Contract No: 701760450

For: AHCSP/0005 Long Term Training and Support Service for Apache AH-64E

SCHEDULE O

DEFFORMS

Document Control

Version	Issued	Notes
ENGROSSMENT	Contract Award	

1.1 The following DEFFORMs are included in this Schedule:

ANNEX	DEFFORM	EDITION	TITLE
A	DEFFORM 532	Edn 10/19	Personal Data Particulars
B	DEFFORM 539A	Edn 08/13	TENDERER'S COMMERCIALLY SENSITIVE INFORMATION FORM
C	DEFFORM 94	Edn 12/20	Confidentiality Agreement
D	DEFFORM 177	Edn 06/21	Design Rights and Patents (Sub-Contractor) Agreement
E	DEFFORM 111	Edn 07/21	Addresses and Other Information
F	DEFFORM 10	Edn 07/18	Acceptance Of Offer Of Contract
G	DEFFORM 10B	Edn 03/14	Acceptance Of Offer Of Amendment To Contract
H	DEFFORM 701	Edn 06/21	Head agreement for licence terms for commercial software purchased by the Secretary of State for Defence

ENGROSSMENT

Annex A

DEFFORM 532

Personal Data Particulars

Edn 05/18

This Form forms part of the Contract and must be completed and attached to each Contract containing DEFCON 532B.

Data Controller	The Data Controller is the Secretary of State for Defence (the Authority). The Personal Data will be provided by: **Apache CSP Delivery Team, Yew 0b #1031, Abbey Wood, Bristol, BS34 8JH, United Kingdom**
Data Processor	The Data Processor is the Contractor. The Personal Data will be processed at: **Middle Wallop Airfield, Stockbridge, Hampshire SO20 9RB** **Wattisham Airfeld, Ipswich, IP7 7RA** **Yeovil Airfield, Heathcote Road, Yeovil BA22 8HT**
Data Subjects	The Personal Data to be processed under the Contract concern the following Data Subjects or categories of Data Subjects: **Service Personnel**; **Ministry of Defence Personnel**
Categories of Data	The Personal Data to be processed under the Contract concern the following categories of data: **Name, Job Title/Role, telephone number, work address, email address, level of security clearance, nationality.**

ENGROSSMENT

	No other personal details such as date of birth or service number will be included.
Special Categories of data (if appropriate)	The Personal Data to be processed under the Contract concern the following Special Categories of data: **No mandatory data should be requested that would fall into this category, however should collection of personal data which may identify as a special category of data as per Paragraph 1 of Article 9 of the EU General Data Protection Regulation (GDPR), these should not be recorded unless required as per Paragraph 2 of Article 9.**
Subject matter of the processing	The processing activities to be performed under the contract are as follows: **Administrative purposes – Student enrolment registers, progress trackers, data trending, personal information in support of the students' learning.**
Nature and the purposes of the Processing	The Personal Data to be processed under the Contract will be processed as follows: **The scope, nature and purpose of the processing is the provision of goods and/or services by the Contractor to the Authority under 701760450 Contract.**
Technical and organisational measures	The following technical and organisational measures to safeguard the Personal Data are required for the performance of this Contract: **Long Term Training and Support Service (LTTSS) for Apache AH-6E Schedule A - Statement of**

	Requirements (SOR). Data to be used only in connection with this Contract AHCSP/0005).
Instructions for disposal of Personal Data	The disposal instructions for the Personal Data to be processed under the Contract are as follows (where Disposal Instructions are available at the commencement of Contract): **Process the Personal Data only for the period necessary to meet the Contractor's obligations under the Contract and then dispose in accordance with the Authority's written instructions. [6 years from Contract Closure/Expiry unless legitimate reason to retain it for longer].**
Date from which Personal Data is to be processed	Where the date from which the Personal Data will be processed is different from the Contract commencement date this should be specified here: **From the Earliest RFTD at Schedule A (Statement of Requirements) Appendix 4 (Statement of Training Throughput).**

The capitalised terms used in this form shall have the same meanings as in the General Data Protection Regulations.

ANNEX B

TENDERER'S COMMERCIALLY SENSITIVE INFORMATION FORM

Redacted under FOIA Section 43, Commercial Interests Exemption

ANNEX C

ENGROSSMENT

Ministry of Defence

Confidentiality Agreement

THIS AGREEMENT is made the .... day of .... 20 .

