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The Effective Date of this Framework Agreement (Version 3) is the date of the Authority's acceptance notification.

BETWEEN:

- (1) The Secretary of State for Defence acting through the Defence Science and Technology Laboratory (Dstl) having its principal place of business at Dstl Porton Down, Salisbury, Wiltshire, SP4 0JQ (the "**Authority**"); and
- (2) The Supplier (as detailed in the acceptance notification).

RECITALS

- A. The purpose of this Framework Agreement (generally known as R-Cloud) is to enable the Authority to agree Contracts with the Supplier on the terms and conditions set out below. The requirements for the Services have been advertised via the Defence Contracts Online website, sharing the requirements with all registered suppliers, prior to being transferred to the web application found at www.rcloud@dstl.gov.uk
- B. The Parties acknowledge that the recitals are included to provide clarity on the wider R-Cloud initiative and the context of the Framework Agreement within the Authority's R-Cloud programme which has been designed to increase access of research requirements to suppliers of science and technology innovation and excellence.
- C. This Framework Agreement (and its Annexes), including the agreed pricing matrix and completed taxonomy information together with the acceptance notification of the Supplier's proposal set out the terms of contract between the Authority and the Supplier.

THE PARTIES AGREE as follows:

SECTION A – PRELIMINARIES

1 DEFINITIONS AND INTERPRETATION

- 1.1 In this Framework Agreement, unless otherwise provided or the context otherwise requires:
 - (a) capitalised expressions shall have the meanings set out in Schedule 1 (Definitions and Interpretation) and the headings are for ease of reference only and shall not affect the interpretation or construction of this Framework Agreement;
 - (b) the singular includes the plural and vice versa;
 - (c) a reference to any Law includes a reference to that Law as amended, extended, consolidated or re-enacted from time to time and references to this Framework Agreement are references to this Framework Agreement as amended from time to time;
 - (d) the words "including", "other", "in particular", "for example" and similar words shall not limit the generality of the preceding words and shall be construed as if they were immediately followed by the words "without limitation";
 - (e) references to Clauses and Schedules are references to the Clauses and Schedules of this Framework Agreement and references in any Schedule to Paragraphs, Parts and Annexes are, unless otherwise provided, references to the paragraphs, parts and annexes of the Schedule or the Part of the Schedule in which the references appear.
- 1.2 The Schedules and their Annexures form part of this Framework Agreement.

2 SCOPE AND STRUCTURE OF THE DOCUMENT

- 2.1 In consideration of the payment of £1.00 by the Authority to the Supplier, receipt of which is hereby acknowledged, the Parties have entered into this Framework Agreement on the terms and conditions set out herein.
- 2.2 Any Contracts placed by the Authority with the Supplier shall be governed by the terms and conditions of this Framework Agreement. The specification, Price and any other requirements specific to the Contract in question shall be those which have been agreed by the Parties in a tasking request and acceptance notification.

3 PRECEDENCE OF DOCUMENTS

- 3.1 If there is any inconsistency between the terms and conditions of this Framework Agreement and any Contract, the following descending order of precedence shall apply:

- (a) The terms and conditions of this Framework Agreement;
- (b) The requirement and any additional terms, specified as part of the tasking process, incorporated into the Contract;

so that the provision in the higher ranked document, to the extent of the inconsistency, shall prevail.

- 3.2 For tasks in support of a United States Government DoD prime contract calling up Federal Acquisition Regulations (FARS) and Defense Federal Acquisition Regulations Supplements (DFARS), the following descending order of precedence shall apply:

- (a) The FAR and DFAR clauses (see Annex C);
- (b) The terms and conditions of this Framework Agreement;
- (c) The requirement and any additional terms, specified as part of the tasking process, incorporated into the Contract;

so that the provision in the higher ranked document, to the extent of the inconsistency, shall prevail.

