
	KPI Ends when Completion Milestone has been achieved
PERFORMANCE MEASUREMENT	
Performance Measurement	Source of Measurement
Social Value - Number of people-hours of learning interventions delivered under the contract, by UK region.	To be agreed with the <i>Contractor</i>
PERFORMANCE LEVELS	
Level	Rate of Performance
GREEN (good)	Target performance Level: Good %> or figure
AMBER (approaching target)	Requires Improvement %-% or figure
RED	Inadequate <% or figure



Appendix 2Rectification Plan

Rectification Plan			
<b>Issue Date:</b>	DD/MM/YYYY	<b>Issue Version:</b>	
<b>Contract Ref:</b>			
<b>KPI:</b>			
<b>month(s) affected:</b>			
<b>Due Date:</b>	DD/MM/YYYY	<b>Estimated Revised Completion Date:</b>	DD/MM/YYYY
<b>Reasons:</b>	[Insert reasons why Contractor Deliverable not delivered or KPI not met]		
<b>Rectification Plan:</b>	[Insert plan to provide the Contractor Deliverable required by the obligation or meet the KPI in future months/Quarters, including timescales, responsible person(s) and actions taken to prevent further delays/underperformance]		
<b>Supporting Documents:</b>	[Insert document references for any attached supporting documentation]		
<b>Contractor's Signature:</b>	[NAME] [ROLE] [SIGNATURE]		



## PART 5 - SCHEDULES

### 1 Schedule 1 – Insurance provisions

<b>Requirement to maintain</b>	<b>1.</b>	Without prejudice to its obligation to indemnify or otherwise be liable to the <i>Employer</i> under this contract, the <i>Contractor</i> will, from the date of this contract, take out and maintain or procure the taking out and maintenance in full force and effect insurances in accordance with the requirements specified in the Insurance Table (at Clause 15) and any other insurances as may be required by law or relevant regulation (together the Required Insurances).
		The <i>Contractor</i> will ensure that the Required Insurances are effective in each case not later than the date on which the relevant risk commences.
<b>Quality of the insurances</b>	<b>2.</b>	The Required Insurances referred to in Clause 1 will be taken out and maintained with insurers who (in the reasonable opinion of the <i>Employer</i> ) are of good financial standing, appropriately regulated and of good repute in the United Kingdom insurance market.
<b>Non invalidation obligations</b>	<b>3.</b>	The <i>Contractor</i> will not (and the <i>Contractor</i> will procure that none of its Subcontractors of any tier will not) take any action, or permit anything to occur in relation to it, which would entitle any insurer to refuse to pay any claim under any insurance policy in which that party is an insured, a co-insured or additional insured person.
<b>Insurance of the Contract</b>	<b>4.</b>	<p>The Insurances referred to in Clause 1 will:</p> <ul style="list-style-type: none"> <li>a) Where specified in the Insurance Table (at Clause 15) name the <i>Employer</i> as co-insured for its separate interest.</li> <li>b) Where specified in the Insurance Table (at Clause 15) provide for non-vitiation and severability of interests protection in respect of any claim made by the <i>Employer</i> as a co-insured.</li> <li>c) Where specified in the Insurance Table (at Clause 15), include an undertaking from the relevant insurer to waive all rights of subrogation howsoever arising and/or claims against the <i>Employer</i>, its employees, servants or agents which they may have or acquire, arising out of any occurrence in respect of which any claim is admitted and is insured under the Required Insurances. The provisions of this Clause 4c) will not apply against any <i>Employer</i> officer, director, employee, agent and assign who has caused or contributed to such an occurrence or claim by fraud, deliberate misrepresentation, deliberate nondisclosure or deliberate breach of policy Clause,</li> <li>d) Where specified in the Insurance Table (at Clause 15), contain an indemnity to principals Clause under which the <i>Employer</i> is indemnified in respect of claims made against the <i>Employer</i> arising from death or bodily injury or third party</li> </ul>

property damage for which the *Contractor* is legally liable in respect of this contract.

- e) Be maintained from the date referred to in Clause 1 above and until at least the expiry or termination of this contract and for such further period as may be specified in the Insurance Table (at Clause 15) subject to the terms, cover features and extensions and principal exclusions as specified in the Insurance Table (at Clause 15).
- f) Be maintained from time to time (as far as is reasonably practicable), on terms no less favourable than those generally available to a contractor in respect of the risks insured in the United Kingdom insurance market from time to time.

**Requirements of the Contractor**

**5. The Contractor will:**

- a) Without limiting any specific requirements in this contract, take or procure the taking of all reasonable risk management and risk control measures in relation to this contract as it would be reasonable to expect of a contractor, acting in accordance with industry best practice, including but not limited to the investigation and reporting of its claims to insurers.
- b) Discharge all its obligations under the Insurance Act 2015 when placing, renewing, amending or maintaining any insurances required by this contract including complying with the duty of fair presentation to insurers and taking the actions needed to protect the *Employer's* separate interests.
- c) Use reasonable endeavours to procure that all insurance brokers through whom any Required Insurances to be effected by the *Contractor* are effected or maintained will maintain intact their files (including all documents disclosed and correspondence in connection with the placement of those Required Insurances and the payment of premiums and claims under such Required Insurances).

**Evidence of the Required Insurances**

**6. The Contractor will provide, on request, to the Employer:**

- a) Evidence of the Required Insurances, in a form satisfactory to the *Employer*; and
- b) Evidence, in a form satisfactory to the *Employer*, that the premiums payable under the Required Insurances have been paid and that the insurances are in full force and effect and meet the insurance requirements of the *Contractor* in respect thereof.
- c) Neither inspection, nor receipt of such evidence, will constitute acceptance by the *Employer* of the terms thereof, nor be a waiver of the *Contractor's* liability under this contract.

**7. Evidence, in a form satisfactory to the Employer, of the insurances required by Clause 1 (Requirement to Maintain) will**

be obtained as and when requested and certified copies will be forwarded to the *Employer* as soon as possible but in any event no later than two (2) weeks following the *Employer* request or the relevant insurance policy renewal date.

- |  |            |  |
|--|------------|--|
| <b>Cancellation</b>                      | <b>8.</b>  | <p>a) Where the insurers purport to cancel, suspend or terminate the Required Insurances, the <i>Contractor</i> will procure that the insurers will, as soon as is reasonably practicable, notify the <i>Contractor</i> in writing in the event of any such proposed suspension, cancellation or termination.</p> <p>b) Where the <i>Contractor</i> receives notification from insurers pursuant to Clause 8a), the <i>Contractor</i> will promptly notify the <i>Employer</i> in writing of receipt of such proposed suspension, cancellation or termination</p>  |
| <b>Insurance claims</b>                  | <b>9.</b>  | The <i>Contractor</i> will promptly notify to insurers any matter arising from or in relation to this contract from which it may be entitled to claim under any of the Required Insurances.  |
|  | <b>10.</b> | <p>Except where the <i>Employer</i> is the claimant party and without limiting the other provisions of this Clause, the <i>Contractor</i> will notify the <i>Employer</i> immediately, (such notification to be accompanied by reasonable particulars of the incident or circumstances giving rise to such claim):</p> <p>a) Of any incident or circumstances which may give rise to any claim amounting to or in excess of seventy five thousand pounds (£75,000) in connection with this contract under any of the Required Insurances.</p> <p>b) If the incident or circumstances may give rise to any claim in connection with this contract, which may be in excess of the limits of the Required Insurances.</p> |
| <b>Failure to insure</b>                 | <b>11.</b> | If the <i>Contractor</i> is in breach of Clause 1 the <i>Employer</i> may pay (at its option) any premiums, Insurance Premium Tax and insurance broker costs required to keep such insurance in force or itself procure such insurance, and in either case, recover such amounts from the <i>Contractor</i> on written demand, together with all reasonable expenses incurred in procuring such insurance.   |
| <b>Premiums</b>                          | <b>12.</b> | Where any policy requires the payment of a premium, the <i>Contractor</i> will be liable for such premium.   |
| <b>Deductibles or excess</b>             | <b>13.</b> | <p>a) Where any insurance is subject to an excess or deductible below which the indemnity from the insurers is excluded, the <i>Contractor</i> will be liable for such excess or deductible.</p> <p>b) The <i>Contractor</i> will not be entitled to recover from the <i>Employer</i> any sum paid by way of excess or deductible under the insurances whether under the terms of this contract or otherwise.</p>  |
| <b>Application of insurance proceeds</b> | <b>14.</b> | All insurance proceeds received under the Construction "All Risks" Insurance and Goods In Transit Insurance(s) referred to in the Insurance Table (at Clause 15), will be applied to repair,   |

reinstate and replace each part or parts of the insured property in respect of which the proceeds were received.

**Insurance  
Table**

**15**

**PART 1 – POLICIES TO BE TAKEN OUT BY THE CONTRACTOR AND MAINTAINED DURING THE WORKS PERIOD**

**1. Construction "All Risks" Insurance (CAR)**

**1.1 Insureds**

1. Contractor
2. Employer

as appropriate, each for their respective rights and interests in this contract.

**1.2 Insured property**

The permanent and temporary works, materials, goods, plant and equipment for incorporation in the *works* plus Plant Materials and Equipment and all other property used or for use in connection with *works* associated with this contract.

**1.3 Coverage**

"All Risks" of physical loss, damage or destruction to the insured property (as specified in paragraph 1.2 above) unless otherwise excluded.

**1.4 Sum insured**

At all times an amount not less than the full reinstatement or replacement value of the insured property (as specified in paragraph 1.2 above), plus provision to include cover features and extensions (as specified in paragraph 1.8 below).

**1.5 Maximum deductible threshold**

Not to exceed £[To be determined by the parties] each loss in respect of claims for defective design, materials and workmanship and in respect of all other claims £[To be determined by the parties] each and every claim.

*[Maximum deductible thresholds will need to be proposed by Tenderers.]*

**1.6 Territorial limits**

United Kingdom including offsite storage and during inland transit.

**1.7 Period of insurance**

From the date of this contract until the completion of the *works* and thereafter in respect of defects liability until expiry of the defects liability period.

**1.8 Cover features and extensions**

1. Terrorism
2. Munitions of war Clause
3. Additional costs of completion Clause
4. Professional fees Clause
5. Debris removal Clause
6. Seventy two (72) hour Clause
7. Public authorities Clause
8. Free issue materials Clause
9. Ten percent (10%) escalation Clause
10. Automatic reinstatement of sum insured Clause
11. Loss minimisation
12. Plans and specifications Clause
13. Guarantee maintenance or extended maintenance to the extent available
14. Payments on account
15. Temporary repairs
16. Offsite storage and repairs
17. Fire Joint Code of Practice
18. *Employer* co-insured party status with attendant non vitiation, waiver of subrogation and notice of cancellation in accordance with Clause 4a), 4b), 4c) and 8a) of this contract

#### 1.9 Principal exclusions

1. War and related perils.
2. Nuclear/radioactive risks.
3. Pressure waves caused by aircraft and other aerial devices travelling at sonic or supersonic speeds.
4. Wear, tear and gradual deterioration.
5. Consequential financial losses.
6. Cyber risks.
7. Inventory losses, fraud and employee dishonesty
8. Faulty design, workmanship and materials DE5 or LEG3/06

## **2. Third Party Public and Products Liability Insurance**

### 2.1 Insured

*Contractor*

### 2.2. Interest

To indemnify the insured (as specified in paragraph 2.1 above) in respect of all sums that the insured (as specified in paragraph 2.1 above) may become legally liable to pay whether contractually or otherwise (including claimant's costs and expenses) as damages in respect of accidental;

1. death or bodily injury, illness or disease contracted by any person;
2. loss or damage to property;
3. interference to property or any easement right of air, light, water or way or the enjoyment or use thereof by obstruction, trespass, nuisance, loss of amenities;

happening during the period of insurance (as specified in paragraph 2.6 below) and arising out of or in connection with this contract.

#### 2.3 Limit of indemnity

Not less than fifty million pounds (£50,000,000) in respect of any one occurrence, the number of occurrences being unlimited in any annual policy period, but in the annual aggregate in respect of products or pollution liability (to the extent insured by the policy).

#### 2.4 Maximum deductible threshold

Not to exceed £ [To be determined by the parties] each and every occurrence of third party property damage.

*[Maximum deductible thresholds will need to be proposed by Tenderers.]*

#### 2.5 Territorial limits

United Kingdom and elsewhere in the world in respect of non manual visits.

#### 2.6 Period of insurance

From the date of this contract until the completion of the works and thereafter in respect of defects liability until expiry of the defects liability period.

#### 2.7 Cover features and extensions

1. Munitions of war
2. Cross liability Clause
3. Contingent motor vehicle liability
4. Legal defence costs
5. Waiver of subrogation in accordance with Clause 4 (c)
6. Indemnity to principals Clause in accordance with Clause 4 (d)
7. Health & Safety at Work Act(s) Clause



8. Data protection legislation Clause
9. Defence appeal and prosecution costs relating to the Corporate Manslaughter and Corporate Homicide Act 2007

## 2.8 Principal exclusions

1. War and related perils.
2. Nuclear/radioactive risks.
3. Liability for death, illness, disease or bodily injury sustained by employees of the insured (as specified in paragraph 2.1 above) arising out of the course of their employment.
4. Liability arising out of the use of mechanically propelled vehicles whilst required to be compulsorily insured by legislation in respect of such vehicles.
5. Liability in respect of predetermined penalties or liquidated damages imposed under any contract entered into by the insured (as specified in paragraph 2.1 above).
6. Liability in respect of loss or damage to property in the care, custody and control of the insured (as specified in paragraph 2.1 above) but this exclusion is not to apply to all property belonging to the *Employer* which is in the care, custody and control of the insured (as specified in paragraph 2.1 above).
7. Events more properly covered under a professional indemnity insurance policy (as specified in paragraph 3 below).
8. Liability arising from the ownership, possession or use of any aircraft or marine vessels.
9. Liability arising from pollution and contamination unless caused by a sudden, unintended, unexpected and accidental occurrence.
10. Losses indemnified under the Construction "All Risks" Insurance policy (as specified in paragraph 1 above).
11. Liability arising from toxic mould
12. Liability arising from asbestos
13. Cyber risks

## 3. **Professional Indemnity Insurance**

### 3.1 Insured

*Contractor*

### 3.2 Interest

To indemnify the insured (as specified in paragraph 3.1 above) for all sums which the insured (as specified in paragraph 3.1 above) may become legally liable to pay (including claimant's costs and expenses) as a result of any claim or claims first made against the insured (as specified in paragraph 3.1 above) during the period of insurance (as specified in paragraph 3.6 below) by reason of any act, error and/or omission arising from or in connection with professional services, advice, design and specification in relation to this contract.

### 3.3 Limit of Indemnity

Not less than five million pounds (£5,000,000) in respect of any one claim, and in the annual aggregate during the period of insurance (as specified in paragraph 3.6 below).

### 3.4 Maximum deductible threshold

Not to exceed £ [To be determined by the parties] each and every claim.

*[Maximum deductible thresholds will need to be proposed by Tenderers.]*

### 3.5 Territorial limits

United Kingdom.

### 3.6 Period of insurance

From the date of this contract for the duration of this contract renewable on an annual basis unless agreed otherwise by the parties and a period of twelve (12) years following the expiry or termination of this contract whichever occurs earlier.

### 3.7 Cover features and extensions

1. Loss of documents and computer records extension.
2. Legal liability assumed under contract, duty of care agreements and collateral warranties.
3. Retroactive cover from the date of this contract or retroactive date no later than the date of this contract in respect of any policy provided on a claims made form of policy wording.

### 3.8 Principal exclusions

1. War and related perils.
2. Nuclear/radioactive risks.
3. Insolvency of the insured (as specified in paragraph 3.1 above).
4. Bodily injury, sickness, disease or death sustained by any employee of the insured (as specified in 3.1 above).

#### 4 **Contractors Pollution Liability**

##### 4.1 Insured

*Contractor*

##### 4.2 Interest

To indemnify the insured (as specified in paragraph 4.1 above) in respect of all sums that the insured (as specified in paragraph 4.1 above) may become legally liable to pay consequent to a pollution incident and/or action by a relevant authority (including but not limited to a local authority, Environmental Agency or any judicial authority) or a third party, including the *Employer*, and resulting in a claim or claims first made against the insured (as specified in paragraph 4.1 above) and reported to the insurer during the policy period. A pollution incident relates to either pollution in existence at the date of this contract disturbed or in some way aggravated, released or made worse by the insured (as set out in paragraph 4.1 above) or pollution caused by the insured (as set out in paragraph 4.1 above) in connection with the execution of the *works* subsequent to the commencement of the relevant *works*.

##### 4.3 Limit of indemnity

Not less than five million (£5,000,000) in respect of any one occurrence and in the aggregate during the policy period, the policy period not to exceed three years unless agreed otherwise by the parties.

##### 4.4 Maximum deductible threshold

Not to exceed [To be determined by the parties] for each and every loss.

*[Maximum deductible thresholds will need to be proposed by Tenderers.]*

##### 4.5 Territorial limits

The site and off site migration of contamination from the site.

##### 4.6 Period of insurance

From the date of this contract for the duration of this contract (the policy period not to exceed three years unless agreed otherwise by the parties).