BETWEEN

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

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

WHEREAS:

A.   The Holder owns certain valuable property and equitable rights in information identified or referenced in Appendix 1 to this Agreement (hereinafter referred to as "the Information");

B.   The Holder has agreed, by contract or otherwise with the Secretary of State for Defence (hereinafter called "the Authority") that Information may be disclosed to the Recipient for the purpose as identified in Appendix 1 to this Agreement (hereinafter referred to as "the Purpose"). The Authority has agreed that such disclosures will only be made to parties who have signed an appropriate confidentiality agreement with the Holder;

C.   The Recipient is willing to receive and hold the Information subject to the terms of this Agreement;

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

1.   The Recipient shall, subject to the following provisions of this Agreement, hold the Information under conditions of strict confidence and shall not use, copy, or disclose the Information other than to the Authority, in whole or in part in any manner or form for other than for the Purpose.

2.   The Recipient may disclose the Information under an obligation of confidence only to those of its officers and employees as need to know the Information for the Purpose. If the Recipient needs to disclose the Information to potential sub-contractors the Recipient shall first inform the Authority and the Holder for approval, obtain from the potential sub-contractor an agreement on behalf of the Holder in the same form as this Agreement, and forward it promptly to the Holder.

3.   The restrictions and obligations in paragraphs 1 and 2 shall not apply to any of the Information which the Recipient can show:

    a.   is already known to the Recipient (without restrictions on disclosure or use) prior to its disclosure to the Recipient directly or indirectly from the Authority or the Holder; or
    b.   is received by the Recipient without any obligation of confidence from a third party having a right to disclose it; or
    c.   has been generated independently by the Recipient; or
    d.   is in or enters the public domain otherwise than by breach of this or another undertaking;

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

4.   The Recipient shall not be in breach of this Agreement where it can show that any disclosure of Information was made solely and to the extent necessary to comply with a statutory, judicial or parliamentary obligation. Where such a disclosure is made, the Recipient shall ensure that any new recipient of the Information is made aware of and asked to respect its confidentiality. Such disclosure shall in no way diminish the obligations of the parties under this Condition.

5.   Any disclosure by the Recipient, as required by an act of law, shall be to the minimum extent

ENGROSSMENT

necessary and shall not constitute a breach of this Agreement.

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

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

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

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

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

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

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

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

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

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

Signed on behalf of
the Recipient by:

Signed on behalf of
the Holder by:

In the capacity of:

In the capacity of:

Date:

Date:

ENGROSSMENT

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

1.   THE PURPOSE

[Delete as Applicable]

    a.   <u>To allow the Recipient to respond to an Invitation to Tender (including performance of a subsequent contract) No [   ].</u>

    b.   <u>To allow the Recipient to provide the Authority with an assessment of Invitation to Tender No [   ].</u>

    c.   <u>To allow the Recipient to provide the Authority with a service and/or contract for the following purpose [   ].</u>

2.   INFORMATION TO BE PROTECTED UNDER THIS AGREEMENT

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

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

Signed on behalf of the Recipient by:	Signed on behalf of the Holder by:
In the capacity of:	In the capacity of:
Date:	Date:

ANNEX D

ENGROSSMENT

Ministry of Defence

Design Rights and Patents
(Sub-Contractor's Agreement)

THIS AGREEMENT is made the day of 20

BETWEEN

whose registered office is at

(hereinafter called "the Sub-Contractor") of the one part and THE SECRETARY OF STATE FOR DEFENCE (hereinafter called "the Secretary of State") of the other part

WHEREAS:-

1. The Secretary of State has placed with (hereinafter called "the main contractor") a contract bearing the reference number (hereinafter called "the main contract") for the design and development of the effect of which is that the costs of such design and development (including the cost referable to any sub-contracts hereinafter referred to) will be substantially borne by the Secretary of State.

2. The main contractor contemplates that the design development and supply of certain components needed for performance of the main contract will be undertaken by various third parties in pursuance of sub-contracts made between them and the main contractor.

3. With a view to securing to the Secretary of State rights as regards inventions designs and other related matters in respect of any sub-contract the main contract provides that the main contractor shall not enter into any sub-contract for any component aforesaid without obtaining the prior approval of the Secretary of State.