4 COMMENCEMENT OF THIS FRAMEWORK AGREEMENT

- 4.1 This Framework Agreement will commence on the Effective Date, and unless terminated at an earlier date by operation of Law or in accordance with the remaining provisions of this Framework Agreement, will terminate on the 29 February 2020. The Authority reserves the right to extend the term by up to three (3) months.
- 4.2 Where the Framework Agreement term expires and the Services due to be provided under any Contract are not due to be completed, prior to such expiry, then the incomplete Services shall be completed in accordance with the requirements of the relevant Contract unless the Authority reasonably directs the Supplier otherwise.
- 4.3 Where, prior to the expiry of the Framework Agreement term, the Authority has received a proposal from a Supplier in accordance with the specific tendering instructions on the tasking form, the terms and conditions of this Framework Agreement shall continue to apply unless the Authority does not issue an acceptance notification relating to that proposal within three months of the date of the expiry of the Framework Agreement term.

SECTION B – SERVICES

5 SCOPE OF SERVICES

- 5.1 This Framework Agreement shall govern the provision of Services as detailed in the published Statement of Requirement for the capability area through the Authority placing a Task or Tasks in accordance with Clause 6.

6 PROCEDURE FOR PLACING A CONTRACT

- 6.1 The procedure for placing a Contract can follow various routes with notification of such Task requests being issued via the Dstl R-Cloud web application tool via www.rcloud.dstl.gov.uk.
- (a) The web application will inform the process with the general principle being that the Authority will issue an invitation to suppliers, the suppliers responding with proposals and the Authority accepting successful offers electronically.
- (b) Where the classification or complexity of the work requires it, the Authority may additionally prepare a tasking order form detailing the Task requirement, any additional terms that may apply and the criteria for awarding the Contract. The Supplier will provide a proposal in accordance with the deadline and instructions issued.
- 6.2 The Authority will evaluate the proposals submitted by the Supplier alongside those submitted by other Suppliers in order to identify the most economically advantageous offer and shall either, at its complete discretion, accept the proposal(s) by issue of an electronic acceptance notification, or issue a decline.
- 6.3 The Supplier shall not commence any Task until authorised. The authorisation of the Task converts the Task to a Contract. The authorisation will be made to the Supplier via notification of an Authority purchase order number as notified within the Acceptance notice, which shall be shown on all correspondence relating to the resultant Contract.

7 DELIVERY AND RISK

- 7.1 The Supplier shall deliver all Articles to the place identified in the Contract. Any access to premises and any labour and equipment that may be provided by the Authority in connection with delivery of the Services shall be provided without acceptance by the Authority of any liability whatsoever, and the Supplier shall indemnify the Authority and the Crown in respect of any actions, suits, claims, demands, losses, charges, costs and expenses which the Authority or the Crown may suffer or incur as a result of or in connection with any damage or injury (whether fatal or otherwise) occurring during the course of delivery of Articles, Services or installation to the extent that any such damage is attributable to any act or omission of the Supplier or any of its sub-contractors.
- 7.2 Until delivery, the risk of loss or damage to any Article shall be with the Supplier.
- 7.3 Where any access to the Authority's premises is necessary in connection with delivery or installation, the Supplier and its sub-contractor shall at all times comply with any security regulations currently in force and any safety, health, environmental and fire regulations currently in force.
- 7.4 Unless otherwise agreed with the Authority in writing, failure to deliver within the time specified shall enable the Authority (at its option) to release itself from any obligation to accept and pay for the Articles and/or to cancel all or part of the relevant Contract, in either case without prejudice to its other rights or remedies. Such remedies are set out at Clause 43.
- 7.5 Articles shall be delivered during the following hours unless otherwise agreed with the

Authority in writing:

- (a) Monday – Thursday 08.00 - 16.00 hrs
- (b) Friday 08.00 - 15.00 hrs

8 ACCEPTANCE

8.1 Acceptance of the Deliverables shall occur in accordance with any acceptance criteria specified in the Contract. If no acceptance procedure is so specified, acceptance shall occur when either:

- (a) the Authority does any act in relation to the Deliverable which is inconsistent with the Supplier's ownership; or
 - (b) the time limit in which to reject the Deliverables defined in Clause 9.2 has elapsed,
- and "**Acceptance**" shall be defined accordingly.

9 REJECTION

9.1 If any of the Deliverables delivered to the Authority do not conform to the Statement of Requirement or any other terms of the Contract, then (without limiting any other right or remedy that the Authority may have) the Authority may reject such Deliverables (in whole or in part). The Authority shall return these Deliverables to the Supplier at the Supplier's risk and cost.

9.2 Rejection of any of the Deliverables under Clause 9.1 shall take place by the time limit for rejection specified in the Statement of Requirement, or (if no such period is specified) within twenty (20) Business Days.