##### 4.7 Cover features and extensions

1. Regulatory or third party claims for on site clean-up of pre-existing and new Claims arising from the act or omission of the insured (as specified in paragraph 4.1 above).
2. Regulatory or third party claims for off-site clean-up of pre-existing and new Claims arising from the act or

	omission of the insured (as set out in paragraph 4.1 above).
3.	Third party claims for on-site and off-site property damage from pre-existing and new Clauses arising from the act or omission of the insured (as set out in paragraph 4.1 above).
4.	Legal costs.
5.	Retroactive cover from the date of this contract or retroactive date no later than the date of this contract in respect of any policy provided on a claims made form of policy wording.
6.	Liability arising from the <i>works</i> , subject to their inclusion within the definition of covered operations under the policy.
4.8	<b><u>Principal exclusions</u></b>
1.	War and related perils.
2.	Nuclear/radioactive risks but this exclusion shall not apply to naturally occurring materials that may become a pollution Clause as a consequence of relocation.
3.	Asbestos (exclusion not to extend to asbestos remediation costs with respect to soil and groundwater).
4.	Deliberate, wilful and intentional non-compliance with any statutory regulation ordinance or instruction of any government agency or body, or executive, judicial or administrative order.
5.	Criminal fines and penalties.
6.	Terrorism.
5.	<b>Goods in Transit Insurance (United Kingdom transits)</b>
5.1	Insured Contractor
5.2	Insured property  All property and interest of every description for all transits by road or air within the United Kingdom that are in the care, custody or control or are otherwise the responsibility of the Contractor in connection with the Contract.
5.3	Coverage  Primary property damage perils in respect of physical loss or damage to the insured property (as set out in paragraph 3.2 above) unless otherwise excluded.
5.4	Sum insured  Not less than the replacement value in respect of any one transit / conveyance unless specified by the Authority.

## 5.5 Periods of Insurance

From the date of the Contract on an "open" cover basis, and specifically from the commencement of the relevant transits until the delivery to the site including loading and unloading.

## 5.6 Maximum deductible threshold

Not to exceed *[To be proposed by Tenderers]* each and every claim.

*[Maximum deductible thresholds will need to be proposed by Tenderers.]*

**6. Cargo Insurance (for transits originating outside of the United Kingdom)**

## 6.1 Insured

Contractor

## 6.2 Insured property

Any property, equipment or other cargos including specie, cash and others that are in the care, custody or control or are otherwise the responsibility of the Contractor in connection with the Contract.

## 6.3 Interest

All risks of physical loss or damage to any such cargo including third party liabilities as a result thereof.

## 6.4 Coverage

London Institute Cargo Clauses (A) including Institute War and Strikes Clauses or their equivalent

## 6.5 Sum insured

Not less than the replacement value in respect of any one transit / conveyance unless specified by the Authority.

## 6.6 Territorial limits

Worldwide subject to any applicable standard London Institute Trading Warranties or their equivalent.

## 6.7 Period of insurance

From the date of the Contract on an "open" cover basis, and specifically from the commencement of the relevant transits until the delivery to the site including loading and unloading

## 6.8 Maximum deductible threshold

Not to exceed *[To be proposed by Tenderers]* each and every claim.

*[Maximum deductible thresholds will need to be proposed by Tenderers.]*

**7 Policies to be taken out as required by United Kingdom law.**

Parties to this contract are required to meet their statutory insurance obligations in full. Insurances required to comply with all statutory requirements including, but not limited to, Employers' Liability Insurance and Motor Third Party Liability Insurance.

The limit of indemnity for the Employers' Liability Insurance shall not be less than ten million pounds (£10,000,000) any one occurrence, the number of occurrences being unlimited during any annual period of insurance or such greater amount as is required by the applicable law for the duration of this contract or such greater period as is required by law.

The statutory insurances to contain an indemnity to principals Clause in respect of claims made against the *Employer* arising out of the performance of the *Contractor* of his duties under this contract in accordance with Clause 4 (d).

The insurance will be maintained from the date of this contract throughout the period of this contract.

## **2 Schedule 2 – Annex N JSP 440**

### **3 Definitions**

- 3.1 The term "*Authority*" for the purposes of the Annex means a Ministry of Defence (MOD) official acting on behalf of the Secretary of State for Defence.

### **4 Security Grading**

- 4.1 All aspects associated with this Contract are classified OFFICIAL. Some aspects are more sensitive and are classified as OFFICIAL- SENSITIVE. The Security Aspects Letter, issued by the Authority defines the OFFICIAL- SENSITIVE information that is furnished to the *Contractor*, or which is to be developed by it, under this Contract. The *Contractor* shall mark all OFFICIAL SENSITIVE documents which it originates or copies during the Contract clearly with the OFFICIAL-SENSITIVE classification. However, the *Contractor* is not required to mark information/material related to the Contract which is only OFFICIAL.

### **5 Official Secrets Acts**

- 5.1 The *Contractor's* attention is drawn to the provisions of the Official Secrets Acts 1911-1989 in general, and to the provisions of section 2 of the Official Secrets Act 1911 (as amended by the Act of 1989) in particular. The *Contractor* shall take all reasonable steps to make sure that all individuals employed on any work in connection with the Contract (including sub-contractors) have notice that these statutory provisions, or any others provided by the Authority, apply to them and shall continue so to apply after the completion or earlier termination of the Contract.

### **6 Protection of OFFICIAL and OFFICIAL- SENSITIVE Information**

- 6.1 The *Contractor* shall protect OFFICIAL and OFFICIAL-SENSITIVE information provided to it or generated by it in accordance with the requirements detailed in this Security Clause and any other conditions that may be specified by the Authority. The *Contractor* shall take all reasonable steps to prevent the loss or compromise of the information or from deliberate or opportunist attack.

- 6.2 The contractor shall apply Industry Security Notice (ISN) 2017/01 requirements to every industry owned IT and communication system used to store, process or generate MOD information including those systems containing OFFICIAL and/or OFFICIAL-SENSITIVE information. ISN 2017/01 details Defence Assurance and Risk Tool (DART) registration, IT security accreditation processes, risk assessment and risk management requirements. The ISN is available at:

6.2.1 [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/594320/DART\\_ISN - V2 3.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/594320/DART_ISN_-_V2_3.pdf)

- 6.3 OFFICIAL and OFFICIAL-SENSITIVE information shall be protected in a manner to avoid unauthorised access. The *Contractor* shall take all reasonable steps to prevent the loss, compromise or inappropriate access of the information or from deliberate or opportunist attack.

- 6.4 All OFFICIAL and OFFICIAL-SENSITIVE material including documents, media and other material shall be physically secured to prevent unauthorised access. When not in use OFFICIAL and OFFICIAL- SENSITIVE documents/material shall be handled with care. As a minimum, when not in use, OFFICIAL-SENSITIVE material shall be stored under lock and key and in a lockable room, cabinets, drawers or safe and the keys/combinations are themselves to be subject to a level of physical security and control.
- 6.5 Disclosure of OFFICIAL and OFFICIAL-SENSITIVE information shall be strictly in accordance with the "need to know" principle. Except with the written consent of the Authority, the *Contractor* shall not disclose any of the classified aspects of the Contract detailed in the Security Aspects Letter other than to a person directly employed by the *Contractor* or Subcontractor, or Service Provider.
- 6.6 Any samples, patterns, specifications, plans, drawings or any other documents issued by or on behalf of the Authority for the purposes of the Contract remain the property of the Authority and shall be returned on completion of the Contract or, if directed by the Authority, destroyed in accordance with paragraph 32.

## **7 Access**

- 7.1 Access to OFFICIAL and OFFICIAL-SENSITIVE information shall be confined to those individuals who have a "need-to-know", have been made aware of the requirement to protect the information and whose access is essential for the purpose of his or her duties.
- 7.2
- 7.3 The *Contractor* shall ensure that all individuals having access to OFFICIAL SENSITIVE information have undergone basic recruitment checks. *Contractors* shall apply the requirements of HMG Baseline Personnel Security Standard (BPSS) for all individuals having access to OFFICIAL-SENSITIVE information. Further details and the full requirements of the BPSS can be found at the Gov.UK website at:
- 7.3.1 <https://www.gov.uk/government/publications/government-baseline-personnel-security-standard>

## **8 Hard Copy Distribution**

- 8.1 OFFICIAL and OFFICIAL-SENSITIVE documents shall be distributed, both within and outside company premises in such a way as to make sure that no unauthorised person has access. It may be sent by ordinary post or Commercial Couriers in a single envelope. The words OFFICIAL or OFFICIAL-SENSITIVE shall not appear on the envelope. The envelope should bear a stamp or details that clearly indicates the full address of the office from which it was sent.
- 8.2 Advice on the distribution of OFFICIAL-SENSITIVE documents abroad or any other general advice including the distribution of OFFICIAL-SENSITIVE hardware shall be sought from the Authority.



## **9 Electronic Communication, Telephony and Facsimile Services**

- 9.1 OFFICIAL information may be emailed unencrypted over the internet. OFFICIAL-SENSITIVE information shall normally only be transmitted over the internet encrypted using either a CESG Commercial Product Assurance (CPA) cryptographic product or a MOD approved cryptographic technique such as Transmission Layer Security (TLS). In the case of TLS both the sender and recipient organisations must have TLS enabled. Details of the required TLS implementation are available at:

9.1.1 <https://www.ncsc.gov.uk/guidance/tls-external-facing-services>

- 9.2 Details of the CPA scheme are available at:

9.2.1 <https://www.ncsc.gov.uk/scheme/commercial-product-assurance-cpa>

- 9.3 Exceptionally, in urgent cases, OFFICIAL-SENSITIVE information may be emailed unencrypted over the internet where there is a strong business need to do so and only with the prior approval of the Authority.
- 9.4 OFFICIAL-SENSITIVE information shall only be sent when it is known that the recipient has been made aware of and can comply with the requirements of these Security Conditions and subject to any explicit limitations that the authority shall require. Such limitations, including any regarding publication, further circulation or other handling instructions shall be clearly identified in the email sent with the material.
- 9.5 OFFICIAL information may be discussed on fixed and mobile telephones with persons located both within the UK and overseas. OFFICIAL-SENSITIVE information may be discussed on fixed and mobile types of telephone within the UK, but not within earshot of unauthorised persons.
- 9.6 OFFICIAL information may be faxed to recipients located both within the UK and overseas, however OFFICIAL-SENSITIVE information may be faxed only to UK recipients.

## **10 Use of Information Systems**

- 10.1 The detailed functions that must be provided by an IT system to satisfy the minimum requirements cannot all be described here; it is for the implementers to identify possible means of attack and ensure proportionate security mitigations are applied to prevent a successful attack.
- 10.2 The contractor shall ensure 10 Steps to Cyber Security is applied in a proportionate manner for each IT and communications system storing, processing or generating MOD UK OFFICIAL or OFFICIAL-SENSITIVE information. 10 Steps to Cyber Security is available at: <https://www.ncsc.gov.uk/guidance/10-steps-cyber-security>. The contractor shall ensure competent personnel apply 10 Steps to Cyber Security.
- 10.3 As a general rule, any communication path between an unauthorised user and the data can be used to carry out an attack on the system or be used to compromise or ex-filtrate data.
- 10.4 Within the framework of the 10 Steps to Cyber Security, the following describes the minimum security requirements for processing and accessing OFFICIAL-SENSITIVE information on IT systems.

- 10.4.1 Access Physical access to all hardware elements of the IT system is to be strictly controlled. The principle of “*least privilege*” will be applied to System Administrators. Users of the IT System -Administrators should not conduct ‘*standard*’ User functions using their privileged accounts.
- (a) Identification and Authentication (ID&A). All systems shall have the following functionality:
    - (i) Up-to-date lists of authorised users.
    - (ii) Positive identification of all users at the start of each processing session.
  - (b) Passwords. Passwords are part of most ID&A, Security Measures. Passwords shall be ‘strong’ using an appropriate method to achieve this, for example including numeric and “*special*” characters (if permitted by the system) as well as alphabetic characters.
  - (c) Internal Access Control. All systems shall have internal Access Controls to prevent unauthorised users from accessing or modifying the data.
  - (d) Data Transmission. Unless the Authority authorises otherwise, OFFICIAL-SENSITIVE information shall be transmitted or accessed electronically (e.g. point to point computer links) via a public network like the Internet, using a CPA product or equivalent as described in paragraph 13 above.
  - (e) Security Accounting and Audit. Security relevant events fall into two categories, namely legitimate events and violations.
  - (f) The following events shall always be recorded:
    - (i) All log on attempts whether successful or failed,
    - (ii) Log off (including time out where applicable),
    - (iii) The creation, deletion or alteration of access rights and privileges,
    - (iv) The creation, deletion or alteration of passwords
  - (g) For each of the events listed above, the following information is to be recorded:
    - (i) Type of event,
    - (ii) User ID,
    - (iii) Date & Time,
    - (iv) Device ID,
  - (h) The accounting records shall have a facility to provide the System Manager with a hard copy of all or selected activity. There shall also be a facility for the records to be printed in an easily readable form. All security records are to be inaccessible to users without a need to know.

If the operating system is unable to provide this then the equipment shall be protected by physical means when not in use i.e. locked away or the hard drive removed and locked away.

- (i) Integrity & Availability. The following supporting measures shall be implemented:
  - (i) Provide general protection against normally foreseeable accidents/mishaps and known recurrent problems (e.g. virus power supply variations),
  - (ii) Defined Business Contingency Plan,
  - (iii) Data backup with local storage,
  - (iv) Anti-Virus Software (Implementation, with updates, of an acceptable industry standard Anti-virus software),
  - (v) Operating systems, applications and firmware should be supported,
  - (vi) Patching of Operating Systems and Applications used shall be in line with the manufacturers recommended schedule. If patches cannot be applied an understanding of the resulting risk will be documented,
- (j) Logon Banners Wherever possible, a *“Logon Banner”* shall be provided to summarise the requirements for access to a system which may be needed to institute legal action in case of any breach occurring.
  - (A) suggested format for the text (depending on national legal requirements) could be:
 

*“Unauthorised access to this computer system may constitute a criminal offence”*
- (k) Unattended Terminals. Users are to be automatically logged off the system if their terminals have been inactive for some predetermined period of time, or systems must activate a password protected screen saver after 15 minutes of inactivity, to prevent an attacker making use of an unattended terminal.
- (l) Internet Connections. Computer systems shall not be connected direct to the Internet or ‘untrusted’ systems unless protected by a firewall (a software based personal firewall is the minimum but risk assessment and management must be used to identify whether this is sufficient).
- (m) Disposal Before IT storage media (e.g. disks) are disposed of, an erasure product shall be used to overwrite the data. This is a more thorough process than deletion of files, which does not remove the data.

## 11 Laptops

- 11.1 Laptops holding any MOD supplied or contractor generated OFFICIALSENSITIVE information are to be encrypted using a CPA product or equivalent as described in paragraph 14 above.

- 11.2 Unencrypted laptops not on a secure site<sup>1</sup> are to be recalled and only used or stored in an appropriately secure location until further notice or until approved full encryption is installed. Where the encryption policy cannot be met, a Risk Balance Case that fully explains why the policy cannot be complied with and the mitigation plan, which should explain any limitations on the use of the system, is to be submitted to the Authority for consideration. Unencrypted laptops and drives containing personal data are not to be taken outside of secure sites. For the avoidance of doubt the term “drives” includes all removable, recordable media (e.g. memory sticks, compact flash, recordable optical media e.g. CDs and DVDs), floppy discs and external hard drives.
- 11.3 Any token, touch memory device or password(s) associated with the encryption package is to be kept separate from the machine whenever the machine is not in use, left unattended or in transit.
- 11.4 Portable CIS devices are not to be left unattended in any public location. They are not to be left unattended in any motor vehicles either in view or in the boot or luggage compartment at any time. When the vehicle is being driven the CIS is to be secured out of sight in the glove compartment, boot or luggage compartment as appropriate to deter opportunist theft.

## **12 Loss and Incident Reporting**

- 12.1 The contractor shall immediately report any loss or otherwise compromise of any OFFICIAL or OFFICIAL-SENSITIVE information to the Authority.
- 12.2 Accordingly, in accordance with Industry Security Notice 2014/02 as may be subsequently updated at:
  - 12.2.1 [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/293480/ISN\\_2014\\_02\\_Incident\\_Reporting.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/293480/ISN_2014_02_Incident_Reporting.pdf)
- 12.3 Any security incident involving any MOD owned, processed, or *Contractor* generated OFFICIAL or OFFICIAL-SENSITIVE information defined in the Contract Security Aspects Letter shall be immediately reported to the MOD Defence Industry Warning, Advice and Reporting Point (WARP), within the Joint Security Co-ordination Centre (JSyCC). This will assist the JSyCC in formulating a formal information security reporting process and the management of any associated risks, impact analysis and upward reporting to the MOD’s Chief Information Officer (CIO) and, as appropriate, the company concerned. The MOD WARP will also advise the contractor what further action is required to be undertaken.

### **JSyCC WARP Contact Details**

Email: For those with access to the RLI: CIO-DSAS-JSyCCOperations

Email: For those without access to the RLI: CIO-DSAS-JSyCCOperations@mod.gov.uk

Telephone: Working Hours: 0306 770 2187

Out of Hours/Duty Officer Phone: 07768 558863

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<sup>1</sup> Secure Sites are defined as either Government premises or a secured office on the contractor premises

Fax: 01480 446328

Mail: Joint Security Co-ordination Centre (JSyCC), X007 Bazalgette Pavilion, RAF Wyton, Huntingdon, Cambs, PE28 2EA.