4. The main contractor has now informed the Secretary of State that for the purpose of performing the main contract they wish to place with the Sub-Contractor a sub-contract for the design and development of the items described in the First Schedule (hereinafter called "the sub-contracted items") and has requested the Secretary of State's approval of the sub-contract accordingly.

5. The Secretary of State has signified its willingness to approve the sub-contract on condition that in consideration of it giving approval the Sub-Contractor enters into a direct Agreement with the Secretary of State concerning the matters hereinafter appearing and the Sub-Contractor has signified their willingness to enter into such an agreement.

NOW THIS AGREEMENT made in consideration of the premises and of the rights and liabilities hereunder mutually granted and undertaken WITNESSETH AND IT IS HEREBY AGREED AND DECLARED as follows:-

1. The Sub-Contractor and the Secretary of State hereby agree to be bound to each other by the provisions of the Conditions as set out in the Second Schedule hereto.

1

ENGROSSMENT

2. No extension alteration or variation in the terms of the sub-contract between the main contractor and the sub-contractor and no other agreement between the main contractor and the sub-contractor relating to the work to be done under the sub-contract or any modification now or hereafter made thereto shall prejudice the operation of this Agreement which shall in all respects apply to the sub-contract as so extended altered varied supplemented or modified as if such extension alteration variation supplementation or modification had been originally provided for in the sub-contract and the expression "the sub-contract items" shall have effect accordingly.

IN WITNESS whereof the parties hereto have set their hands the day and years first before written

Signed on behalf of
the Sub-Contractor

(in capacity of   )

Signed on behalf of
The Secretary of
State for Defence

2

ENGROSSMENT

THE FIRST SCHEDULE

The Sub-Contract Items are:-

THE SECOND SCHEDULE

The Clauses which apply to this Agreement are:-

To be
inserted as
appropriate

except that:

(i)   Where "the Contractor" is stated "the Sub-Contractor" shall be substituted.

(ii)   Where "the Authority" is stated "the Secretary of State" shall be substituted.

(iii)   Where "Contract" is stated "sub-contract" shall be substituted.

(iv)   Where "sub-contractor" is stated "further sub-contractor" shall be substituted.

(v)   Where "sub-contract" is stated "further sub-contract" shall be substituted.

ENGROSSMENT

ANNEX E

**DEFFORM 111
(Edn 07/21)**

Appendix - Addresses and Other Information

1. Commercial Officer
Name: DES Apache-Comrcl-SCO
Address: Apache Delivery Team
Building 100 Centenary House
Leonardo Helicopters Box 146
Lysander Road
Yeovil
Somerset
BA20 2YB
Email: Redacted under FOIA Section 40, Personal Information
☎ Redacted under FOIA Section 40, Personal Information

2. Project Manager, Equipment Support Manager or PT Leader (from whom technical information is available)
Name: DES Apache-CSP-PM5
Address: Apache Delivery Team
Defence Equipment & Support
Yew 0b, #1031
MoD Abbey Wood (South)
Bristol
BS34 8JH
Email: Redacted under FOIA Section 40, Personal Information ☎ Redacted under FOIA Section 40, Personal Information

3. Packaging Design Authority
Organisation & point of contact:

(Where no address is shown please contact the Project Team in Box 2)

☎

**4. (a) Supply / Support Management Branch or Order Manager:
Branch/Name:**
Please contact the Project Team in Box 2

☎

 (b) U.I.N.

5. Drawings/Specifications are available from

6. Intentionally Blank

8. Public Accounting Authority

1. Returns under DEFCON 694 (or SC equivalent) should be sent to DBS Finance ADMT – Assets In Industry 1, Level 4 Piccadilly Gate, Store Street, Manchester, M1 2WD

☎ 44 (0) 161 233 5397

2. For all other enquiries contact DES Fin FA-AMET Policy, Level 4 Piccadilly Gate, Store Street, Manchester, M1 2WD
☎ 44 (0) 161 233 5394

9. Consignment Instructions
The items are to be consigned as follows:

10. Transport. The appropriate Ministry of Defence Transport Offices are:
A. DSCOM, DE&S, DSCOM, MoD Abbey Wood, Cedar 3c, Mail Point 3351, BRISTOL BS34 8JH
Air Freight Centre
IMPORTS ☎ 030 679 81113 / 81114   Fax 0117 913 8943
EXPORTS ☎ 030 679 81113 / 81114   Fax 0117 913 8943
Surface Freight Centre
IMPORTS ☎ 030 679 81129 / 81133 / 81138   Fax 0117 913 8946
EXPORTS ☎ 030 679 81129 / 81133 / 81138   Fax 0117 913 8946

B. JSCS

JSCS Helpdesk No. 01869 256052 (select option 2, then option 3)
JSCS Fax No. 01869 256837
Users requiring an account to use the MOD Freight Collection Service should contact UKStratCom-DefSp-RAMP@mod.gov.uk mailto:deswatergaurd-ics-support@mod.gov.uk in the first instance.

