Ministry of Defence

Contract Number: DGM/1880

Schedule 22: Intellectual Property Rights

For:

Next Generation Munitions Solution (NGMS) Programme

November 2020

1 DEFCONS

Section 1a - DEFCONS

1.1 The Conditions set out in this “Section 1a – DEFCONS” are applicable solely to work performed under this Contract:

(a) in relation to Articles (being Articles developed other than under DEFCON 15 Edn 8/74) or software the intellectual property in which are owned by the Contractor or

(b) which work relates to stand alone development having no specific relevance to Articles or software in the possession of the Authority as at the date of this Contract.

DEFCON 14 Edn 11/05 Inventions and Designs – Crown Rights and Ownership of Patents and Registered Designs

DEFCON 15 (Same Edition as applied to the original development of the Article) (Articles covered by Paragraph 1.1(a) only)

DEFCON 15 Edn 2/98 Design Rights and Rights to Use Design Information (Articles covered by Paragraph 1.1(b) only)

DEFCON 16 (Same Edition as applied to the original development of the Article) (Articles covered by Paragraph 1.1(a) only)

DEFCON 16 Edn 10/04 Repair and Maintenance Information (Articles covered by Paragraph 1.1(b) only)

DEFCON 21 (Same Edition as applied to the original development of the Article) (Articles covered by Paragraph 1.1(a) only)

DEFCON 21 Edn 10/04 – Retention of Records (Articles covered by Paragraph 1.1(b) only)

DEFCON 90 Edn 11/06 – Copyright

DEFCON 91 (Same Edition as applied to the original development of the software) (Software covered by Paragraph 1.1(a) only)

DEFCON 91 Edn 11/06 – Intellectual Property Rights in Software (Software covered by Paragraph 1.1(b) only)

DEFCON 126 (Same Edition as applied to the original development of the material) (Material covered by Paragraph 1.1(a) only)

DEFCON 126 Edn 11/06 – International Collaboration Clause (Material covered by Paragraph 1.1(b) only)

Note to DEFCON 126 – The period referred to under Clauses 2 and 3 shall be until the earlier of the date at which the relevant equipment ceases to be in service with the UK Armed Forces and the date when this Contract terminates.

DEFCON 632 Edn 08/12 - Third Party Intellectual Property Rights - Commercial and Non-Commercial Articles and Services

1.2 The Contractor will in good faith develop and agree with the Authority such Contract Data Requirements in the form of DEFFORM 315s, attached at Annex A, (or alternate format as may otherwise be agreed) as may be required to specify that information which is relevant and reasonable in relation to the inclusion of DEFCON 15 and DEFCON 16 in this Contract.

Section 1b – DEFCONS

1.3 The Conditions set out in this "Section 1b – DEFCONS" are applicable solely to work performed under this Contract in relation to Articles developed under DEFCON 15 (Edn 8/74), the intellectual property in which are owned by the Contractor and COTS Products as defined in the Intellectual Property Rights Agreement dated 25 May 2000 between BAE Systems and the Authority.

DEFCON 14 Edn. 11/05 Inventions and Designs – Crown Rights and Ownership of Patents and Registered Designs

DEFCON 15 Edn 8/74 Design Rights

Notes to DEFCON 15

For work performed in relation to Articles developed under DEFCON 15 (Edn 8/74):

In addition to the rights secured by DEFCON 15 Edn 8/74, the Authority shall have in relation to any modified or improved design of Article made under this Contract the rights set out in the Intellectual Property Rights Agreement dated 25 May 2000 between BAE Systems and the Authority as applying to old DEFCON 15 products as though such modified or improved design had been in existence prior to 30 November 1999.

For work performed in relation to COTS Products as defined in the Intellectual Property Rights Agreement dated 25 May 2000 between BAE Systems and the Authority:

In addition to the rights secured in any modifications or improvements by DEFCON 15 Edn 8/74, the Authority shall have in relation to any modified or improved design of Article made under the Contact the rights set out in the Intellectual Property Rights Agreement dated 25 May 2000 between BAE Systems and the Authority as applying to COTS Products as though such modified or improved design had been in existence prior to 30 November 1999.

DEFCON 21 – Retention of Records (Same Edition as applied to the original development of the Article)

DEFCON 90 Edn 11/06 - Copyright

DEFCON 91 Edn 11/06 – Intellectual Property Rights in Software (Same Edition as applied to the original development of the software)

DEFCON 126 – International Collaboration Clause (Same Edition as applied to the original development of the Article)

Note to DEFCON 126

The period referred to under Clauses 2 and 3 shall be until the earlier of the date at which the relevant equipment ceases to be in service with the UK Armed Forces and the date when this Contract terminates.