### **13 Sub-Contracts**

- 13.1 In accordance with Clause 26 (Subcontracting) of the Engineering and construction contract and this Annex The *Contractor* may Sub-contract any elements of this Contract to Subcontractors within the United Kingdom notifying the Authority. When subcontracting to a Subcontractor located in the UK the *Contractor* shall ensure that these Security Conditions shall be incorporated within the Sub-contract document. The prior approval of the Authority shall be obtained should the *Contractor* wish to Sub-contract any OFFICIALSENSITIVE elements of the Contract to a Subcontractor located in another country. The first page of Appendix 5 (MOD Form 1686 (F1686)) of the Security Policy Framework Contractual Process chapter is to be used for seeking such approval. The MOD Form 1686 can be found at Appendix 5 at:

13.1.1 [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/367494/Contractual\\_Process\\_-\\_Appendix\\_5\\_form.doc](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/367494/Contractual_Process_-_Appendix_5_form.doc).

- 13.2 If the Sub-contract is approved, the *Contractor* shall incorporate these security conditions within the Sub-contract document.

### **14 Publicity Material**

- 14.1 *Contractors* wishing to release any publicity material or display hardware that arises from this Contract shall seek the prior approval of the Authority. Publicity material includes open publication in the contractor's publicity literature or website or through the media; displays at exhibitions in any country; lectures or symposia; scientific or technical papers, or any other occasion where members of the general public may have access to the information even if organised or sponsored by the MOD, Services or any other government department.

### **15 Private Venture**

- 15.1 30. Any defence related Private Venture derived from the activities of this Contract are to be formally assessed by the Authority for determination of its appropriate classification. *Contractors* are to submit a definitive product specification for PV Security Grading in accordance with the requirement detailed at:

15.1.1 [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/414857/20150310\\_PV\\_Ex\\_Guidance\\_Document.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/414857/20150310_PV_Ex_Guidance_Document.pdf)

### **16 Promotions and Potential Export Sales**

- 16.1 *Contractors* wishing to promote, demonstrate, sell or export any material that may lead to the release of information or equipment classified OFFICIALSENSITIVE (including classified tactics, training or doctrine related to an OFFICIAL-SENSITIVE equipment) are to obtain the prior approval of the Authority utilising the MOD Form 680 process, as identified at:

16.1.1 <https://www.gov.uk/mod-f680-applications>.

**17 Destruction**

- 17.1 As soon as no longer required, OFFICIAL and OFFICIAL-SENSITIVE information/material shall be destroyed in such a way as to make reconstitution unlikely, for example, by burning, shredding or tearing into small pieces. Advice shall be sought from the Authority when information/material cannot be destroyed or, unless already authorised by the Authority, when its retention is considered by the *Contractor* to be necessary or desirable. Unwanted OFFICIAL-SENSITIVE information/material which cannot be destroyed in such a way shall be returned to the Authority.

**18 Interpretation/Guidance**

- 18.1 Advice regarding the interpretation of the above requirements should be sought from the Authority.
- 18.2 Further requirements, advice and guidance for the protection of MOD information at the level of OFFICIAL-SENSITIVE may be found in Industry Security Notices at:
- 18.2.1 <https://www.gov.uk/government/publications/industry-security-notices-isns>.

**19 Audit**

- 19.1 Where considered necessary by the Authority, the *Contractor* shall provide evidence of compliance with this Security Clause and/or permit the inspection of the *Contractors* processes and facilities by representatives of the Authority to ensure compliance with these requirements.

### 3 **Schedule 3 (GDPR Schedule)**

The following definitions shall apply to this Schedule.

“Party”: a Party to this contract

“Law”: means any law, subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978, bye-law, enforceable right within the meaning of section 2 of the European Communities Act 1972, regulation, order, regulatory policy, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements with which the Processor is bound to comply;

“Processor Personnel”: means all directors, officers, employees, agents, consultants and contractors of the Processor and/or of any Sub-Processor engaged in the performance of its obligations under this contract.

#### **GDPR CLAUSE DEFINITIONS:**

“Data Protection Legislation”: (i) the GDPR, the LED and any applicable national implementing Laws as amended from time to time (ii) the DPA 2018 subject to Royal Assent to the extent that it relates to processing of personal data and privacy; (iii) all applicable Law about the processing of personal data and privacy;

“Data Protection Impact Assessment”: an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data.

Controller , Processor , Data Subject , Personal Data , Personal Data Breach , Data Protection Officer take the meaning given in the GDPR.

“Data Loss Event”: any event that results, or may result, in unauthorised access to Personal Data held by the Processor under this contract, and/or actual or potential loss and/or destruction of Personal Data in breach of this contract, including any Personal Data Breach.

“Data Subject Request”: a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data.

“DPA 2018”: Data Protection Act 2018

“GDPR”: the General Data Protection Regulation (Regulation (EU) 2016/679)

“Joint Controllers”: where two or more Controllers jointly determine the purposes and means of processing

“LED”: Law Enforcement Directive (Directive (EU) 2016/680)

“Protective Measures”: appropriate technical and organisational measures which may include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the such measures adopted by it including those outlined in Schedule [x] (Security).

“Sub-processor”: any third party appointed to process Personal Data on behalf of that Processor related to this contract.

## **6 DATA PROTECTION**

- 6.1 The Parties acknowledge that for the purposes of the Data Protection Legislation, the *Client* is the Controller and the *Contractor* is the Processor unless otherwise specified in Schedule.

The only processing that the Processor is authorised to do is listed in Schedule [X] by the Controller and may not be determined by the Processor.

- 6.2 The Processor shall notify the Controller immediately if it considers that any of the Controller's instructions infringe the Data Protection Legislation.

- 6.3 The Processor shall provide all reasonable assistance to the Controller in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Controller, include:

6.3.1 a systematic description of the envisaged processing operations and the purpose of the processing; an assessment of the necessity and proportionality of the processing operations in relation to the *works*;

6.3.2 an assessment of the risks to the rights and freedoms of Data Subjects; and

6.3.3 the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.

- 6.4 The Processor shall, in relation to any Personal Data processed in connection with its obligations under this contract:

6.4.1 process that Personal Data only in accordance with Annex A of this Schedule unless the Processor is required to do otherwise by Law. If it is so required the Processor shall promptly notify the Controller before processing the Personal Data unless prohibited by Law;

6.4.2 ensure that it has in place Protective Measures, are appropriate to protect against a Data Loss Event, which the Controller may reasonably reject (but failure to reject shall not amount to approval by the Controller of the adequacy of the Protective Measures), having taken account of the:

- (i) nature of the data to be protected;
  - (ii) harm that might result from a Data Loss Event;
  - (iii) state of technological development; and
  - (iv) cost of implementing any measures;
- (c) ensure that :



OFFICIAL-SENSITIVE

- (i) the Processor Personnel do not process Personal Data except in accordance with this contract (and in Annex A of this Schedule);
- (ii) it takes all reasonable steps to ensure the reliability and integrity of any Processor Personnel who have access to the Personal Data and ensure that they:
  - (A) are aware of and comply with the Processor's duties under this Clause;
  - (B) are subject to appropriate confidentiality undertakings with the Processor or any Sub-processor;
  - (C) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third Party unless directed in writing to do so by the Controller or as otherwise permitted by this contract; and
  - (D) have undergone adequate training in the use, care, protection and handling of Personal Data; and

6.4.3 not transfer Personal Data outside of the EU unless the prior written consent of the Controller has been obtained and the following conditions are fulfilled:

- (i) the Controller or the Processor has provided appropriate safeguards in relation to the transfer (whether in accordance with GDPR Article 46 or LED Article 37) as determined by the Controller;
- (ii) the Data Subject has enforceable rights and effective legal remedies;
- (iii) the Processor complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Controller in meeting its obligations); and
- (iv) the Processor complies with any reasonable instructions notified to it in advance by the Controller with respect to the processing of the Personal Data;

6.4.4 at the written direction of the Controller, delete or return Personal Data (and any copies of it) to the Controller on termination of the contract unless the Processor is required by Law to retain the Personal Data.

6.5 Subject to Clause 1.6, the Processor shall notify the Controller immediately if it:

6.5.1 receives a Data Subject Request (or purported Data Subject Request);

6.5.2 receives a request to rectify, block or erase any Personal Data;

6.5.3 receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;

OFFICIAL-SENSITIVE

- (d) receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this contract;
- 6.5.4 receives a request from any third Party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law; or
- 6.5.5 becomes aware of a Data Loss Event.
- 6.6 The Processor's obligation to notify under Clause 1.5 shall include the provision of further information to the Controller in phases, as details become available.
- 6.7 Taking into account the nature of the processing, the Processor shall provide the Controller with full assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under Clause 1.5 (and insofar as possible within the timescales reasonably required by the Controller) including by promptly providing:
  - 6.7.1 the Controller with full details and copies of the complaint, communication or request;
  - 6.7.2 such assistance as is reasonably requested by the Controller to enable the Controller to comply with a Data Subject Request within the relevant timescales set out in the Data Protection Legislation;
  - 6.7.3 the Controller, at its request, with any Personal Data it holds in relation to a Data Subject;
  - 6.7.4 assistance as requested by the Controller following any Data Loss Event;
  - 6.7.5 assistance as requested by the Controller with respect to any request from the Information Commissioner's Office, or any consultation by the Controller with the Information Commissioner's Office.
- 6.8 The Processor shall maintain complete and accurate records and information to demonstrate its compliance with this Clause. This requirement does not apply where the Processor employs fewer than 250 staff, unless:
  - 6.8.1 the Controller determines that the processing is not occasional;
  - 6.8.2 the Controller determines the processing includes special categories of data as referred to in Article 9(1) of the GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the GDPR; or
  - 6.8.3 the Controller determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.
- 6.9 The Processor shall allow for audits of its Data Processing activity by the Controller or the Controller's designated auditor.
- 6.10 Each Party shall designate its own data protection officer if required by the Data Protection Legislation.

- 6.11 Before allowing any Sub-processor to process any Personal Data related to this contract, the Processor must:
- 6.11.1 notify the Controller in writing of the intended Sub-processor and processing;
  - 6.11.2 obtain the written consent of the Controller;
  - 6.11.3 enter into a written agreement with the Sub-processor which give effect to the terms set out in this Clause 2 such that they apply to the Sub-processor; and
  - 6.11.4 provide the Controller with such information regarding the Sub-processor as the Controller may reasonably require.
- 6.12 The Processor shall remain fully liable for all acts or omissions of any of its Sub-processors.
- 6.13 The Controller may, at any time on not less than 30 Working Days' notice, revise this Clause by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this contract).
- 6.14 The Parties agree to take account of any guidance issued by the Information Commissioner's Office. The Controller may on not less than 30 Working Days' notice to the Processor amend this agreement to ensure that it complies with any guidance issued by the Information Commissioner's Office.
- 6.15 Where the Parties include two or more Joint Controllers as identified in Annex A of this Schedule in accordance with GDPR Article 26, those Parties shall enter into a Joint Controller Agreement based on the terms outlined in Schedule [Y] in replacement of Clauses 1.1-1.14 for the Personal Data under Joint Control.

## **Annex A - Schedule of Processing, Personal Data and Data Subjects**

### **Schedule [X] Processing, Personal Data and Data Subjects**

This Schedule shall be completed by the Controller, who may take account of the view of the Processors, however the final decision as to the content of this Schedule shall be with the Controller at its absolute discretion.

1. The contact details of the Controller's Data Protection Officer are: [Insert Contact details]
2. The contact details of the Processor's Data Protection Officer are: [Insert Contact details]
3. The Processor shall comply with any further written instructions with respect to processing by the Controller.
4. Any such further instructions shall be incorporated into this Schedule.

Description	Details
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OFFICIAL-SENSITIVE

Identity of the Controller and Processor	<p>The Parties acknowledge that for the purposes of the Data Protection Legislation, the Customer is the Controller and the <i>Contractor</i> is the Processor in accordance with Clause 1.1.</p> <p>[Guidance: You may need to vary this section where (in the rare case) the Customer and <i>Contractor</i> have a different relationship. For example where the Parties are Joint Controller of some Personal Data:</p> <p>“Notwithstanding Clause 1.1 the Parties acknowledge that they are also Joint Controllers for the purposes of the Data Protection Legislation in respect of:</p> <p>[Insert the scope of Personal Data which the purposes and means of the processing is determined by the both Parties]</p> <p>In respect of Personal Data under Joint Control, Clause 1.1-1.15 will not apply and the Parties agree to put in place a Joint Controller Agreement as outlined in Schedule Y instead.”</p>
Subject matter of the processing	<p>[This should be a high level, short description of what the processing is about i.e. its subject matter of the Contract.</p> <p>Example: The processing is needed in order to ensure that the Processor can effectively deliver the Contract to provide a service to members of the public. ]</p>
Duration of the processing	[Clearly set out the duration of the processing including dates]
Nature and purposes of the processing	<p>[Please be as specific as possible, but make sure that you cover all intended purposes.</p> <p>The nature of the processing means any operation such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction of data (whether or not by automated means) etc.</p> <p>The purpose might include: employment processing, statutory obligation, recruitment assessment etc]</p>
Type of Personal Data being Processed	[Examples here include: name, address, date of birth, NI number, telephone number, pay, images, biometric data etc]
Categories of Data Subject	[Examples include: Staff (including volunteers, agents, and temporary workers), customers/ <i>Clients</i> , suppliers, patients, students / pupils, members of the public, users of a particular website etc]

**4      Schedule 4 – not used**

**5** **Schedule 5 – Accounting for** **Property of the Authority – Data & Format Requirements for PSA Records Annex A to Clause 70.3**

**Format**

The *Contractor* is not obliged to maintain and report on his PSA records in a format that is different from his original records. Electronic formats are the preferred format for reporting under Clause 1.b) of this Clause. If electronic formats are used for reporting, the following formats are acceptable:

Single MS Access Table

Unformatted MS Excel Spreadsheet

Other electronic formats may be suitable, subject to agreement with DBS Finance ADMT - see Box 8 of DEFFORM 111 – for points of contact. Reports required under Clause 1(b) of this Clause are to be submitted to DBS Finance ADMT - see Box 8 of DEFFORM 111.

**Item Record Information**

A record is required for each item of GFA held by the *Contractor* from information available to the *Contractor* provided by the *Client* and from the *Contractor's* own inventory management systems.

Serial	Name	Description	Comments
<b>KEY DATA FIELDS</b>			
1a	NATO Stock Number (NSN)	The NSN is to be provided in 3 separate fields, i.e.	The NSN is a 13 digit number assigned to an Item of Supply. It consists of the 4 digit NATO Supply Classification (NSC) and the 9 digit National Item Identification Number (NIIN) i.e. Nation Code (NC) + IIN.
1b		NSN (4 digits)	
1c		NC (2 digits)	
		IIN (7 digits)	
2	Contract Number	Contract Number under	If an item is issued

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	or identification of authorising document or responsible MOD official's details if there is no contract.	which the contractor holds GFA.	against or transferred to a new Contract or other authorising document, Serial 2 details should be updated. The preceding Contract No field is to be completed at Serial 8.
3	Terms of Issue / Loan Type	Contract Work Item (CWI); Contract Work Arising (CWA); Contract Support Item (CSI); Contract Embodiment Item (CEI).	This is the loan category indicating why industry is holding the asset.
4	Part Number	The Original Equipment Manufacturer's part number for the item	Essential if Serial 1 information is not available. A serial number or unique sequence number should be identified for high value stock items.  For JTTE insert Tool No.
<b>GENERAL DATA FIELDS</b>			
5	Domestic Management Code/Inventory Management Code (DMC/IMC)	Unique Identifier used to further identify the main equipment to which an item belongs.	Domestic Management Code examples are; IMC(Sea): 0613 DMC (Land): 1VSM DMC Air): 10S Note – No DMC/IMC starts with a 0 (zero).

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6	Description	A description of the Asset	The description on the issuing paperwork should be used.
7	Unit Of Measure	Each, Pack, etc. for each line	Otherwise known as Denomination of Quantity
8	Preceding Contract No		To be completed if an item is transferred to a new-succeeding contract.
9	JTTE Indicator	"Yes" indicator to reflect that JTTE has passed from DEFCON 23 to DEFCON 611	This indicator is to be flagged when the contractor moves an item off the DEFCON 23 Register and lists the item in the PSA.
10	Prime Contractor	The Prime Contractor AAC Code should be detailed where the item is being reported by a self-accounting subcontractor	
11	Disposal Indicator	Highlights an item which requires disposal: 1 – Obsolete 2 – Surplus 3 - Disposal instructions requested 4 – Disposal instructions received	May relate to an item identified as obsolete or surplus to requirements, or for which disposal instructions have been received.
12	Asset Location	The name of the Site where the contractor holds the item. This description only needs to detail the name of the site and should not exceed 30 characters.	This field only needs to be populated if the asset is held on a site other than the primary site as the primary site is fixed to the AIMS Number.
13	Remarks		Any remarks pertinent to the item or that will better identify ownership



### Transactional Information

Transactional information enables Resource Accounting and Budgeting compliant accounting and informs decisions on future requirements and any assessment for disposal, either to scrap or return to a MOD Depot or Unit. A transactional information record is required for each item held by the *Contractor*, comprising Serial Nos 1, 2, 3 and 4 identified as the **Key Data Fields**, which will form the unique record identifier that will be used by the Assets in Industry Data Centre. No aggregation of individual line entries is required to be undertaken by the *Contractor* for transactional returns.

Serial	Name	Description	Comments
<b>KEY DATA FIELDS</b>			
14	Opening Balance Data	Reporting period start date.	
15	Quantity Embodied		Only to be recorded when the item has been embodied in the product, i.e. at the point in time when the item loses its own identity
16	Quantity Returned to MOD		This is to include quantity of items returned to MOD under cover of MOD Form 640 or MOD Form 650.
17	Quantity Disposed		This is to include quantity of items scrapped on site or lost in shops (MOD Form 650A), and items authorised for disposal through DSA or otherwise.