10 SECURITY CLEARANCE

10.1 Supplier's personnel may be required to have or obtain the necessary security clearance deemed applicable by the Authority for access to material designated to any security classification above OFFICIAL. When a tasking order form, with defined assets requiring security protection, is received by the Supplier, its personnel must have or be prepared to acquire the necessary clearance for that Task or they will be deemed to be unable to participate in the Task at that level and may not be awarded a Contract.

10.2 Research Workers - Prior to any contract being placed all of the Supplier's personnel engaged on the Dstl requirement must complete and return a Personal Particulars – Research Workers Form; see also Clause 21.

11 ACCESS AND FACILITIES TO BE PROVIDED BY THE SUPPLIER

11.1 The Supplier's progress and quality standards in performing the Services under the Contract shall be monitored by the Authority. The Supplier shall provide to the Authority's representatives all reasonable access to its premises for these purposes.

11.2 Any Government Furnished Assets (GFA) provided to the Supplier by the Authority must be recorded and physically maintained where appropriate. Any costs associated with GFA, such as maintenance, calibration or replacement, must be agreed prior to Task award.

Health and Safety Hazard Control

11.3 The Supplier agrees to comply with any rules regarding health and safety made known to the Supplier from time to time by the Authority together with all applicable statutory rules and

regulations regarding these matters. The Authority will be responsible for procuring that its employees and agents also comply with these rules and regulations.

- 11.4 Where the Supplier enters a Government Establishment for the purpose of performing work under the Contract, the Supplier shall notify the Project Manager or the site project liaison officer or overseeing officer nominated in the Contract of:
- (a) any injury, disease or dangerous occurrence at such Government Establishment arising out of the performance of the Contract, which is required to be reported under the Reporting of Injuries Diseases and Dangerous Occurrences Regulations 1995 (RIDDOR) (in addition to any report which the Supplier may be required to submit under RIDDOR to the relevant enforcing authority (e.g. Health and Safety Executive or Local Authority).
 - (b) any health and safety hazards associated with the work to be performed by him or any of his Representatives, and
 - (c) any foreseeable risks to the health and safety of all persons associated with such hazards;
 - (d) any precautions to be taken by him as well as any precautions which, in his opinion, ought to be taken by the Authority, in order to control such risks.

SECTION C – PRICING AND PAYMENT

12 PRICING

- 12.1 The pricing of any proposal submitted by the Supplier pursuant to Clause 6 shall be in accordance with the provisions of this Clause 12 and the Services specified in the tasking order form.

Pricing in a Competition

- 12.2 The Supplier is free to submit a Firm Price based on rates of its choosing save always that those rates must not exceed those in the pricing matrix agreed as part of this Framework Agreement. The Authority shall usually require a Firm Price for delivery of Services. Where the Authority determines that pricing on a Firm Price basis is not appropriate, it may require the Supplier to propose an ascertained cost, with a Maximum Price Payable, using the Firm Price Hourly Rates contained in the pricing matrix. Alternatively, the Authority may require the use of a Maximum Price Target Cost [MPTC] pricing mechanism where this is appropriate to the nature of the Task.

- 12.3 In the event that a Contract is agreed on an ascertained cost basis, pursuant to Clause 12.2, the Authority reserves the right to subsequently require the Supplier to provide a Firm Price at a determined point which when agreed with the Supplier will apply for the remainder of the Contract.

Pricing For Sole Source

- 12.4 The Supplier's Firm Price Hourly Rates as set out in the pricing matrix shall apply to any sole source Contracts for the duration of the Framework Agreement term. Alternatively, the Authority may require the use of a Maximum Price Target Cost [MPTC] pricing mechanism where this is appropriate to the nature of the Task.
- 12.5 NOT USED.
- 12.6 At the time of responding to a sole source Task request, the Supplier can offer, or the Authority can request an offer with, lower Firm Price Hourly Rates than those detailed in the

pricing matrix and (subject to mutual agreement) these rates can be utilised in any resulting Contract.

- 12.7 A breakdown of costs must be submitted and shall identify individually the costs for materials, travel, subsistence and any other costs within the commercial response of the proposal.