11. The Invoice Paying Authority
Ministry of Defence   ☎ 0151-242-2000
DBS Finance
Walker House, Exchange Flags   Fax: 0151-242-2809
Liverpool, L2 3YL   **Website is:**
https://www.gov.uk/government/organisations/ministry-of-defence/about/procurement#invoice-processing

12. Forms and Documentation are available through *:
Ministry of Defence, Forms and Pubs Commodity Management

ENGROSSMENT

	PO Box 2, Building C16, C Site Lower Arncott Bicester, OX25 1LP (Tel. 01869 256197 Fax: 01869 256824) **Applications via fax or email:** Leidos-FormsPublications@teamleidos.mod.uk
7. Quality Assurance Representative: DES Apache-EngQA Commercial staff are reminded that all Quality Assurance requirements should be listed under the General Contract Conditions. **AQAPS** and **DEF STANs** are available from UK Defence Standardization, for access to the documents and details of the helpdesk visit http://dstan.gateway.isg-r.r.mil.uk/index.html [intranet] or https://www.dstan.mod.uk/ [extranet, registration needed].	*** NOTE** **1.** Many **DEFCONs** and **DEFFORMs** can be obtained from the MOD Internet Site: https://www.aof.mod.uk/aofcontent/tactical/toolkit/index.htm **2.** If the required forms or documentation are not available on the MOD Internet site requests should be submitted through the Commercial Officer named in Section 1.

ANNEX F

ENGROSSMENT

[DEFFORM 10]

ENGROSSMENT

ANNEX G

ENGROSSMENT

DEFFORM 10B (Edn 03/14) - Acceptance of Offer of Amendment to Contract

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

---

[1] The date of unqualified acceptance by signature is the effective date of the amendment

[2] 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 **{** HYPERLINK "http://ec.europa.eu/growth/smes/business-friendly-environment/sme-definition/" **}**

ENGROSSMENT

ANNEX H

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 AUTHORITY) 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 AUTHORITY wishes to agree standard terms of licence with the COMPANY which will apply to "Commercial Software" products it procures from the COMPANY in order to avoid the need to negotiate individual terms each time those products are purchased; and

II.   The COMPANY is prepared to agree standard terms of licence with the AUTHORITY in order to facilitate sales of Commercial Software to the AUTHORITY.

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

THE HEAD AGREEMENT

1.   The Parties agree that they will adopt the terms of licence set out in the Annex to this Head Agreement (the "Annex"), as the standard terms of licence for the procurement of Commercial Software by the AUTHORITY from the COMPANY and from any of their wholly owned subsidiaries for which the COMPANY is entitled to make this Head Agreement. This shall not imply that either Party may not propose other conditions for any particular licence or that either Party shall be bound to accept any particular licence in the terms set out in the Annex.

ENGROSSMENT

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]*

ENGROSSMENT

ENGROSSMENT

ANNEX TO THE HEAD AGREEMENT FOR LICENCE TERMS FOR COMMERCIAL

SOFTWARE BETWEEN THE SECRETARY OF STATE FOR DEFENCE AND

………………………………….DATED ……………………………….

Agreed Standard Conditions

1 Definitions

1.1   "AUTHORITY" 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 AUTHORITY.

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 AUTHORITY 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 AUTHORITY in respect of the Licensed Software and all the conditions associated with it, as set out in the Standard Conditions in combination with a relevant Schedule.

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 AUTHORITY and the LICENSOR, under which the LICENSOR undertakes to supply the Licensed Software for Use by the AUTHORITY under the conditions of the Licence. Each Schedule, in combination with these Standard Conditions, constitutes a distinct Licence independent of any other Licence existing by operation of the Head Agreement.

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 AUTHORITY may Use the Licensed Software on the Designated Equipment at the Designated Site in accordance with the Licence from the date of receipt of the Licensed Software by the AUTHORITY.