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18	Quantity Issued - Other		Any other issue of items not covered by serial 14, 15 or 16. The reason for the issue / transfer is to be recorded in the remarks field.
19	Quantity Received		
20	Stocktaking Adjustments	Stock Adjustments	
		(Qty) as a result of stocktaking losses or gains.	
21	Closing Balance	The total quantity in stock at the close of the reporting period	
22	Closing Balance date	Reporting period end date.	

**6      Schedule 6 – Security Measures – Provisions to be Included in Relevant Sub-Contracts – Clause 29A**

**Definition**

1      In this Clause:-

- (a)    'Secret Matter' means any matter connected with the contract, or its performance which the First Party informs the Second Party in writing has been designated by the Authority as "TOP SECRET" or "SECRET" and shall include any information concerning the content of such matter and anything which contains or may reveal that matter;
- (b)    'Employee' shall include any person who is an employee or director of the Second Party or who occupies the position of a director of the Second Party, by whatever title given.
- (c)    The 'Authority' means the Secretary of State for Defence.
- (d)    'Security Policy Framework' means the HMG Security Policy Framework relating to the Government Security Classification policy as published by the Cabinet Office.
- (e)    GovS 007: Security' means the Government Functional Standard GovS 007: Security relating to the government's expectations for protecting:
  - (i)     the government's people, information and assets;
  - (ii)    visitors to government property, and third-party suppliers while engaged on government business; and
  - (iii)    citizen data.

**The Official Secrets Acts**

2      The Second Party shall:

- (f)    Take all reasonable steps to ensure that all Employees engaged on any work in connection with the contract have notice that the Official Secrets Acts 1911-1989 apply to them and will continue so to apply after the completion or termination of the contract; and
- (g)    If directed by the First Party or the Authority, ensure that any Employee shall sign a statement acknowledging that, both during the term of the contract and after its completion or termination, he is bound by the Official Secrets Acts 1911-1989 (and where applicable any other legislation).

**Security Measures**

3      Unless he has the written authorisation of the Authority to do otherwise, neither the Second Party nor any of his Employees shall, either before or after the completion or

termination of the contract, do or permit to be done anything which they know or ought reasonably to know may result in Secret Matter being disclosed to or acquired by a person in any of the following categories:

- (a) who is not a British citizen;
- (b) who does not hold the appropriate authority for access to the protected matter;
- (c) in respect of whom the Authority has notified the Second Party in writing that the Secret Matter shall not be disclosed to or acquired by that person;
- (d) who is not an Employee of the Second Party;
- (e) who is an Employee of the Second Party and has no need to know the information for the proper performance of the contract.

4 Unless he has the written permission of the Authority to do otherwise, the Second Party and his Employees shall, both before and after the completion or termination of the contract, take all reasonable steps to ensure that:

- (a) no photograph of, or pertaining to, any Secret Matter shall be taken and no copy of or extract from any Secret Matter shall be made except to the extent necessary for the proper performance of the contract;
- (b) any Secret Matter is at all times strictly safeguarded in accordance with the GovS 007: Security (as amended from time to time) and upon request is delivered up to the Authority who shall be entitled to retain it.

A decision of the Authority on the question of whether the Second Party has taken or is taking reasonable steps as required by this Clause, shall be final and conclusive.

5 The Second Party shall:

- (a) provide to the Authority:
  - (i) upon request, such records giving particulars of those Employees who have had at any time, access to any Secret Matter that is required to be kept in accordance with Sub-Clause 4.b.;
  - (ii) upon request, such information as the Authority may from time to time require so as to be satisfied that the Second Party and his Employees are complying with his obligations under this Clause, including the measures taken or proposed by the Second Party so as to comply with his obligations and to prevent any breach of them;
  - (iii) full particulars of any failure by the Second Party and his Employees to comply with any obligations relating to Secret Matter arising under this Clause immediately upon such failure becoming apparent;
- (b) ensure that, for the purpose of checking the Second Party's compliance with the obligation in Sub-Clause 4.b), a representative of the First Party or the Authority shall be entitled at any time to enter and inspect any premises used

by the Second Party which are in any way connected with the contract and inspect any document or thing in any such premises, which is being used or made for the purposes of the contract. Such representative shall be entitled to all such information as he may reasonably require.

- 6 If at any time either before or after the completion or termination of the contract, the Second Party or any of his Employees discovers or suspects that an unauthorised person is seeking or has sought to obtain information directly or indirectly concerning any Secret Matter, the Second Party shall forthwith inform the Authority of the matter with full particulars thereof.

#### **Sub-Contracts**

- 7 If the Second Party proposes to make a Sub-contract which will involve the disclosure of Secret Matter to the Subcontractor, the Second Party shall:
- (a) submit for approval of the Authority the name of the proposed sub- contractor, a statement of the work to be carried out and any other details known to the Second Party which the Authority shall reasonably require;
  - (b) incorporate into the Sub-contract the terms of this Clause and such secrecy and security obligations as the Authority shall direct.
  - (c) inform the Authority immediately he becomes aware of any breach by the Subcontractor of any secrecy or security obligation and, if requested to do so by the Authority, terminate the contract.

#### **Termination**

- 8 The First Party shall be entitled to terminate the contract immediately if:
- (a) the Second Party is in breach of any obligation under this Clause; or
  - (b) the Second Party is in breach of any secrecy or security obligation imposed by any other contract with the Crown;

## 7 Schedule 7 Project Bank Accounts

### TRUST DEED FOR PROJECT BANK ACCOUNT

#### Trust Deed

**THIS DEED is made the [INSERT DATE FIGURE IN WORDS] day of [INSERT MONTH IN WORDS] 20 [INSERT YEAR]**

#### BETWEEN:

- (1) **The *Client*** (as detailed in Annex B to this Deed);
- (2) **The *Contractor*** (as detailed in Annex B to this Deed); and
- (3) **The *Subcontractors*** (as detailed in Annex B to this Deed).

Collectively referred to in this Deed as “the Parties”.

#### Background

**A.** The *Client* has engaged the *Contractor* to carry out the RAF CAM Relocation Contract (ref: 70157777386)

**B.** To assist in the development and performance of the Works, the *Contractor* has engaged the *Subcontractors* to carry out certain parts of the work required in respect of the Project as set out in more detail in the Subcontracts.

**C.** The Parties wish to adopt a payment mechanism which will (i) ensure the ‘Fair Payment’ of both the *Contractor* and the *Subcontractors*; and (ii) ensure that the *Subcontractors* receive payment at the same time as the *Contractor*. To achieve this objective, the Parties have agreed to operate a bank account in accordance with the terms of this Deed.

## 1 Definitions

In this Deed, the following words have the following meanings:

‘Account Holders’ the *Client* and the *Contractor*;

‘Bank’ the Bank where the Bank Account will be held as set out in Annex B to this Deed;

‘Bank Account’ a Bank Account opened with the Bank which has no overdraft facility, into which all monies due under the Works Contract will be paid by the *Client* in accordance with this Deed;

‘Bank Mandate’ the instructions as to the operation of the Bank Account as agreed between the Account Holders and the Bank as set out in Annex C to this Deed;

‘Works Contract’ the Contract between the *Client* and the *Contractor* in respect of the Project as detailed in Annex B to this Deed;

'Project' the Project defined in Annex B to this Deed;

'Subcontract' a Sub-contract agreement between a Subcontractor and the *Contractor* in respect of the Project; and

'Term' from the date of this Deed until such time as all monies due to the *Contractor* and the Subcontractors under the Works Contract and/or the Subcontracts have been paid in full.

## **2 Account**

- 2.1 The Account Holders undertake to open a new interest-bearing deposit Bank Account with the Bank, such account to be opened and held in the names of the Account Holders.
- 2.2 The *Client* undertakes to pay all monies due to the *Contractor* and/or the Subcontractors under the Works Contract and the Subcontracts into the Bank Account as and when such monies become due for payment in accordance with the terms of the Works Contract.
- 2.3 The Parties agree that any monies paid into the Bank Account shall, as from the date on which such monies are paid into the Bank Account, be kept separate and distinct and clearly identifiable, and shall be held in trust for each of the *Contractor* and the Subcontractors in the amounts owing to them as set out in the Account Holder's instructions to the Bank for the payment of monies to the *Contractor* and the Subcontractors. The *Contractor* and the Subcontractors acknowledge that they have no rights and/or interest in the monies held in the Bank Account other than as a beneficiary of the monies owing to them.
- 2.4 If for any reason the total amount of monies deposited by the *Client* in the Bank Account is less than the total amount of monies which has been authorised by the Account Holders for payment to the Subcontractors and the *Contractor*, the monies held in the Bank Account shall be allocated to and held on trust for each of the Subcontractors and the *Contractor* in the same proportions that the monies owed to them forms of the total amount of monies owed at that time to the Subcontractors and the *Contractor* collectively
- 2.5 The *Client* acknowledges that, as and when the monies are paid by it into the Bank Account in accordance with the Works Contract, it will cease to have any further rights and/or interest in such monies.
- 2.6 The Account Holders accept that, irrespective of any disputes, which may arise in respect of work performed by the *Contractor* and/or the Subcontractors, the Account Holders may not withdraw any monies from the Bank Account (other than in the case of the *Contractor* where it may withdraw monies owned by it).

## **3 Operation of the Bank Account**

- 3.1 The Account Holders each agree that:
  - 3.1.1 they will sign the Bank Mandate as soon as reasonably practicable following execution of this Deed; and in any event, within twenty-one (21) Calendar Days of the date of this Deed;

- 3.1.2 they will operate the Bank Account at all times in accordance with the Bank Mandate, this Deed and the Works Contract. If there is any conflict between the Bank Mandate, this Deed and/or the Works Contract, the documents shall take precedence in the following order:
  - 3.1.2.1 this Deed;
  - 3.1.2.2 the Bank Mandate; and
  - 3.1.2.3 the Works Contract.
- 3.1.3 the Bank Account shall not become overdrawn;
- 3.1.4 they will keep accurate, complete and up to date books of account and records of all transactions relating to the Bank Account, including but not limited to details of all payments out of the Bank Account authorised by the Account Holders and any Bank charges payable;
- 3.1.5 if the Account Holders have the ability to authorise transactions in respect of the Bank Account via an electronic facility operated by the Bank, each Account Holder shall ensure that its access details for such facility are only made available of those of its employees and/or representatives which need to know such information, and that such employees and/or representatives are aware of the
- 3.1.6 confidential nature of the access details, the Bank Account details and the Bank Account transactions;
- 3.1.7 they are each responsible for the acts and/or omissions of their own employees and/or other representatives as if they were its own acts and/or omissions;
- 3.1.8 they are each liable for their own acts and/or omissions under this Deed and have no liability for the acts and/or omissions of the other Account Holder;
- 3.1.9 they hold all monies in the Bank Account on trust for the full and exclusive benefit of the *Contractor* and the Subcontractors in accordance with clauses 2.3 and 2.4 above.
- 3.2 As and when payment milestones set out in the Works Contract have been achieved, the Account Holders shall identify any payments due under the Works Contract and the Subcontracts and:
  - 3.2.1 the *Client* shall promptly pay the monies due under the Works Contract into the Bank Account;
  - 3.2.2 as and when the monies have been cleared, the Account Holders shall promptly authorise the Bank to make any payments due pursuant to the Works Contract and/or Sub-contract to the Subcontractors and/or the *Contractor* from the Bank Account.



- 3.3 The *Contractor* agrees to inform each of the Subcontractors of the amounts which are to be paid to them from the Bank Account and the date on which the Subcontractor can expect to receive such payment on the same day as the Account Holders authorise the payments out of the Bank Account.
- 3.4 All payments to the Subcontractors and the *Contractor* shall be made by bank transfer Banker's Automated Clearing Services (BACS). The Subcontractors and the *Contractor* must inform the Account Holders of their relevant bank account details and keep them up to date at all times. The Subcontractors and the *Contractor* accept that failure to do so may result in monies not being paid to them and that the Account Holders have no liability for such failure.
- 3.5 Any interest paid by the Bank in respect of the monies held in the Bank Account shall belong to the *Contractor* and may be withdrawn by it after Works Contract Completion Date as defined in the Works Contract.
- 3.6 Any Bank Charges, money transmission costs and other disbursements incurred in the establishment and operation of the Bank Account shall be borne by the *Contractor*.

#### **4 New Subcontractors**

- 4.1 If the *Contractor* appoints a new Subcontractor in respect of the Works Contract after the date of this Deed and agrees with that new Subcontractor that it shall be paid via the Bank Account, the Account Holders shall arrange for the new Subcontractor to sign a deed of adherence in the form set out in Annex A to this Deed.
- 4.2 The Parties agree that, in signing the deed of adherence, the Account Holders are signing on behalf of themselves and as agent for each of the Subcontractors. Each Subcontractor agrees to be bound by the terms of any deed of adherence validly executed by the Account Holders on behalf of all the Parties.

#### **5 Removal of Subcontractors**

- 5.1 If prior to the expiry of the Term a Subcontractor ceases to be involved in the Project for whatever reason (including but not limited to the termination of its Sub-contract), the Account Holders shall arrange for the payment out of the Bank Account to the Subcontractor of any monies held on trust for the benefit of that Subcontractor.
- 5.2 On payment of all the monies due to it from the Bank Account in accordance with Clause 5.1 above, the Subcontractor shall cease to have any further rights and/or interest in the Bank Account.

#### **6 Confidentiality**

- 6.1 No party shall use and/or disclose any confidential information, which is acquired by it about another party's business and/or given to it by another party to this Deed except in the proper performance of this Deed.

#### **7 Termination**

- 7.1 This Deed shall continue for the Term, subject to early termination in accordance with Clause 7.2 below.

- 7.2 This Deed shall immediately terminate if:
- 7.2.1 the parties agree in writing that the Deed should terminate; and/or
  - 7.2.2 the Works Contract terminates and all monies have paid out from the Bank Account.
- 7.3 On termination of this Deed the Account Holders undertake to ensure all monies held on trust for the benefit of the *Contractor* and/or the Subcontractors and held in the Bank Account are promptly paid to the relevant parties (less any outstanding bank charges and expenses).
- 8 **General**
- 8.1 This Deed contains the whole agreement between the Parties and it supersedes any prior written or oral agreement between them and is not affected by any other promise, representation, expectation, warranty, usage, custom or course of dealing. The parties confirm that they have not entered into this contract on the basis of any representation that is not expressly incorporated into this contract. Nothing in this Deed shall exclude liability for any fraudulent statement or act made prior to the date of this Deed.
- 8.2 No waiver by any Party of any breach of this contract shall be considered a waiver of any subsequent breach of the same provision or any other provision.
- 8.3 The invalidity, illegality or unenforceability of any of the provisions of this Deed shall not affect the validity, legality or enforceability of any of the remaining provisions of this Deed.
- 8.4 No Party shall be liable for any delay or failure in performing its obligations under this Deed as a result of reasons beyond its reasonable control, including but not limited to acts of God, war, flood, fire, labour disputes, Subcontractor delays, strikes, lock-outs, riots, civil commotion, malicious damage, explosion, governmental actions and any other similar events. Failure to make payment due to insufficient funds in the Bank Account is not a force majeure event.
- 8.5 The Subcontractors are only liable for their own acts and/or omissions under this Deed and not the acts and/or omissions of any of the other Subcontractors. The Subcontractors are not jointly and severally liable under this Deed.
- 8.6 No party may assign its interest in this Deed (or any part) without the written consent of the other parties, such consent not to be unreasonably withheld or delayed.
- 8.7 None of the items and conditions of this Deed shall be enforceable by any person who is not a party to it.
- 8.8 This Deed is governed by and interpreted in accordance with English law and the parties agree to submit to the exclusive jurisdiction of the English courts.

**IN WITNESS OF THE ABOVE the parties execute this document as a Deed on the date written above**

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## Annex A

### DEED OF ADHERENCE

THIS DEED OF ADHERENCE is dated the [INSERT DATE FIGURE IN WORDS] day of [INSERT MONTH] 20

[INSERT YEAR]

#### BETWEEN:

(1) THE CURRENT PARTIES (as defined below; and

(2) [INSERT NAME OF NEW SUBCONTRACTOR] (INSERT COMPANY NUMBER) whose registered office is

at {INSERT ADDRESS} (\*New Party\*)

#### Background

A. The Current Parties have entered into a Deed dated {INSERT DEED DATE} which governs the operation of a Project Bank Account (PBA) into which all monies due under the Works Contract (as defined below) are paid.

B. The New Party is a Subcontractor of [INSERT NAME OF SUBCONTRACTOR]. It has been agreed by the *Client* and the *Contractor* that the New Party will be paid for its work using the PBA (as defined below).

C. This Deed of Adherence constitutes the terms upon which the New Party agrees to be paid for the work it performs for the *Contractor* via the PBA and sets out the New Party's rights and interests in the monies contained within the PBA.

## 1 Definitions

In this Deed the following words have the following meanings:

'Admission Date' [INSERT DATE];

'*Client*' The Secretary of State for Defence acting through Defence Infrastructure

Organisation at [INSERT COMMERCIAL BRANCH ADDRESS] (including his successors and assigns);

'Works Contract' the Contract between the *Client* and the *Contractor* dated {INSERT DATE} for [INSERT TITLE OF PROJECT];

'*Contractor*' [INSERT REGISTERED CONTRACTOR NAME AND COMPANY NUMBER];

'Current Parties' the persons/organisations whose names are set out in Appendix 1 to this Deed of Adherence being the current parties to the Deed;

'Deed' the Deed between the Current Parties dated {INSERT DATE} which sets out the basis on which the Project Bank Account is to be operated; and

'Project Bank Account' the Bank Account held in the name of the *Client* and the *Contractor* at [**INSERT NAME OF BANK**] account number {**INSERT BANK ACCOUNT NUMBER**} into which all monies due in respect of the Works Contract are to be paid.