DEFCON 632 Edn 08/12 - Third Party Intellectual Property Rights - Commercial and Non-Commercial Articles and Services

Technical Publication Condition

1.4 The Contractor shall ensure that the Authority has the right to copy, amend, extend or have copied, amended or extended any technical publication called for under this Contract or as may be generated or delivered under this Contract or any part thereof including any such part when incorporated in any amended or extended version of such technical publication, and to circulate, use or have used said technical publication including any amended or extended version and any copies thereof for any United Kingdom Government purpose. For the purposes of this Contract delivery can be self to self. This Paragraph 1.4 shall only apply:

(a) in relation to Table 1 in Schedule 5 (Engineering Requirements). These requirements are limited to the provision of deliverable technical documentation as a consequence of a new munition being added to this Contract, or a munition subject to an Update.

(b) to technical documentation relating to Type A and B Munitions previously supplied by the Contractor and any technical documentation generated in support of through-life support activities specified in Paragraph 2.1 (Design Organisation) of Schedule 5 (Engineering Requirements).

2 GENERAL CONDITIONS

2.1 For the avoidance of doubt, where intellectual property of any kind is generated in the performance of this Contract the terms of Section 1a - DEFCONS or Section 1b - DEFCONS (depending on the conditions under which the relevant Article(s) were developed) shall apply to that intellectual property.

2.2 The Contractor shall not undertake any development or upgrade work under this Contract without first informing the Authority of the work to be undertaken.

2.3 The Contractor shall maintain a full record of all development and upgrade work carried out under this Contract, including any work carried out under Enabling Charge Target Costs funding. Such records shall be made available to the Authority promptly upon request. Such records, subject to any pre-existing rights of the Authority, shall be used by the Authority for internal purposes only, and shall not be disclosed by the Authority to any third party.

2.4 Should the Contractor carry out any privately funded, research, design, development or upgrade work in relation to those munitions provided under this Contract, the Contractor undertakes, subject to fair and reasonable terms and to the rights of third parties, to make any intellectual property generated as a result of such work available to the Authority on the terms of Section 1a - DEFCONS or Section 1b - DEFCONS (depending on the conditions under which the relevant Article(s) were developed). Such fair and reasonable terms shall include payment and this payment shall take full account of the technical and commercial risk borne by the Contractor in undertaking such work.

2.5 Without prejudice to Section 1 – DEFCONS in the event that the Contractor under this Contract develops any intellectual property relating exclusively to munitions or other products, the intellectual property in which is wholly owned by the Authority, then such developed intellectual property shall be vested in the Authority.

3 SUB-CONTRACTING

3.1 Unless otherwise agreed by the Authority, the Contractor shall not place any sub-contract in furtherance of work under Section 1 – DEFCONS without securing for the Authority rights in relation to that work consistent with those under Section 1a – DEFCONS or Section 1b – DEFCONS as is appropriate.

4 EXPORT CONTROL

4.1 The Contractor shall ensure that it acquires any required export consents necessary for performance of this Contract. The Authority undertakes to use its best endeavours to assist the Contractor in obtaining such export consents as are required for performance of this Contract or exercise of the rights granted.

5 AUTHORISATION BY THE CROWN FOR USE OF THIRD PARTY INTELLECTUAL PROPERTY RIGHTS

5.1 Notwithstanding any other provisions of the Contract and for the avoidance of doubt, award of the Contract by the Authority and placement of any contract task under it does not constitute an authorisation by the Crown under Sections 55 and 56 of the Patents Act 1977 or Section 12 of the Registered Designs Act 1949. The Contractor acknowledges that any such authorisation by

the Authority under its statutory powers must be expressly provided in writing, with reference to the acts authorised and the specific intellectual property involved.

ANNEX A

Ministry of Defence

CONTRACT DATA REQUIREMENT

1. ITT/Contract Number	2. CDR Number	3. Data Category	4. Contract Delivery Date
5. Equipment/Equipment Subsystem Description		6. General Description of Data Deliverable	
7. Purpose for which data is required		8. Intellectual Property Rights a. Applicable DEFCONs b. Special IP Conditions	
9. Update/Further Submission Requirements			
10. Medium of Delivery		11. Number of Copies	

ANNEX B

Ministry of Defence

DEFFORM 177

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

THIS AGREEMENT is made the day of

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 he wishes 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 his willingness to approve the sub-contract on condition that in consideration of his 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 his 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.

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

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.