2.2   The AUTHORITY may allow contractors of the AUTHORITY and their sub-contractors to Use the Licensed Software on the Designated Equipment at the Designated Site on AUTHORITY contracts only, provided that the AUTHORITY ensures or procures that those contractors and sub-contractors are bound by the conditions of the Licence and that, unless prevented by security considerations, the AUTHORITY shall notify the LICENSOR of the identity of those contractors or

ENGROSSMENT

sub-contractors as soon as is reasonably practical. The AUTHORITY shall not charge for that Use.

2.3   The AUTHORITY may specify alternative Designated Equipment or an alternative Designated Site by notification to the LICENSOR, in which case Clause 2.1 shall apply only to the alternative Designated Equipment or Designated Site as notified. However, in the event that the alternative Designated Equipment shall be equipment of a greater processing capacity or capability or a different operating system outside the parameters of the original Designated Equipment the LICENSOR may require the AUTHORITY to pay a fair and reasonable additional fee which will not exceed the difference between the corresponding fees shown in respect of Use of the Licensed Software on the existing and alternative Designated Equipment respectively in the LICENSOR's price list current at the time when the AUTHORITY has specified the alternative Designated Equipment.

2.4   The AUTHORITY may Use the Licensed Software on alternative equipment if the Designated Equipment is temporarily inoperative until the Designated Equipment is again operative without notification or additional payment to the LICENSOR.

2.5   Notwithstanding the above, the AUTHORITY may copy the Licensed Software in machine-readable form for back-up purposes for Use of the Licensed Software. The AUTHORITY may also create eye readable copies of documentation solely for utilisation by operating personnel of the Licensed Software. All copyright in such copies shall remain the property of the LICENSOR.

3   Delivery And Acceptance

3.1   The LICENSOR shall deliver the Licensed Software at a time and to a place agreed with the AUTHORITY.

3.2   The LICENSOR or the AUTHORITY as mutually agreed shall install each program of the Licensed Software on the Designated Equipment and test it against acceptance tests if agreed between the LICENSOR and the AUTHORITY.

3.3 The AUTHORITY may reject the Licensed Software within the acceptance period specified in Part IV of the Schedule only (which period starts on receipt of the Licensed Software by the AUTHORITY) if it fails an agreed acceptance test or if it does not perform on the Designated Equipment in accordance with the functionality set out in an agreed statement or user document provided by the LICENSOR. The AUTHORITY shall be understood to have accepted the Licensed Software if it has not been validly rejected before the expiry of the acceptance period.

3.4   If the AUTHORITY rejects the Licensed Software in accordance with Clause 3.3 the Licence for it shall terminate and the AUTHORITY shall be entitled to reimbursement of any fees paid in respect of the Licensed Software.

3.5   The AUTHORITY and the LICENSOR may mutually agree to extend the acceptance period, or to amend the Schedule appropriately, for any Licensed Software that would otherwise have been rejected under Clause 3.3.

4   Payment

ENGROSSMENT

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

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

5   Confidentiality

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

a. the Licensed Software;

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

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

ENGROSSMENT

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 AUTHORITY shall ensure or procure that any individual to whom the Licensed Software is made available is made aware of, and complies with, the obligations as to confidentiality and other relevant conditions of the Licence.

5.5   The AUTHORITY shall reproduce and maintain any copyright notices and trade marks on or in any of the copies of the Licensed Software made in accordance with the Licence, including partial copies, and on any software changed under the terms of the Licence.

6   IPR Actions And Liabilities For IPR Infringement

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

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

(a) If the claim or action is brought against the LICENSOR they shall take full responsibility for dealing with settling or defending the claim or action;

(b) If any claim is made against the AUTHORITY or its contractors the LICENSOR shall be given full responsibility for dealing with settling or defending the claim as appropriate in their judgement;

(c) If legal action is taken against the AUTHORITY 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 AUTHORITY shall assume all liability for and indemnify the LICENSOR and its contractors, against all costs and liabilities under the claim or action in the event that it arises as a consequence of any of :

a. Use of the Licensed Software by the AUTHORITY, or by a contractor permitted to use the Licensed Software pursuant to Clause 2.2, outside the LICENSOR's specification or user documentation on the Designated Equipment or in a manner outside the reasonable knowledge or expectation of the LICENSOR or in circumstances particular to the AUTHORITY as distinct from other customers for the equivalent Licensed Software;

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 AUTHORITY for the purposes of the Licence, but only to the extent that this material is held and used within the terms under which it was provided and used solely for the purposes of the Licence.