## **2     Admission**

- 2.1     The New Party will be added as a party to the Deed on the Admission Date.
- 2.2     The New Party agrees to be bound by the Deed in relation to the Current Parties as from the Admission Date as if the New Party was an original party to the Deed.
- 2.3     The Current Parties agree to be bound by the Deed in relation to the New Party as from the Admission Date as if the New Party was an original party to the Deed.

## **3     General**

- 3.1     The *Client* and the *Contractor* are authorised by the remaining Current Parties to enter into and execute this Deed on behalf of all the Current Parties as their agent.
- 3.2     This Deed of Adherence is governed by English law and the parties agree to submit to the non-exclusive jurisdiction of the English Courts.

**IN WITNESS OF THE ABOVE the parties execute this document as a Deed on the date written above.**

**Appendix 1 to Annex A**

**THE CURRENT PARTIES**

[INSERT DETAILS OF THE CURRENT PARTIES TO THE DEED]

EXECUTED and DELIVERED as a DEED

by the *Client*

acting by: .....

[INSERT POST TITLE]

EXECUTED and DELIVERED as a DEED

by [INSERT NAME OF CONTRACTOR]

acting by: .....

Director

.....

Director/Secretary

EXECUTED and DELIVERED as a DEED

by [INSERT NAME OF NEW PARTY]

acting by: .....

Director

.....

Director/Secretary

## Annex B

### DETAILS

*Client:* [INSERT NAME, ADDRESS OF *CLIENT*]

*Contractor:* [INSERT NAME, ADDRESSE AND COMPANY NUMBER  
FOR THE *CONTRACTOR*].

Subcontractors: [INSERT NAMES, ADDRESSES AND COMPANY  
NUMBERS FOR EACH SUBCONTRACTOR WHO WILL  
BE A PARTY TO THIS DEED].

Bank: [INSERT DETAILS OF THE BANK WHICH WILL OPERATE THE PROJECT BANK  
ACCOUNT].

Works Contract: Contract between (1) the *Client* and (2) the *Contractor* in respect of the  
Project and dated [INSERT DATE] with Works Contract Number: [INSERT WORKS  
CONTRACT NO.].

Project: [INSERT PROJECT TITLE]

**Annex C**

**BANK MANDATE**

[INSERT THE INSTRUCTIONS AS TO THE OPERATION OF THE BANK ACCOUNT AS AGREED BETWEEN THE ACCOUNT HOLDERS AND THE BANK.] (Use ..... of [INSERT NAME OF BANK])

EXECUTED and DELIVERED as a DEED

by the *Client*

acting by: .....

[INSERT POST TITLE]

EXECUTED and DELIVERED as a DEED

by [INSERT NAME OF CONTRACTOR]

acting by: .....

Director

.....

Director/Secretary

EXECUTED and DELIVERED as a DEED

by [INSERT NAME OF NEW PARTY]

acting by: .....

Director

.....

Director/Secretary



## 8 Schedule 8

### **ANNEX A to DEFCON 82 (Clause 73B) - Part A: New Equipments**

1. The *Contractor* shall make preliminary arrangements for the supply of spares as follows:

#### **Provision of Initial Spares Concurrently with the Main Equipment**

2. Initial spares under this procedure are required to be delivered not later, and preferably two months earlier, than the first delivery of the main equipment. The *Contractor* shall therefore plan to provide concurrently with the main equipment a sufficient quantity of spare parts to ensure adequate spares cover for the stated period. In principle, each batch of parts released for manufacture should contain its quota of spares. Any special release procedure will be detailed in the Contract.
3. To implement Clause 2 above, the *Contractor* is required to assess which parts are likely to need replacement during the initial period of use. (See Clause 5 of DEFCON 82) (Clause 73B).

#### **Criteria for Determining Spares Required**

4. Spares recommended by the *Contractor* shall, unless the Contract stipulates otherwise, comply with the following criteria:
  - a. They shall consist of components, piece-parts, modules, sub- assemblies and assemblies which are to the same design standard as those fitted in the production equipment.
  - b. Common items such as standard nuts and bolts, washers etc., shall be excluded unless they are likely to need frequent replacement, when they shall be listed separately (see sub-sub-Clause 5.b.(3). below).
  - c. Items supplied to the *Contractor* on Embodiment Loan are to be excluded.
  - d. The total estimated value of all the parts recommended shall not exceed the amount which may be included in the Contract for this purpose.
  - e. The total quantity of any part shall take account of reliability predictions and such deployment information, servicing and other data as may be supplied by the Authority.

#### **Preparation and Submission of Lists**

5. Within the time specified in the Contract (or within three months from date of Contract if no time is so specified) or of the Authority's approval to manufacture any major assembly included in the Contract:
  - a. The *Contractor* shall provide the Project Manager concerned with an original copy of each preliminary list detailing the range and quantity of spares which he recommends. (See Clause 5 of DEFCON 82 (Clause 73B)). If formal design

modification approval of any part of the main equipment occurs after these lists have been prepared, the *Contractor* may be asked to submit further lists, within a specified period, in respect of the modified portion of the equipment (see Clause 10 below). No action to purchase or manufacture listed items is to be taken until authority is given - see Clauses 6 and 7 below.

- b. Preliminary lists are to be submitted in 3 parts, using DEFFORM 82A:
- (1) LIST A - shall detail the main assemblies in serially numbered order (e.g. 1/10 to 10/10), forming the complete equipment and may be submitted as a list, or as an equipment family tree. Where assemblies of a complete equipment are receiving the Authority's approval to manufacture in sequence, it is most important that inability to complete LIST A should not delay completion of LISTS B and C for assemblies which have been approved for manufacture. Such lists are to be endorsed with the main assembly serial number mentioned above.
  - (2) LIST B - shall detail the spares which are peculiar to the equipment, separate lists being submitted for each main assembly.
  - (3) LIST C - shall detail those spares recommended, but not appropriate to LISTS A or B, together with any common items referred to in sub-Clause 4.b) above, these items being listed last. Separate lists are to be submitted for each main assembly.
  - (4) On LISTS B and C the *Contractor* shall complete columns (i) to (viii), adding any special reference advised by the Authority. The original copy of each of these lists shall be submitted to the Project Manager as soon as they are completed and without waiting for the completion of other lists. The last list of any series is to show that the series is complete.

#### NOTE:

When preparing his list of spares on DEFCONs 82A or 82B, the *Contractor* must mark all static-sensitive items with the letters 'SS' in red in the 'Description' column.

Particular attention is drawn to the requirement for the actual manufacturer's name, address and parts reference number to be entered in columns (ii) and (iii) of DEFFORM 82A in respect of all parts detailed thereon.

The estimated prices to be entered in column (viii) of DEFFORM 82A will be used by the Authority for budgetary purposes only. Prices for all Articles subsequently purchased will be negotiated separately in accordance with normal contract arrangements.

#### Procedure for the Purchase of Spares by the Authority

6. After examination of the Contractor's recommendations on Lists B and C, the Authority will place its requirements on the *Contractor* by means of an amendment to an existing contract or a new contract. The Authority will accept liability for the supply of the spares recommended by the *Contractor* only to the extent that his recommendation is positively approved and the spares are specifically ordered. The Authority also reserves the right to procure Articles deleted from the original lists from sources other than the Main Equipment *Contractor*.

7. Domestic management codes, NATO Stock Nos., item names and descriptions and packaging requirements for the items to be purchased will be notified to the *Contractor* as soon as possible by means of further copies of DEFFORM 110AL on which columns 'a', 'b' and 'c' have been completed. Each Article shall be identified by a NATO Stock No. before delivery.

### **Technical Data to Be Supplied**

8. To enable the Authority to carry out technical vetting, codification and cataloguing of the spares recommended under this procedure, the *Contractor* shall supply the following information prior to, or concurrently with, Lists B and C. (The Authority undertakes that the information given will not be used for any other purposes):

- a. Parts lists of the equipment or unit, illustrated wherever possible.
- b. General arrangement drawings of the equipment or unit to show the position and function of the spares recommended.
- c. Schematic layout diagram of assemblies, suitably references to indicate where the recommended spares will be fitted.
- d. Relevant detail drawings, specifications and technical data.

9. The *Contractor* shall send the above information in duplicate to the Project Manager named in the Contract unless instructed otherwise.

### **Design Changes**

10. The *Contractor* shall be responsible for notifying the Project Manager of any amendments to the lists which he considers necessary as a result of design changes, quoting the appropriate reference and authority. Details of the amendment(s) shall be submitted on DEFFORM 82A or 82B as required by the Project Manager. Following examination of these amendments, the Authority will place its requirements by means of a formal amendment to the Contract or a separate demand, accompanied by copies of DEFFORM 110 AL or DEFFORM 82B, completed to show the Articles and quantities to be supplied. NATO Stock Nos., etc., will be notified subsequently, as described in Clause 6 above.

### **Spares Which Are Rendered Surplus by Design or Other**

#### **Change**

11. Spares provided in accordance with this procedure which become redundant before delivery because of unforeseen changes in design or other similar reason, will be dealt with in accordance with DEFCON 503.

## **ANNEX B TO DEFCON 82 - Part B : Notification of Spares Required as a Result of Equipment Modification(s)**

### **Purpose**

1. This procedure has the special purpose of detailing those spares considered to be essential to maintain a modified equipment or portion thereof in operational condition for an initial period until normal spares procedures can apply. The need will arise directly from modifications approved under Post Design Services, or similar arrangements, which are to be incorporated in equipment by means of modification sets or kits (or sometimes during production).

### **Assessment and Timing of Information**

2. Initial spares arising from modifications are required for Service use concurrently with the relevant equipment, or modification set or kit. It is therefore important that the information called for in Clause 5 below shall be submitted to the Authority immediately following modification approval.

3. For this purpose, the *Contractor* shall:

- a. assess the parts (see Clause 5 of DEFCON 82) introduced by the modification which are likely to need replacement during the first 2 years of use of the modified equipment (or such other period as may be stated in the Contract).
- b. define those original parts of the equipment which, despite their replacement by new parts, are, nevertheless, capable of alteration so as to become entirely suitable for incorporation in the modified equipment, and
- c. list those parts which have become redundant.

4. The number of modification sets or kits, or alternatively the number of equipments concerned, will be notified to the *Contractor* by the Authority.

### **Criteria For Determining Spares Required**

5. The spares for modified equipment (or portion thereof) shall, unless otherwise stated by the Authority, satisfy the same criteria as those set out for new equipment in Clause 4 of Annex A, except that account shall be taken of any original parts which can be altered for re-use.

### **Preparation And Submission Of Lists**

6. The *Contractor* shall provide the Project Manager with 2 copies of a list detailing the range and quantity of spares which he recommends. This must include all of those original parts which are capable of being altered for use in the modified equipment. The list shall be submitted as soon as formal approval is given to the modification(s).

7. The lists are required to show separately:

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- a. LIST D - Spares which the *Contractor* recommends and which are peculiar to the equipment
- b. LIST E - Spares recommended but not peculiar to the equipment

8. The list(s) shall be submitted on DEFFORM 82B, the *Contractor* completing this Form as appropriate.

(N.B. Column (xiv) is for internal use)

**Technical Data To Be Supplied**

9. To enable the Authority to carry out technical vetting, codification and cataloguing of the spares for modified equipment recommended under this procedure, the *Contractor* shall supply, concurrently with Lists D and E, technical data similar to that called for in Clauses 8 and 9 of Annex A. The *Contractor* shall send the above information in duplicate to the Project Manager named in the Contract, unless instructed otherwise.

## 9 Schedule 9

### NATO STANAGs

Number	Edition	Version	Title
4206	3		THE NATO MULTI-CHANNEL TACTICAL DIGITAL GATEWAY - SYSTEM STANDARDS
4145	2	2	NUCLEAR SURVIVABILITY CRITERIA FOR ARMED FORCES MATERIAL AND INSTALLATIONS - AEP-4
4597	2		OBSOLESCENCE MANAGEMENT
4521	2		CHEMICAL, BIOLOGICAL, RADIOLOGICAL AND NUCLEAR (CBRN) CONTAMINATION SURVIVABILITY FACTORS IN THE DESIGN, TESTING AND ACCEPTANCE OF MILITARY EQUIPMENT - AEP-07 EDITION 5
3151	10		CODIFICATION - UNIFORM SYSTEM OF ITEM IDENTIFICATION
4580	1		METHOD OF EXPRESSING NAVIGATION INTEGRITY
5000	3		INTEROPERABILITY OF TACTICAL DIGITAL FACSIMILE EQUIPMENT
4578	2		THE ENHANCED DIGITAL STRATEGIC TACTICAL GATEWAY (EDSTG)
3150	8		CODIFICATION - UNIFORM SYSTEM OF SUPPLY CLASSIFICATION
4661	1		PRODUCT LIFE CYCLE SUPPORT
2536	3		ALLIED JOINT DOCTRINE FOR PETROLEUM - AJP-4.7 EDITION B
1135	6		INTERCHANGEABILITY OF FUELS, LUBRICANTS AND ASSOCIATED PRODUCTS USED BY THE ARMED FORCES OF THE NORTH ATLANTIC TREATY NATIONS - AFLP-1135 EDITION A
4107	11		MUTUAL ACCEPTANCE OF GOVERNMENT QUALITY ASSURANCE AND USAGE OF THE ALLIED QUALITY ASSURANCE PUBLICATIONS (AQAP)
3114	9		AEROMEDICAL TRAINING OF FLIGHT PERSONNEL - AAMedP-1.2 EDITION A
3497	4		AEROMEDICAL TRAINING OF AIRCREW IN AIRCREW CBRN EQUIPMENT AND PROCEDURES - AAMedP-1.8, EDITION A
3318	8		AEROMEDICAL ASPECTS OF AIRCRAFT ACCIDENT AND INCIDENT INVESTIGATION - AAMedP-1.7 EDITION B
7112	2		RECOMMENDED MEDICAL EQUIPMENT FOR AEROMEDICAL EVACUATIONS - AAMedP-1.20 EDITION A
7147	2		AEROMEDICAL ASPECTS OF NIGHT VISION DEVICE (NVD) TRAINING - AAMedP-1.21, EDITION A
2520	1		CBRN DEFENCE STANDARDS FOR EDUCATION, TRAINING AND EVALUATION - ATP-3.8.1 VOL III

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Number	Edition	Version	Title
2228	4		ALLIED JOINT DOCTRINE FOR MEDICAL SUPPORT - AJP-4.10 EDITION C
4427	3		CONFIGURATION MANAGEMENT IN SYSTEM LIFE CYCLE MANAGEMENT - ACMP-2000 EDITION A & ACMP-2009 EDITION A & ACMP-2100 EDITION A
4800	2		NATO EDUCATION AND TRAINING NETWORK FEDERATION ARCHITECTURE AND FEDERATION OBJECT MODEL DESIGN - AMSP-04 EDITION B
4814	1		SYSTEMS AND SOFTWARE ENGINEERING – SOFTWARE LIFE CYCLE PROCESSES
4329	5		NATO STANDARD BAR CODE HANDBOOK - AAITP-09 EDITION A
2515	2		COLLECTIVE PROTECTION IN A CHEMICAL, BIOLOGICAL, RADIOLOGICAL AND NUCLEAR ENVIRONMENT (COLPRO) - ATP-70 EDITION A
2451	5		ALLIED JOINT DOCTRINE FOR COMPREHENSIVE CHEMICAL, BIOLOGICAL, RADIOLOGICAL, AND NUCLEAR DEFENCE - AJP-3.8 EDITION B

**NATO - Allied Publications**

Short Title	Edition	Volume	Version	Long Title
AEP-04	4	ANNEX A Vol I		NUCLEAR HARDENING CRITERIA FOR ARMED FORCES MATERIAL AND INSTALLATIONS
AEP-07	5			CHEMICAL, BIOLOGICAL, RADIOLOGICAL AND NUCLEAR (CBRN) CONTAMINATION SURVIVABILITY FACTORS IN THE DESIGN, TESTING AND ACCEPTANCE OF MILITARY EQUIPMENT
AFLP-1135	A		2	INTERCHANGEABILITY OF FUELS, LUBRICANTS AND ASSOCIATED PRODUCTS USED BY THE ARMED FORCES OF THE NORTH ATLANTIC TREATY NATIONS
AQAP-2210	A		2	NATO SUPPLEMENTARY SOFTWARE QUALITY ASSURANCE REQUIREMENTS TO AQAP-2110 OR AQAP-2310
AQAP-2110	D		1	NATO QUALITY ASSURANCE REQUIREMENTS FOR DESIGN, DEVELOPMENT AND PRODUCTION
AQAP-2131	C		1	NATO QUALITY ASSURANCE REQUIREMENTS FOR FINAL INSPECTION AND TEST
AQAP-2310	B		1	NATO QUALITY ASSURANCE REQUIREMENTS FOR AVIATION, SPACE AND DEFENCE SUPPLIERS
AQAP-4107	A		2	MUTUAL ACCEPTANCE OF GOVERNMENT QUALITY ASSURANCE AND USAGE OF THE ALLIED QUALITY ASSURANCE PUBLICATIONS (AQAP)
AQAP-2105	C		1	NATO REQUIREMENTS FOR QUALITY PLANS
AQAP-2070	B		4	NATO MUTUAL GOVERNMENT QUALITY ASSURANCE (GQA) PROCESS
AQAP-2310	B		2	NATO QUALITY ASSURANCE REQUIREMENTS FOR AVIATION, SPACE AND DEFENCE SUPPLIERS
AQAP-2000	3			NATO POLICY ON AN INTEGRATED SYSTEMS APPROACH TO QUALITY THROUGH THE LIFE CYCLE
ADatP-03	A		3	NATO MESSAGE TEXT FORMATTING SYSTEM (FORMETS) - CONCEPT OF FORMETS (CONFORMETS)
AAMedP-1.2	A		1	AEROMEDICAL TRAINING OF FLIGHT PERSONNEL