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 AUTHORITY:

a. has made or makes an admission of any sort to the third party relevant to the claim or action;

b. the AUTHORITY has entered or enters into negotiations with the third party relevant to the claim or action;

c. the AUTHORITY 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 them or their contractor or the Parties jointly, which relates to infringement of any third party intellectual property right in connection with the supply or Use of the Licensed Software under the Licence. By joint agreement, the AUTHORITY may take the lead in dealing with settling and defending any such enquiry claim or action made against it directly in consultation with the LICENSOR and, subject to the LICENSOR's agreement as to the terms of any settlement, this shall not displace any liability of the LICENSOR arising under Clause 6.2. If any claim is made against the AUTHORITY under Section 55 of the Patents Act 1977 as a result of the AUTHORITY's use of the Software, and if the AUTHORITY offers a settlement of the claim, otherwise than as a result of a Court order

ENGROSSMENT

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 AUTHORITY'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 AUTHORITY as to how to minimise the AUTHORITY's loss of Use of the Licensed Software, replacing or modifying the Licensed Software without significant change to the specification of the Licensed Software all at the LICENSOR's expense, including installation and testing.

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 AUTHORITY, either in full or with the agreement of the AUTHORITY (which shall not be unreasonably withheld) of a portion of the licence fee representing the lost portion of the Licence.

6.8 The conditions set forth in clauses 6.2 to 6.7 represent the total liability and responsibility of each Party to the other under a Licence in respect of any actual or alleged infringement of any intellectual property right owned by a third party, and take precedence over any other liability condition in the Licence.

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 AUTHORITY during the warranty period stated in Part VII of the Schedule will be remedied by LICENSOR without unreasonable delay in a manner commensurate with good software industry practice and without payment by the AUTHORITY. During the warranty period the LICENSOR undertakes to provide to the AUTHORITY free of charge corrections to material errors known to the LICENSOR.

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 AUTHORITY to reject the Licensed Software in accordance with Clause 3.3.

ENGROSSMENT

7.3   No oral or written information or advice given by the LICENSOR, their agents or employees shall create a warranty or extend the scope of the warranty given under Clause 7.1.

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

8   General Liability Conditions

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

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

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 AUTHORITY terminates it by written notification to the LICENSOR, or it is terminated pursuant to Clauses 3.4 or 6.7.

9.2   The AUTHORITY shall within thirty days of termination of a Licence, through all reasonable endeavours and to the best of its knowledge, return or destroy, at the LICENSOR's option, all originals and destroy all copies of the Licensed Software including partial copies and modifications except that the AUTHORITY may on prior written authorisation from the LICENSOR

ENGROSSMENT

retain one copy for archival purposes only. The AUTHORITY shall promptly certify in writing once it has so done.

9.3 In the event of the LICENSOR drawing the attention of the AUTHORITY to a breach of any condition of a Licence then:

a. where the breach is of a nature that cannot be remedied, the AUTHORITY undertakes to settle with the LICENSOR on fair and reasonable terms and to utilise all reasonable endeavours to ensure that a further breach does not occur,

b. where the breach is capable of being remedied, the AUTHORITY shall promptly remedy the breach and where appropriate put in place measures to ensure that a further breach does not occur. The AUTHORITY shall indemnify the LICENSOR for all loss and damage incurred by it as a result of the breach.

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

10   Combination of Software

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

11   Output

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

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 AUTHORITY and LICENSOR in relation to or in connection with this Agreement or the Schedule of any Licence granted under it, the AUTHORITY or the LICENSOR may give notice to the other in writing of the existence of that question, dispute or difference and both Parties will attempt to reach a solution. If no mutually acceptable solution is found the AUTHORITY or the LICENSOR may give notice to the other in writing (the ADR notice) that the matter is to be referred to Alternative Dispute Resolution (ADR).

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.