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Short Title	Edition	Volume	Version	Long Title
AAMedP-1.8	A		1	AEROMEDICAL TRAINING OF AIRCREW IN AIRCREW CBRN EQUIPMENT AND PROCEDURES
AAMedP-1.7	B		1	AEROMEDICAL ASPECTS OF AIRCRAFT ACCIDENT AND INCIDENT INVESTIGATION
AAMedP-1.21	A		1	AEROMEDICAL ASPECTS OF NIGHT VISION DEVICE (NVD) TRAINING
ATP-3.8.1		III		CBRN DEFENCE STANDARDS FOR EDUCATION, TRAINING AND EVALUATION
AJP-4.10	C		1	ALLIED JOINT DOCTRINE FOR MEDICAL SUPPORT
ACMP-2000	A		2	CONFIGURATION MANAGEMENT CONTRACTUAL REQUIREMENTS
ACMP-2009	A		2	GUIDANCE ON CONFIGURATION MANAGEMENT
	A		2	CONFIGURATION MANAGEMENT CONTRACTUAL REQUIREMENTS
AAITP-09	A		1	NATO STANDARD BAR CODE HANDBOOK
ATP-70	A		1	COLLECTIVE PROTECTION IN A CHEMICAL, BIOLOGICAL, RADIOLOGICAL AND NUCLEAR ENVIRONMENT (COLPRO)
AJP-3.8	B		1	ALLIED JOINT DOCTRINE FOR COMPREHENSIVE CHEMICAL, BIOLOGICAL, RADIOLOGICAL, AND NUCLEAR DEFENCE

**BS / BS EN / BS ISO Standards**

Identifier	Title	Issue Number	Publish Date	Document Link
BS 202000:2020	Standardization management system. Specification	-	26/06/2020 00:00:00	<a href="https://bsol.bsigroup.com/Bibliographic/BibliographicInfoData/000000000030387671">https://bsol.bsigroup.com/Bibliographic/BibliographicInfoData/000000000030387671</a>
BS ISO 26101	Acoustics — Test methods for the qualification of free-field environments	3	19/05/2021 00:00:00	<a href="https://bsol.bsigroup.com/PdfViewer/Viewer?pid=000000000030427888">https://bsol.bsigroup.com/PdfViewer/Viewer?pid=000000000030427888</a>
BS EN ISO 3744:2010	Acoustics — Determination of sound power levels and sound energy levels of noise sources using sound pressure — Engineering methods for an essentially free field over a reflecting plane	3	05/10/2010 00:00:00	<a href="https://bsol.bsigroup.com/PdfViewer/Viewer?pid=000000000030094843">https://bsol.bsigroup.com/PdfViewer/Viewer?pid=000000000030094843</a>
BS ISO 26101-1:2021	Acoustics — Test methods for the qualification of the acoustic environment — Part 1: Qualification of free-field environments	1	11/05/2021 00:00:00	<a href="https://bsol.bsigroup.com/PdfViewer/Viewer?pid=000000000030427888">https://bsol.bsigroup.com/PdfViewer/Viewer?pid=000000000030427888</a>
BSI	BS EN ISO 9001	5	30/09/2015 00:00:00	<a href="https://bsol.bsigroup.com/PdfViewer/Viewer?pid=000000000030273524">https://bsol.bsigroup.com/PdfViewer/Viewer?pid=000000000030273524</a>
BS 7671	Requirements for Electrical Installations. IET Wiring Regulations	18	03/08/2020 00:00:00	<a href="https://bsol.bsigroup.com/PdfViewer/Viewer?pid=000000000030412459">https://bsol.bsigroup.com/PdfViewer/Viewer?pid=000000000030412459</a>
BS EN ISO 13849	Safety of machinery — Safety-related parts of control systems — Part 1: General principles for design	3	31/12/2016 00:00:00	<a href="https://bsol.bsigroup.com/PdfViewer/Viewer?pid=000000000030273467">https://bsol.bsigroup.com/PdfViewer/Viewer?pid=000000000030273467</a>
BS EN 60204	Safety of machinery. Electrical equipment of machines. General requirements	17	27/09/2019 00:00:00	<a href="https://bsol.bsigroup.com/PdfViewer/Viewer?pid=000000000030440581">https://bsol.bsigroup.com/PdfViewer/Viewer?pid=000000000030440581</a>

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Identifier	Title	Issue Number	Publish Date	Document Link
BS EN 746-3	Industrial thermoprocessing equipment. Safety requirements for the generation and use of atmosphere gases.	1	30/08/2010 00:00:00	<a href="https://bsol.bsigroup.com/PdfViewer/Viewer?pid=000000000030427888">https://bsol.bsigroup.com/PdfViewer/Viewer?pid=000000000030427888</a>
BS EN ISO/IEC 17025:2017	General requirements for the competence of testing and calibration laboratories	3	31/12/2017 00:00:00	<a href="https://bsol.bsigroup.com/Bibliographic/BibliographicInfoData/000000000030379555">https://bsol.bsigroup.com/Bibliographic/BibliographicInfoData/000000000030379555</a>
BS EN ISO 14001:2015	Environmental management systems. Requirements with guidance for use	4	30/09/2015 00:00:00	<a href="https://bsol.bsigroup.com/Bibliographic/BibliographicInfoData/000000000030281203">https://bsol.bsigroup.com/Bibliographic/BibliographicInfoData/000000000030281203</a>
BS ISO/IEC 25051:2014	Software engineering. Systems and software Quality Requirements and Evaluation (SQuaRE). Requirements for quality of Ready to Use Software Product (RUSP) and instructions for testing	2	28/02/2014 00:00:00	<a href="https://bsol.bsigroup.com/Bibliographic/BibliographicInfoData/000000000030268869">https://bsol.bsigroup.com/Bibliographic/BibliographicInfoData/000000000030268869</a>
BS EN ISO 9001:2015	Quality management systems. Requirements	5	30/09/2015 00:00:00	<a href="https://bsol.bsigroup.com/Bibliographic/BibliographicInfoData/000000000030273524">https://bsol.bsigroup.com/Bibliographic/BibliographicInfoData/000000000030273524</a>
BS ISO/IEC/IEEE 15288:2015	Systems and software engineering. System life cycle processes	3	30/06/2015 00:00:00	<a href="https://bsol.bsigroup.com/PdfViewer/Viewer?pid=000000000030413569">https://bsol.bsigroup.com/PdfViewer/Viewer?pid=000000000030413569</a>
BS ISO 10007:2017	Quality management. Guidelines for configuration management	3	26/04/2017 00:00:00	<a href="https://bsol.bsigroup.com/PdfViewer/Viewer?pid=000000000030341507">https://bsol.bsigroup.com/PdfViewer/Viewer?pid=000000000030341507</a>
BS ISO 31000:2018	Risk management. Guidelines	2	31/03/2010 00:00:00	<a href="https://bsol.bsigroup.com/PdfViewer/Viewer?pid=000000000030315447">https://bsol.bsigroup.com/PdfViewer/Viewer?pid=000000000030315447</a>
BS 1192-4:2014	Collaborative production of information. Fulfilling employer's information exchange requirements using COBie. Code of practice	2	30/09/2014 00:00:00	<a href="https://bsol.bsigroup.com/PdfViewer/Viewer?pid=000000000030294672">https://bsol.bsigroup.com/PdfViewer/Viewer?pid=000000000030294672</a>

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Identifier	Title	Issue Number	Publish Date	Document Link
BS 8536-2:2016	Briefing for design and construction. Code of practice for asset management (Linear and geographical infrastructure)	1	31/10/2016 00:00:00	<a href="https://bsol.bsigroup.com/PdfViewer/Viewer?pid=000000000030333121">https://bsol.bsigroup.com/PdfViewer/Viewer?pid=000000000030333121</a>
BS 8536-1:2015	Briefing for design and construction. Code of practice for facilities management (Buildings infrastructure)	1	31/07/2015 00:00:00	<a href="https://bsol.bsigroup.com/PdfViewer/Viewer?pid=000000000030315621">https://bsol.bsigroup.com/PdfViewer/Viewer?pid=000000000030315621</a>
BS EN ISO 19650-3:2020	Organization and digitization of information about buildings and civil engineering works	1	19/08/2020 00:00:00	<a href="https://bsol.bsigroup.com/PdfViewer/Viewer?pid=000000000030374338">https://bsol.bsigroup.com/PdfViewer/Viewer?pid=000000000030374338</a>
BS EN ISO 19650-1:2018	Part 1: Organization and digitization of information about buildings and civil engineering works	1	19/06/2019 00:00:00	<a href="https://bsol.bsigroup.com/PdfViewer/Viewer?pid=000000000030333754">https://bsol.bsigroup.com/PdfViewer/Viewer?pid=000000000030333754</a>
BS EN ISO 19650-2:2018	Part 2: Organization and digitization of information about buildings and civil engineering works	1	16/01/2019 00:00:00	<a href="https://bsol.bsigroup.com/PdfViewer/Viewer?pid=000000000030420198">https://bsol.bsigroup.com/PdfViewer/Viewer?pid=000000000030420198</a>
BS EN ISO 19650-4	Part 4: Organization and digitization of information about buildings and civil engineering works	1	21/08/2021 00:00:00	file:///C:/Users/sirede100/Downloads/21-30400355%20DC--[2021-11-09--02-58-04%20PM].pdf
BS EN ISO 19650	Part 5: Organization and digitization of information about buildings and civil engineering works	1	12/07/2021 00:00:00	<a href="https://bsol.bsigroup.com/PdfViewer/Viewer?pid=000000000030377794">https://bsol.bsigroup.com/PdfViewer/Viewer?pid=000000000030377794</a>
BS ISO 6658	Sensory analysis. Methodology. General guidance	4	26/02/2020 00:00:00	<a href="https://bsol.bsigroup.com/PdfViewer/Viewer?pid=000000000030413079">https://bsol.bsigroup.com/PdfViewer/Viewer?pid=000000000030413079</a>

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Identifier	Title	Issue Number	Publish Date	Document Link
BS EN 16798	Energy performance of buildings. Ventilation for buildings. For non-residential buildings. Performance requirements for ventilation and room-conditioning systems		25/02/2020 00:00:00	<a href="https://bsol.bsigroup.com/PdfViewer/Viewer?pid=000000000030411369">https://bsol.bsigroup.com/PdfViewer/Viewer?pid=000000000030411369</a>
BS EN 352-1:2020	Hearing protectors. General requirements. Earmuffs	3	25/11/2020 00:00:00	<a href="https://bsol.bsigroup.com/PdfViewer/Viewer?pid=000000000030436076">https://bsol.bsigroup.com/PdfViewer/Viewer?pid=000000000030436076</a>
BS EN 352-2:2020	Hearing protectors. General requirements. Earplugs	2	24/11/2020 00:00:00	<a href="https://bsol.bsigroup.com/PdfViewer/Viewer?pid=000000000030376863">https://bsol.bsigroup.com/PdfViewer/Viewer?pid=000000000030376863</a>
BS EN 352-3:2020	Hearing protectors. General requirements. Earmuffs attached to head protection and/or face protection devices	3	24/11/2020 00:00:00	<a href="https://bsol.bsigroup.com/PdfViewer/Viewer?pid=000000000030436078">https://bsol.bsigroup.com/PdfViewer/Viewer?pid=000000000030436078</a>
BS EN 352-4:2020	Hearing protectors. Safety requirements. Level-dependent earmuffs	2	24/11/2020 00:00:00	<a href="https://bsol.bsigroup.com/PdfViewer/Viewer?pid=000000000030359242">https://bsol.bsigroup.com/PdfViewer/Viewer?pid=000000000030359242</a>
BS EN 352-5:2020	Hearing protectors. Safety requirements. Active noise reduction earmuffs	2	01/12/2020 00:00:00	<a href="https://bsol.bsigroup.com/PdfViewer/Viewer?pid=000000000030359245">https://bsol.bsigroup.com/PdfViewer/Viewer?pid=000000000030359245</a>
BS EN 352-6:2020	Hearing protectors. Safety requirements. Earmuffs with safety-related audio input	2	02/12/2020 00:00:00	<a href="https://bsol.bsigroup.com/PdfViewer/Viewer?pid=000000000030359254">https://bsol.bsigroup.com/PdfViewer/Viewer?pid=000000000030359254</a>
BS EN 352-7:2020	Hearing protectors. Safety requirements. Level-dependent earplugs	2	26/11/2020 00:00:00	<a href="https://bsol.bsigroup.com/PdfViewer/Viewer?pid=000000000030359251">https://bsol.bsigroup.com/PdfViewer/Viewer?pid=000000000030359251</a>
BS EN 352-8:2020	Hearing protectors. Safety requirements. Entertainment audio earmuffs	2	23/11/2020 00:00:00	<a href="https://bsol.bsigroup.com/PdfViewer/Viewer?pid=000000000030359248">https://bsol.bsigroup.com/PdfViewer/Viewer?pid=000000000030359248</a>

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Identifier	Title	Issue Number	Publish Date	Document Link
BS EN 352-9:2020	Hearing protectors. Safety requirements. Earplugs with safety-related audio input	1	25/11/2020 00:00:00	<a href="https://bsol.bsigroup.com/PdfViewer/Viewer?pid=000000000030359236">https://bsol.bsigroup.com/PdfViewer/Viewer?pid=000000000030359236</a>
BS EN 352-10:2020	Hearing protectors. Safety requirements. Entertainment audio earplugs	1	25/11/2020 00:00:00	<a href="https://bsol.bsigroup.com/PdfViewer/Viewer?pid=000000000030359239">https://bsol.bsigroup.com/PdfViewer/Viewer?pid=000000000030359239</a>
BS ISO/IEC/IEEE 15288	Systems and software engineering. System life cycle processes	3	30/06/2015 00:00:00	<a href="https://bsol.bsigroup.com/PdfViewer/Viewer?pid=000000000030320508">https://bsol.bsigroup.com/PdfViewer/Viewer?pid=000000000030320508</a>
BS ISO/IEC/IEEE 12207	Systems and software engineering. Software life cycle processes.	5	27/10/2017 00:00:00	<a href="https://bsol.bsigroup.com/PdfViewer/Viewer?pid=000000000030363576">https://bsol.bsigroup.com/PdfViewer/Viewer?pid=000000000030363576</a>
BS EN IEC 62368	Audio/video, information and communication technology equipment. Safety requirements	1	23/03/2020 00:00:00	<a href="https://bsol.bsigroup.com/PdfViewer/Viewer?pid=000000000030347376">https://bsol.bsigroup.com/PdfViewer/Viewer?pid=000000000030347376</a>
PD IEC TR 62368-2	Audio/video, information and communication technology equipment. Explanatory information related to IEC 62368-1:2018	3	18/06/2019 00:00:00	<a href="https://bsol.bsigroup.com/PdfViewer/Viewer?pid=000000000030379500">https://bsol.bsigroup.com/PdfViewer/Viewer?pid=000000000030379500</a>
BS EN ISO 13506-1:2017	Protective clothing against heat and flame.	3	20/09/2017 00:00:00	<a href="https://bsol.bsigroup.com/PdfViewer/Viewer?pid=000000000030282554">https://bsol.bsigroup.com/PdfViewer/Viewer?pid=000000000030282554</a>
BS EN 3475-505	Aerospace series. Cables, electrical, aircraft use. Test methods. Tensile test on conductors and strands.	1	31/03/2012 00:00:00	<a href="https://bsol.bsigroup.com/PdfViewer/Viewer?pid=000000000030247305">https://bsol.bsigroup.com/PdfViewer/Viewer?pid=000000000030247305</a>
BS EN ISO 12402-2	Personal flotation devices. Lifejackets, performance level 275. Safety requirements	3	11/09/2020 00:00:00	<a href="https://bsol.bsigroup.com/PdfViewer/Viewer?pid=000000000030322592">https://bsol.bsigroup.com/PdfViewer/Viewer?pid=000000000030322592</a>
BS ISO 20400:2017	Sustainable procurement - Guidance	2017	30/04/2017 00:00:00	<a href="https://bsol.bsigroup.com/Bibliographic/BibliographicInfoData/000000000030295293">https://bsol.bsigroup.com/Bibliographic/BibliographicInfoData/000000000030295293</a>
BS EN ISO 26000:2020	Guidance on social responsibility	2020	30/11/2010 00:00:00	<a href="https://bsol.bsigroup.com/Bibliographic/BibliographicInfoData/000000000030428852">https://bsol.bsigroup.com/Bibliographic/BibliographicInfoData/000000000030428852</a>

## Defence Standards

Def Stan No	Part No	Section No	Supp. No	Title
00-003				Design Guidance for the Transportability of Equipment
00-035	3			Environmental Handbook for Defence Materiel - Environmental Test Methods
00-035	2			Environmental Handbook for Defence Materiel - Environmental Trials Program Methodologies
00-035	4			Environmental Handbook for Defence Materiel - Natural Environments
00-035	5			Environmental Handbook for Defence Materiel - Induced Mechanical Environments
00-035	1			Environmental Handbook for Defence Materiel - Control and Management
00-040	1			Reliability and Maintainability - Management Responsibilities and Requirements
00-042	1			Reliability and Maintainability Assurance Activity - One-Shot Devices/Systems
00-042	3			Reliability and Maintainability Assurance Activity - R&M Case
00-042	5			Reliability and Maintainability Assurance Activity - In -Service Reliability Demonstration
00-042	6			Reliability and Maintainability Assurance Activity - Maintainability Demonstration
00-042	7			Reliability and Maintainability Assurance Activity - Reliability Testing
00-044				Reliability and Maintainability Data Collection and Classification
00-045	1			Using Reliability Centred Maintenance to Manage Engineering Failures - Requirements for Reliability Centred Maintenance
00-045	2			Using Reliability Centred Maintenance to Manage Engineering Failures - Development
00-045	3			Using Reliability Centred Maintenance to Manage Engineering Failures - Guidance for Reliability Centred Maintenance
00-049				MOD Guide to R&M Terminology Used in Requirements
00-049				MOD Guide to R&M Terminology Used in Requirements
00-051	1			Environmental Management Requirements for Defence Systems - Requirements
00-051	2			Environmental Management Requirements for Defence Systems - Guidance
00-055	1			Requirements for Safety of Programmable Elements (PE) in Defence Systems
00-055	1			Requirements for Safety of Programmable Elements (PE) in Defence Systems
00-056	1			Safety Management Requirements for Defence Systems - Requirements and Guidance
00-056	2			Safety Management Requirements for Defence Systems - Guidance on Establishment with Part 1
00-088				Packaging for Ammunition and Explosives
00-251				Human Factors Integration for Defence Systems - Contracting for Human Factors Systems
00-600	2			Integrated Logistics Support requirements for MOD projects - MOD Requirements
00-600	1			Integrated Logistics Support requirements for MOD projects - Integrated Logistics
00-600	3			Integrated Logistic Support Requirements for MOD projects - Logistic Information
00-601	1			MOD Business Rules - Contracting for Technical Documentation - AIR S1000D
00-601	4			MOD Business Rules – Contracting for Technical Documentation - NON S1000D
00-810	11			Marking of Ammunition and Associated Packages - Pyrotechnics
00-970	13			Certification Specifications for Airworthiness - MILITARY COMMON FIT EQUIPMENT
00-970	7			Certification Specifications for Airworthiness - ROTORCRAFT
00-970	5			Certification Specifications for Airworthiness - LARGE TYPE AIR SYSTEMS
00-970	0			Certification Specifications for Airworthiness - PROCEDURES FOR USE, COMPLETION
00-970	1			Certification Specifications for Airworthiness - FIXED WING COMBAT AIR SYSTEMS
00-970	3			Certification Specifications for Airworthiness  - SMALL AND MEDIUM TYPE AIR SYSTEMS
01-005				Fuels, Lubricants and Associated Products

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Def Stan No	Part No	Section No	Supp. No	Title
05-010	1			Product Definition Information - Hardcopy/Microform Product Definition Information
05-010	0			Product Definition Information - General Introduction to Product Definition Information
05-010	2			Product Definition Information - Digital Product Definition Information
05-010	3			Product Definition Information - Product Definition Information Guidance
05-057				Configuration Management of Defence Materiel
05-061	4			Quality Assurance Procedural Requirements - Contractor Working Parties
05-061	1			Quality Assurance Procedural Requirements - Concessions
05-061	9			Quality Assurance Procedural Requirements - Independent Inspection Requirements
05-099	1			Managing Government Furnished Equipment in Industry - Provides end to end the management of GFE in Industry
05-099	2			Managing Government Furnished Equipment in Industry - Requirement for the by a delivery partner (DP), on behalf of the MOD as stated in the DP Contract
05-099				Managing Government Furnished Equipment in Industry
05-102				Military Aircrew Helmet Impact Standard (MAHIS)
05-134				Specification for the Integration Testing of Aircrew Equipment Assemblies and
05-135				Avoidance of Counterfeit Materiel
05-138				Cyber Security for Defence Suppliers
59-411	1			Electromagnetic Compatibility - Management and Planning
59-411	2			Electromagnetic Compatibility - The Electric, Magnetic and Electromagnetic En
59-411	3			Electromagnetic Compatibility - Test Methods and Limits for Equipment and Su
59-411	4			Electromagnetic Compatibility - Platform and System Tests and Trials
59-411	5			Electromagnetic Compatibility - Code of Practice for Tri-Service Design and In
61-017				The Selection and Introduction of Batteries for Service Use
68-284	2			Breathing Gases for Non-Medicinal Life-Support Applications - Breathing Oxyg
81-041	3			Packaging of Defence Materiel - Environmental Testing
81-041	1			Packaging of Defence Materiel - Introduction to Defence Packaging Requireme
81-041	2			Packaging of Defence Materiel - Design
81-041	4			Packaging of Defence Materiel - Service Packaging Instruction Sheet (SPIS)
81-041	5			Packaging of Defence Materiel - Packaging Processes
81-041	6			Packaging of Defence Materiel - Package Marking



# PART 5 – DEFFORMS

## 1 Schedule 1 - DEFFORM 10B

### Acceptance of Offer of Amendment to Contract

Offer and Acceptance	
<p><b>Section A) Offer</b></p> <p>Contract Amendment <b>[xx]</b> to Contract <b>[insert reference]</b> constitutes an offer by the Authority for the supplier to supply / provide the <i>Contractor</i> Deliverables. This is open for acceptance by the supplier until <b>[insert date 10 working days (or more) from date of signature]</b>.</p> <p>By signing this DEFFORM 10B the <i>Contractor</i> agrees to be bound by the attached contract amendment, and they acknowledge that all other terms and conditions remain unchanged.</p> <p>Signed by:</p> <p>Name (Block Capitals):</p> <p>Position:</p> <p>For and on behalf of the <i>Client</i></p> <p>Authorised Signatory</p> <p>Date:</p>	<p><b>Section B) Acceptance of Offer of Amendment</b></p> <p>I acknowledge receipt of the Departments Contract Amendment Letter No [ ].</p> <p>I confirm that I accept the Offer it contains and agree to be bound by its terms and I acknowledge that all other terms and conditions of the Contract remain unchanged.</p> <p>Signed by:</p> <p>Name (Block Capitals):</p> <p>Position:</p> <p>For and on behalf of</p> <p>Authorised Signatory</p> <p>Date<sup>2</sup>:</p>
<p><b>Section C) Tier 1 Subcontractor SME data:<sup>3</sup></b></p> <p>Name ..... value of work (£ ex VAT) ..... SME .... Yes / No</p> <p>Name ..... value of work (£ ex VAT) ..... SME .... Yes / No</p> <p>Name ..... value of work (£ ex VAT) ..... SME .... Yes / No</p> <p>Name ..... value of work (£ ex VAT) ..... SME .... Yes / No</p>	

<sup>1</sup> The date of unqualified acceptance by signature is the effective date of the amendment

<sup>2</sup> The MOD is required to report to Government spend with Small and Medium-sized Enterprises (SMEs) including sub-contractors. This is currently required at Tier 1 only. SMEs are defined by the EU on <http://ec.europa.eu/growth/smes/business-friendly-environment/sme-definition/>



## 2 **Schedule 10 (DEFFORM 687C) – Electronic Information Sharing Agreement (EISA)**

THIS AGREEMENT, reference ..... [reference number] relates to the use of the Shared Data Environment (SDE) Service to be provided under MOD contract number ..... [title of contract] (the Contract) between the Secretary of State for Defence (the Authority) and [name of SDE service provider] (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 the Agreement govern the use of the Service.

It is agreed as follows

### 1. **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:

- 1.1 “Access” means communication with the SDE by Users, including Loading and Retrieval of Information;
- 1.2 “Agreement” means this agreement including its Annexes, Schedules and any other documentation expressly made part of the Agreement;
- 1.3 “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;
- 1.4 “Data” means Information represented in digital form;
- 1.5 “Disaster” means a significant unplanned event which causes the SDE to be unavailable, or which causes the Data to be corrupted, lost, or unavailable;
- 1.6 “Expunge” means the removal of Data from the SDE whilst ensuring that a record of its existence is maintained in the Log;
- 1.7 “Fidelity” means the extent to which the SDE System maintains Data without corruption or disturbance to its content as it is processed;
- 1.8 “Information” means any information, in any form, disclosed or acquired under or in connection with the Agreement;
- 1.9 “Integrity” means the extent to which the SDE System safeguards and properly processes Data;

- 1.10 “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;
- 1.11 “Log” means the record of communication with the SDE involving Access;
- 1.12 “Mark” means a designation permanently associated with a piece of Information, whether in tangible or digital form;
- 1.13 “Non-Contracted Information” means all Information other than Contracted Information which a User makes available to another User or Users;
- 1.14 “Primary User” means a User so designated in Schedule 1;
- 1.15 “Project” means the project, of which the Contract forms a part, described in Annex A;
- 1.16 “Project Implementation” means all activities conducted for the purpose of implementing the Project;
- 1.17 “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;
- 1.18 “Retrieve” means retrieval of Information or other communication with the SDE other than Loading;
- 1.19 “Secondary User” means a User sponsored by a Primary User and so designated in Schedule 1;
- 1.20 “Shared Data Environment (SDE)” means the SDE System together with
- (i) Information Accessed via the SDE System, and
  - (ii) any part of the computer and software infrastructure which is controlled by a User other than the *Contractor*;
- 1.21 “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;
- 1.22 “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:
- (i) Information Accessed via that infrastructure, and
  - (ii) any part of the computer and software infrastructure which is controlled by a User other than the *Contractor*;
- 1.23 “Supply” means to make Information available for Loading;
- 1.24 “User” means a party to the Agreement;
- 1.25 “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

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1.26 “Working Day” means any day excluding:

- (i) Saturdays, Sundays and public and statutory holidays in the jurisdiction of the User concerned, and
- (ii) privilege days notified in writing by the Authority to the Users at least 10 Working Days in advance.

## **2. Scope**

- (a) The Agreement is created for the purposes of establishing the SDE for the Project, providing or Users secure Access and assurance as to the security of Information.
- (b) The Agreement defines the responsibilities, rights and obligations of Users in relation to the SDE and the User Protocol.

## **3. Duration**

- (a) The Agreement shall remain in force as set out in the Scope or on earlier expiry or termination.
- (b) The *Contractor* shall notify all Users:
  - (i) immediately on receipt of a notice of termination, of the date of termination of the Contract, and
  - (i) 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.

## **4. Designation of Users**

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

## **5. Withdrawal and Exclusion from the Agreement**

- (a) 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*.
- (b) The Authority may require the exclusion of a User from the Agreement, after consultation with the *Contractor* and that User, in the following circumstances:

- OFFICIAL-SENSITIVE
- (i) the underlying contract under which he was engaged with the Project has expired or is terminated; or
  - (ii) where there is no contractual relationship, his association with the Project has ceased; or
  - (iii) where a User's actions or omissions have caused him to have prejudiced the effective operation of the SDE.
- (c) 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.
  - (d) The *Contractor* shall immediately notify all Users of any withdrawal or exclusion of a User.
  - (e) 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.
  - (f) 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.
  - (g) 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.
  - (h) 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.

## 6. Marking of Information

- (a) Prior to the Supply of Information, each User shall apply Marks to that Information, in accordance with Schedule 2.
- (b) In addition to the Marks in Schedule 2, the User may mark Information to be Supplied with a copyright and/or other proprietary legend.
- (c) 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.

## 7. Provision of Information

- (a) Each *originating User who Loads or Supplies Information shall ensure that:*
  - (i) the Data conforms with the requirements specified in the User Protocol;
  - (ii) the Data has been verified in accordance with the virus control policy provided by the *Contractor* in accordance with DEFCON 687A;

- OFFICIAL-SENSITIVE
- (iii) the Information is of Clause 6 and Marked in accordance with the provisions Schedule 2; and
- (iv) 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.
- (b) 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.

## 8. 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:

- (a) to enable Access exclusively for the Users who are from time to time parties to the Agreement;
- (b) to provide service support facilities to all Users;
- (c) to ensure that the SDE System operates and is operated in accordance with the security and confidentiality requirements set out in the Agreement;
- (d) to use all reasonable endeavours to ensure that the Information processing systems deployed to support the SDE System:
- (i) maintain Loaded Information without corruption to its content as it is processed, and
  - (ii) properly process the Information;
- (e) to provide a secure user authentication method;
- (f) to provide the means for Users to establish Access permissions for their Information;
- (g) to provide Users with controlled Access;
- (h) 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;
- (i) to implement and maintain a virus control policy and make details thereof available to all Users;
- (j) 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
- (k) 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:
- (i) a specific request for its retention in the SDE is made by any current User, or

- (ii) it is withdrawn by a <sup>OFFICIAL-SENSITIVE</sup> User in accordance with Clause 11, or
- (iii) it is Archived.

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

## 9. User Obligations

- (a) 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.
- (b) Users shall comply with the requirements set out in the User Protocol.
- (c) 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.
- (d) 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.
- (e) 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.
- (f) 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*.
- (g) 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.
- (h) 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*.
- (i) Within the scope of the Agreement, sponsoring Primary Users shall be responsible for the actions of their Secondary Users.

## 10. 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.

## 11. Withdrawal of Information

- (a) 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.
- (b) 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.



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- (c) 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.
  - (d) 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.

## **12. Intellectual Property, Confidentiality and Protection of Information**

- (a) The Supply or Loading of Information shall not create or imply any of the following:
  - (i) any transfer of ownership of Information or of underlying IPR or any collective ownership of the same;
  - (ii) 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
  - (iii) 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.
- (b) 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.
- (c) 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:
  - (i) 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;
  - (ii) Non-Contracted Information – for use by Users for Project Purposes.
- (d) 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.
- (e) 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.
- (f) 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:
  - (i) 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;

- (ii) that the <sup>OFFICIAL-SENSITIVE</sup> Information was already known to him (without restrictions on disclosure or use) prior to Retrieving it from the SDE;
- (iii) 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
- (iv) 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.

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

### 13. Additional Users

- (a) Applications for additional Users shall be made to the *Contractor*, who shall consult the Authority on each application.
- (b) 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.
- (c) 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.

### 14. Amendments

- (a) 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.
- (b) The authoritative version of the Agreement shall be maintained by the *Contractor* in the SDE System for Retrieval by all Users.

### 15. Notices

- (a) All notices, orders, or other forms of communication required to be given in writing ("Notices") under or in connection with the Agreement shall:
- (i) be given in writing;
  - (ii) be authenticated by signature, either physical or electronic, as appropriate;
  - (iii) be marked for the attention of the appropriate department or officer; and
  - (iv) be marked in a prominent position with the Agreement reference or relevant contract number.

- (b) Notices should be <sup>OFFICIAL-SENSITIVE</sup> delivered by:
- (i) hand;
  - (ii) first-class prepaid post (or airmail, in the case of Notices to or from overseas);
  - (iii) facsimile;
  - (iv) telex; or
  - (v) electronic mail, including the delivery of a message by means of the SDE.
- (c) Notices shall be deemed to have been received if;
- (i) 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;
  - (ii) 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
  - (iii) sent by facsimile, telex or other electronic means;
    - 1) 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
    - 2) 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.
- (d) 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.
- (e) Where a User requests written confirmation of any communication which does not constitute a Notice such request shall not unreasonably be refused.

## **16. Audit**

- (a) 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.
- (b) 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.

## **17. Liability**

- OFFICIAL-SENSITIVE
- (a) 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.
  - (b) 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:
    - (i) directly or indirectly as a result of use of Loaded Information, or
    - (ii) 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.

## **18. Law**

- (a) The Agreement shall be considered as an agreement made in England and subject to English Law.
- (b) 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.
- (c) 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.

## **19. Dispute Resolution**

- (a) 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.
- (b) 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.
- (c) 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.

- OFFICIAL-SENSITIVE
- (d) 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.
  - (e) 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.
  - (f) 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.

## **20. 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.

## **21. 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.

## **22. 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.

## **23. Waiver**

- (a) 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.
- (b) 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

*Annex B*

*User Protocol*



Schedule 1Primary and Secondary Users

Primary User [Name], sponsoring:

- Secondary User [Name]
- Secondary User [Name]
- Secondary User [Name]

Primary User [Name], Sponsoring

- Secondary User [Name]
- Secondary User [Name]
- Secondary User [Name]

Marking Scheme

- (a) the name of the User originating the Information;
- (b) the national security classification ;
- (c) a commercial privacy designation;
- (d) the Information type;
- (e) 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;
- (f) an identification number;
- (g) the name of each Primary User to whom Access is granted;
- (h) any other Marks

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

This Agreement is made this ..... day of ..... in the year.....

**BETWEEN**

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

**AND**

*[Insert company's name, registration number and corporate address]* (afterwards referred to as the COMPANY);

each being referred to as a "Party" and collectively as the "Parties".

**BACKGROUND**

- I. The *CLIENT* wishes to agree standard terms of licence with the COMPANY which will apply to "Commercial Software" products it procures from the COMPANY in order to avoid the need to negotiate individual terms each time those products are purchased; and
- II. The COMPANY is prepared to agree standard terms of licence with the *CLIENT* in order to facilitate sales of Commercial Software to the *CLIENT*.
  - (i) For the purpose of this Agreement "Commercial Software" means software available commercially including that software modified on sale to suit the requirements of a customer.