ENGROSSMENT

The Parties agree that after a period of two (2) months from the date of receipt of the ADR notice, or such other date as may be agreed by the Parties, and provided that the dispute remains unresolved, it shall finally be settled by arbitration by a sole arbitrator at the request in writing by either party to the other. Failing agreement on the appointment of the arbitrator within 14 days of receipt of such request, the arbitrator shall be appointed by the President for the time being of the Law Society, in accordance with the Arbitration Act 1996 or any statutory modification or re-enactment of it. The costs of any ADR shall be shared equally by the AUTHORITY and the LICENSOR, however, the costs of arbitration shall be settled by the arbitrator.

12.3 Where a Party rejects the referral of the matter to ADR they 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 their interest in any Licence or the intellectual property licensed thereunder without providing for the continuance of the AUTHORITY'S rights under the Licence and without notifying the AUTHORITY in writing of the identity of the assignee.

13.2 Unless prevented by law or national regulation the AUTHORITY shall have the right to novate any Licence to a separate legal entity, without charge to itself or the legal entity, upon two months written notice to the LICENSOR, as provided below:

13.2.1 following a transfer from the AUTHORITY to the legal entity of any function of the AUTHORITY for which the Licensed Software has been obtained; or

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, the Licensed Software shall be supplied "as is", and the liability referred to in Clause 8.3 shall be ten pounds sterling only.

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

14 Discontinuance of Business

14.1 The AUTHORITY shall have the right to secure from the LICENSOR, or from the authorised trustees or receivers acting on behalf of the LICENSOR, in the event of the LICENSOR permanently ceasing to maintain the Licensed Software or the LICENSOR permanently discontinuing in business because of bankruptcy, receivership, dissolution, or other form of permanent business disruption and that business is not continued by a successor in interest to the LICENSOR to whom the benefits and obligations of this Agreement and any licence granted under it have been assigned, Licensed Software documentation including program source code in the possession and control of the LICENSOR, but no more than the LICENSOR uses themselves, as the AUTHORITY shall consider necessary for it to maintain and continue its normal Use of the Licensed Software for the duration of the Licence but for no other purpose.

ENGROSSMENT

14.2 If so required by a Special Condition, the LICENSOR shall compile and maintain, at a price or in accordance with a price formula identified in the Special Condition, an up to date copy of the Licensed Software documentation to which the AUTHORITY is entitled under Clause 14.1 which copy shall be held by the LICENSOR as a bailee without lien for the AUTHORITY and be made available to the AUTHORITY without additional charge. In the absence of such a Special Condition, the copy shall be prepared on the AUTHORITY's demand and it shall be made available to the AUTHORITY at a fair and reasonable price based on the cost of compilation, reproduction and dispatch.

14.3 The AUTHORITY shall have the right to utilise the Licensed Software documentation to which it is entitled under Clause 14.1 for the purpose of maintaining its Use of the Licensed Software for the duration of the Licence but for no other purpose. The AUTHORITY shall hold in confidence all information in the documentation.

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 AUTHORITY shall be liable for failure to perform any of their obligations under the Licence if that failure results from circumstances beyond their reasonable control.

15.5 Headings have been included for convenience only and shall not be used in construing any condition of the Licence.

ENGROSSMENT

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 their own right and the Parties declare that they have no intention to grant any such right.

ENGROSSMENT

<u>SAMPLE</u>

<u>ATTACHMENT TO ANNEX TO HEAD AGREEMENT – STANDARD FORM OF LICENSING
SCHEDULE</u>

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

<u>CONTRACT REFERENCE NUMBER</u>: …………………………………

By their respective signatures of this Schedule the Secretary of State For Defence (the "AUTHORITY") 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.

<u>PART I - LICENSED SOFTWARE PROGRAMS</u>
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.

<u>PART II - DESIGNATED EQUIPMENT</u>
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.

<u>PART III - DESIGNATED SITE</u>
Insert identification details of the specific site or sites on which the Licensed Software is licensed for use, or else insert "not restricted" as a safe default.

<u>PART IV – ACCEPTANCE PERIOD & TEST</u>
Insert the acceptance period defined by duration and commencement event or defined by a specific end date.
Insert acceptance test documentation reference, if applicable.

ENGROSSMENT

PART V - LICENCE FEES

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

PART VI - INVOICE ARRANGEMENTS

Insert the AUTHORITY'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:

Provisions for library compiler or software generator.

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

FOR LICENSOR   **FOR AUTHORITY**

Signed ....   Signed ....

Name ....   Name ....
[*Print Name*] …………………….   [*Print Name*} ……………………..

Appointment ....   Appointment ....

Date...   Date

ENGROSSMENT