**THE HEAD AGREEMENT**

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

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

Signed for and on behalf of the Secretary of State for Defence

.....

*[Print name]* .....

In the capacity of .....*[Insert capacity of signatory]*

Signed for and on behalf of the COMPANY *[Insert name of company]*

.....

*[Print name]*.....

In the capacity of .....*[Insert capacity of signatory]*

## **AGREED STANDARD CONDITIONS**

### **1 DEFINITIONS**

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

### **2 LICENCE GRANT**

- 2.1 The *CLIENT* may Use the Licensed Software on the Designated Equipment at the Designated Site in accordance with the Licence from the date of receipt of the Licensed Software by the *CLIENT*.

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

### **3 DELIVERY AND ACCEPTANCE**

- 3.1 The LICENSOR shall deliver the Licensed Software at a time and to a place agreed with the *CLIENT*.
- 3.2 The LICENSOR or the *CLIENT* as mutually agreed shall install each program of the Licensed Software on the Designated Equipment and test it against acceptance tests if agreed between the LICENSOR and the *CLIENT*.
- 3.3 The *CLIENT* may reject the Licensed Software within the acceptance period specified in Part IV of the Schedule only (which period starts on receipt of the Licensed Software by the *CLIENT*) if it fails an agreed acceptance test or if it does not perform on the Designated Equipment in accordance with the functionality set out in an agreed statement or user document provided by the LICENSOR. The *CLIENT* shall be understood to have accepted the Licensed Software if it has not been validly rejected before the expiry of the acceptance period.
- 3.4 If the *CLIENT* rejects the Licensed Software in accordance with Clause 3.3 the Licence for it shall terminate and the *CLIENT* shall be entitled to reimbursement of any fees paid in respect of the Licensed Software.
- 3.5 The *CLIENT* and the LICENSOR may mutually agree to extend the acceptance period, or to amend the Schedule appropriately, for any Licensed Software that would otherwise have been rejected under Clause 3.3.

### **4 PAYMENT**

- 4.1 The LICENSOR will invoice the *CLIENT* for the agreed licence fees in the amount and in accordance with the invoice arrangements set out respectively in Parts V and VI of the Schedule on or after receipt by the *CLIENT* of the Licensed Software.

- 4.2 The *CLIENT* shall pay the invoice value within 30 days from the later of delivery of the Licensed Software or the date of receipt of a valid invoice related to that Licensed Software. Payment does not constitute acceptance of the Licensed Software.

## 5 CONFIDENTIALITY

- 5.1 Subject to Clause 5.2 and except as otherwise agreed in writing, the *CLIENT* and the LICENSOR shall each hold in confidence and shall not use, disclose or otherwise make available, except in accordance with the Licence, all the following information received from the other under or in connection with the Licence:

- a. the Licensed Software;
- b. details of the EMPLOYER's use and application of the Licensed Software;
- c. any other information which is identified as being disclosed in confidence at the time of disclosure

provided that:

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

- 5.2 The obligations under Clause 5.1 shall not require the receiving Party to maintain confidence in, or refrain from using, any part of the information to the extent that the receiving Party can show that such part of the information:

- a. was already known to that Party, without restraint on use or disclosure, prior to the date of receipt or acquisition under or in connection with the Licence; or
- b. has been received by that Party, without restraint on use or disclosure, from a third party having the right to disclose it; or
- c. has entered the public domain otherwise than in breach of the Licence or any other agreement between the Parties; or
- d. was generated by that Party independently of the information which is subject to Clause 5.1;

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

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

## 6 IPR ACTIONS AND LIABILITIES FOR IPR INFRINGEMENT

- 6.1 The LICENSOR declares that he is \_\_\_\_\_ entitled as either owner or licensee to provide the Licensed Software to the *CLIENT* on the terms and conditions of the Licence.
- 6.2 Subject to the limitations imposed in Clauses 6.3 and 6.4, the LICENSOR shall assume all liability and indemnify the *CLIENT* against all costs or liabilities arising under any valid claim or action brought by a third party against either Party, or against any of its contractors (which expression shall include any Subcontractor) engaged in tasks relevant to the provision of the Licensed Software or to the EMPLOYER's exercise of the Licence, in respect of any third party intellectual property right, including a patent, registered or unregistered design right, trade mark, copyright, trade secret or confidential information, which relates to the supply of the Licensed Software or the Use of the Licensed Software in accordance with the Licence by the *CLIENT* or its contractor, then:
- (a) If the claim or action is brought against the LICENSOR he shall take full responsibility for dealing with settling or defending the claim or action;
  - (b) If any claim is made against the *CLIENT* or its contractors the LICENSOR shall be given full responsibility for dealing with settling or defending the claim as appropriate in his judgement;
  - (c) If legal action is taken against the *CLIENT* or its contractor that Party shall be entitled to join the LICENSOR in the action.
- 6.3 Clause 6.2 shall not apply, and the *CLIENT* shall assume all liability for and indemnify the LICENSOR and its contractors, against all costs and liabilities under the claim or action in the event that it arises as a consequence of any of :
- (a) Use of the Licensed Software by the *CLIENT*, or by a contractor permitted to use the Licensed Software pursuant to Clause 2.2, outside the LICENSOR's specification or user documentation on the Designated Equipment or in a manner outside the reasonable knowledge or expectation of the LICENSOR or in circumstances particular to the *CLIENT* as distinct from other customers for the equivalent Licensed Software;
  - (b) Use of modifications to the Licensed Software not provided or not approved in writing by the LICENSOR;
  - (c) infringement by the LICENSOR of any third party intellectual property right by reason only of use of any material provided by the *CLIENT* for the purposes of the Licence, but only to the extent that this material is held and used within the terms under which it was provided and used solely for the purposes of the Licence.
- 6.4 Clause 6.2 shall not apply in the event that, without the consent of the LICENSOR (which shall not be unreasonably withheld) the *CLIENT*:
- (a) has made or makes an admission of any sort to the third party relevant to the claim or action;
  - (b) the *CLIENT* has entered or enters into negotiations with the third party relevant to the claim or action;
  - (c) the *CLIENT* has made or makes an offer to the third party for settlement of the claim or action.



- 6.5 Each Party undertakes to notify and consult the other promptly in the event of any enquiry, claim or action brought or likely to be brought against it or its contractor or the Parties jointly, which relates to infringement of any third party intellectual property right in connection with the supply or Use of the Licensed Software under the Licence. By joint agreement, the *CLIENT* may take the lead in dealing with settling and defending any such enquiry claim or action made against it directly in consultation with the LICENSOR and, subject to the LICENSOR's agreement as to the terms of any settlement, this shall not displace any liability of the LICENSOR arising under Clause 6.2. If any claim is made against the *CLIENT* under Section 55 of the Patents Act 1977 as a result of the EMPLOYER's use of the Software, and if the *CLIENT* offers a settlement of the claim, otherwise than as a result of a Court order and without the agreement of the LICENSOR, the LICENSOR shall be relieved of any liability which might otherwise arise under Clause 6.2.
- 6.6 In the event that any claim or action is made which is subject to Clause 6.2 or if in the LICENSOR's reasonable opinion such claim or action is likely to be made, the LICENSOR shall promptly utilise all reasonable endeavours to:
- (a) establish or secure the EMPLOYER's right to continue to Use the Licensed Software or, failing to do so,
  - (b) avoid that claim or action by, and after consultation with the *CLIENT* as to how to minimise the EMPLOYER's loss of Use of the Licensed Software, replacing or modifying the Licensed Software without significant change to the specification of the Licensed Software all at the LICENSOR's expense, including installation and testing.
- 6.7 In the event of the LICENSOR being unable to satisfy the requirements of sub-Clauses 6.6a. or 6.6b. the LICENSOR may terminate the Licence relating to the Licensed Software upon not less than three months written notice unless a lesser period is determined by any court order, and the LICENSOR shall make a refund of the licence fee to the *CLIENT*, either in full or with the agreement of the *CLIENT* (which shall not be unreasonably withheld) of a portion of the licence fee representing the lost portion of the Licence.
- 6.8 The conditions set forth in clauses 6.2 to 6.7 represents the total liability and responsibility of each Party to the other under a Licence in respect of any actual or alleged infringement of any intellectual property right owned by a third party, and take precedence over any other liability condition in the Licence.

## 7 WARRANTY

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

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

## 8 GENERAL LIABILITY CONDITIONS

- 8.1 The LICENSOR shall have no liability to the *CLIENT* for any indirect or consequential damages or losses which might arise by reason of Use of the Licensed Software by or for the *CLIENT* including, without limitation, loss of profit, loss of revenue, loss of use, loss of business information produced by Use of the Licensed Software.
- 8.2 The exclusion provided under Clause 8.1 shall not apply where the *CLIENT* suffers loss because of a defect within the Licensed Software which defect is known to the LICENSOR at the time the Licensed Software is furnished to the *CLIENT* unless the *CLIENT* has previously been made aware of and accepted the presence of the defect and its relevance to the EMPLOYER's application of the Licensed Software.
- 8.3 The total of the LICENSOR's liability under or in connection with this Agreement (whether arising from contract, negligence or any other basis) is limited in respect of each event or series of connected events to the value given in Part IX of the Schedule, provided that no limitation shall apply in respect of liability for death of or injury to persons arising from the LICENSOR's negligence, as provided by the Unfair Contracts Act 1977, and, except in relation to sub-Clause 13.2.2, no limitation shall apply in respect of any liability arising under the provisions of Clause 6.2.

## 9 TERM AND TERMINATION OF THE LICENCE

- 9.1 Each Licence shall continue until the *CLIENT* terminates it by written notification to the LICENSOR, or it is terminated pursuant to Clauses 3.4 or 6.7.
- 9.2 The *CLIENT* shall within thirty days of termination of a Licence, through all reasonable endeavours and to the best of its knowledge, return or destroy, at the LICENSOR's option, all originals and destroy all copies of the Licensed Software including partial copies and modifications except that the *CLIENT* may on prior written authorisation from the LICENSOR retain one copy for archival purposes only. The *CLIENT* shall promptly certify in writing once it has so done.
- 9.3 In the event of the LICENSOR drawing the attention of the *CLIENT* to a breach of any condition of a Licence then:
- (a) where the breach is of a nature that cannot be remedied, the *CLIENT* undertakes to settle with the LICENSOR on fair and reasonable terms and to utilise all reasonable endeavours to ensure that a further breach does not occur,
  - (b) where the breach is capable of being remedied, the *CLIENT* shall promptly remedy the breach and where appropriate put in place measures to ensure that a further breach does not occur. The *CLIENT* shall indemnify the LICENSOR for all loss and damage incurred by him as a result of the breach.
- 9.4 The termination of any Licence shall be without prejudice to the continuation of the Head Agreement or any other Licence under it.

## 10 COMBINATION OF SOFTWARE

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

## 11 OUTPUT

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

## 12 DISPUTES

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

## 13 TRANSFER

- 13.1 The LICENSOR shall not assign his interest in any Licence or the intellectual property licensed thereunder without providing for the continuance of the EMPLOYER'S rights under the Licence and without notifying the *CLIENT* in writing of the identity of the assignee.
- 13.2 Unless prevented by law or national regulation the *CLIENT* shall have the right to novate any Licence to a separate legal entity, without charge to itself or the legal entity, upon two months written notice to the LICENSOR, as provided below:
- 13.2.1 following a transfer from the *CLIENT* to the legal entity of any function of the *CLIENT* for which the Licensed Software has been obtained; or
- 13.2.2 on disposal to the legal entity of surplus Designated Equipment where the Licensed Software is essential to the running of that equipment, whether or not it is embedded in the equipment, provided that all warranties (whether express or implied) and all

indemnities shall be void,  
"as is", and the liability  
pounds sterling only.

OFFICIAL-SENSITIVE

the Licensed Software shall be supplied  
referred to in Clause 8.3 shall be ten

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

## 14 DISCONTINUANCE OF BUSINESS

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

## 15 GENERAL

- 15.1 If any provision of this Agreement is held to be invalid, illegal or unenforceable to any extent then:
- (a) that provision shall (to the extent it is invalid, illegal or unenforceable) be given no effect and shall be understood not to be included in the Agreement but without invalidating any of the remaining provisions of the Agreement; and
  - (b) the Parties shall use all reasonable endeavours to replace the invalid, illegal or unenforceable provision by a valid, legal and enforceable provision the effect of which is as close as possible to the effect of the invalid, illegal or unenforceable provision.
- 15.2 No act or omission of either Party shall by itself amount to a waiver of any right or remedy unless expressly stated by that Party in writing. In particular, no reasonable delay in exercising any right or remedy, shall by itself constitute a waiver of that right or remedy.
- 15.3 No waiver of any right or remedy shall operate as a waiver in respect of any other right or remedy.
- 15.4 Neither the LICENSOR nor the *CLIENT* shall be liable for failure to perform any of its obligations under the Licence if that failure results from circumstances beyond its reasonable control.

- 15.5 Headings have been included for convenience only and shall not be used in construing any condition of the Licence.
- 15.6 The Licence shall be subject to and construed and interpreted in accordance with the Laws of England and shall be subject to the non-exclusive jurisdiction of the Courts of England for the enforcement of any arbitral decision.
- 15.7 The Licence shall constitute the entire agreement between the Parties relating to the Licensed Software and supersedes any previous agreement.
- 15.8 No right is granted to any person who is not a Party to the Licence to enforce any term of the Licence in his own right and the Parties declare that they have no intention to grant any such right.

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

**SCHEDULE TO THE HEAD AGREEMENT BETWEEN THE *CLIENT* AND .....***[Insert name of Company]* **DATED:** .....*[Insert date of Head Agreement]* Version Number: .....*[insert, if any]*

CONTRACT REFERENCE NUMBER: .....

By their respective signatures of this Schedule the Secretary of State For Defence (the “*CLIENT*”) undertakes to purchase and .....*[insert name of the LICENSOR which must be either the name of the COMPANY as recorded on the Head Agreement or the name of a legally entitled wholly owned subsidiary]* (the “*LICENSOR*”) undertakes to supply the Licensed Software for Use on the Designated Equipment at the Designated Site (all as identified below) under the Standard Conditions set down in the Annex to the Head Agreement and any Special Conditions set down in Part VIII below which may vary or add to those Standard Conditions.

### PART I - LICENSED SOFTWARE PROGRAMS

*Insert details of each program sufficient for unambiguous identification of nature and release standard*

*Indicate for each program whether these are supplied by the LICENSOR as owner or a licensee of the owner.*

### PART II - DESIGNATED EQUIPMENT

*Insert identification details of the specific equipment on which the Licensed Software is licensed for use (which can be specified as an individual installation, or if the LICENSOR allows any installation of a particular type of processing characteristic) or else insert “not restricted” as a safe default.*

### PART III - DESIGNATED SITE

*Insert identification details of the specific Software is licensed for use, or else insert*

*site or sites on which the Licensed “not restricted” as a safe default.*

#### PART IV – ACCEPTANCE PERIOD & TEST

*Insert the acceptance period defined by duration and commencement event or defined by a specific end date.*

*Insert acceptance test documentation reference, if applicable.*

#### PART V - LICENCE FEES

*Insert the full details of the payments to be made by the CLIENT as licence fees and identify separately any payments to be made for software installation or support.*

#### PART VI - INVOICE ARRANGEMENTS

*Insert the EMPLOYER’s address for submission of the Invoice and any special requirements for Invoicing*

#### PART VII - WARRANTY PERIOD

*Insert the warranty period defined by duration and commencement event or defined by a specific end date.*

#### PART VIII - SPECIAL CONDITIONS

*Insert here any special conditions. These can add to or vary the Standard Conditions contained in the Annex to the Head Agreement. If the Licensed Software comprises a library of routines, or a compiler or other software generating tool, incorporate and complete the appropriate provisions from below:*

<i>Provisions for library compiler or software generator.</i>
---

#### PART IX – LIMITS OF LICENSOR’S LIABILITY

*Insert the LICENSOR’s limit of liability consequent on matters arising in connection with the Licence (whether arising from contract, negligence or any other basis), other than through death, injury or infringement of third party intellectual property rights*

In the event that no separate limit of liability is inserted in connection with the Licence the LICENSOR’s liability under this PART IX shall not exceed five million pounds sterling.

FOR LICENSOR

FOR CLIENT

OFFICIAL-SENSITIVE

Signed .....

... Signed

Name .....

Name .....

[*Print Name*] .....

[*Print Name*] .....

Appointment .....

Appointment .....

Date .....

Date .....

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

**SCHEDULE TO THE HEAD AGREEMENT BETWEEN THE *CLIENT* AND**  
..... DATED .....Version Number: .....

CONTRACT REFERENCE NUMBER: .....

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

PART I - LICENSED SOFTWARE PROGRAMS

PART II - DESIGNATED EQUIPMENT

PART III - DESIGNATED SITE

PART IV – ACCEPTANCE PERIOD & TEST

PART V - LICENCE FEES

PART VI - INVOICE ARRANGEMENTS

PART VII - WARRANTY PERIO

PART VIII - SPECIAL CONDITIONS

*Provisions for library compiler or software generator.*

PART IX – LIMITS OF LICENSOR’s LIABILITY



OFFICIAL-SENSITIVE

In the event that no separate limit of liability is inserted in connection with the Licence the LICENSOR's liability under this PART IX shall not exceed five million pounds sterling.

*FOR LICENSOR*

*FOR CLIENT*

Signed .....

Signed .....

Name .....

Name .....

[Print Name] .....

[Print Name} .....

Appointment .....

Appointment .....

Date .....

Date .....