Pricing On Ascertained Costs

- 12.8 The ascertained costs (Maximum Price Payable) shall be agreed prior to commencement of the Contract. A cost breakdown of the Maximum Price Payable shall be submitted by the Supplier and shall be exclusive of VAT.

- 12.9 The total amount to be paid by the Authority to the Supplier under the Contract shall not, without the approval in writing of the Authority, exceed the Maximum Price Payable stated in the approved Contract.

- 12.10 Where Parties agree that the duration and value of the Contract warrants it, progress payments will be made monthly, based on the proportion of work undertaken less a 20% retention fee, which shall be held over and included in the final payment on submission of the required information set out in Clause 12.13 below. Any request for progress payments must be set out by the Supplier in the commercial response to the proposal.

- 12.11 If at any time the Supplier considers that the Contract cannot be completed within the Maximum Price Payable agreed, it shall immediately inform the Authority and provide an explanation of the circumstances. The Supplier will under no circumstances undertake any work exceeding the Maximum Price Payable unless agreed otherwise with Authority.

- 12.12 Provided that it does not exceed the Maximum Price Payable, the final price payable to the Supplier for delivery of the Services shall comprise the following elements:

- (a) the actual net invoiced cost of materials properly purchased and paid for by the Supplier for incorporation in the Articles;
- (b) the actual net sums properly paid by the Supplier to its suppliers or sub-contractors for goods supplied or work done in connection with the Contract;
- (c) the labour costs incurred in the execution of the work under the Contract, having included (where applicable and in accordance to the pricing matrix) the percentage discount and showing the hourly rate and hours utilized.
- (d) A declaration of the profit generated as part of the final Price.

- 12.13 On completion of a Contract priced on the basis of ascertained costs the Supplier will provide to the Authority:

- (a) a certified cost statement, showing the cost elements used to build the final Price;
- (b) where requested, an explanation of the various rates used; and
- (c) confirmation that the costs have been reasonably and properly incurred in accordance with the Contract.

- 12.14 A representative sample of cost statements may be subject to individual audit by the Authority.

- 12.15 The Authority shall pay to the Supplier the amount by which any sum payable on the basis of the prices finally fixed exceeds any sum paid on the basis of the provisional prices and the Supplier shall pay to the Authority the amount by which any sum paid on the basis of the

provisional prices exceeds the sum payable on the basis of the prices finally fixed. In the event of any alteration of the provisional prices similar provisions for payment and repayment shall apply.

Travel and Subsistence

- 12.16 Claims for travel and subsistence included within the price for a Contract shall be submitted in accordance with the actual limits listed below which shall remain unchanged throughout the duration of the Framework Agreement, unless the Authority agrees otherwise at the time of placing a Task. These limits are inclusive of VAT.
- (a) The Supplier may claim up to a maximum of £100 per night for accommodation. The Supplier may claim up to a maximum of £6 for lunch and/or £20 for an evening meal. Any price in excess of these limits will require justification and approval by the Authority.
 - (b) For any car journeys made in the performance of the Contract, the Supplier may claim 25 pence per mile. Claims including vehicle insurance are inadmissible. In exceptional circumstances and with the prior authorisation of the Authority, where it is deemed to be in the public interest, the Supplier may request reimbursement for short-term car hire to meet specifically the performance of the Contract.
 - (c) For air, sea and rail travel, if possible the Supplier shall use any benefits obtained as a direct consequence of the Supplier's performance under the Framework Agreement (e.g. Air Miles) to offset the costs of further travel required in performance of Contract(s) placed under this Framework Agreement.

13 PAYMENT

- 13.1 Save as may be agreed for a specific Task, the Authority shall pay the Supplier for the Services in accordance with the terms of the relevant Contract after Acceptance (as defined in Clause 8) of all Deliverables required under that Contract in accordance with the terms of this Framework Agreement.
- 13.2 The Authority enters into this Framework Agreement and each Contract hereunder on the strict understanding that the Supplier shall be responsible for the payment of all taxes lawfully due from or collectable by the Supplier, including but not limited to its own National Insurance contributions, income taxes and VAT. The Supplier shall defend and indemnify the Authority for all and any claims which may be brought against the Authority as a result of the failure of the Supplier to pay such taxes.
- 13.3 In order to obtain payment the Supplier shall send an emailed PDF copy of a Properly Submitted Invoice to the Project Manager identified within the Contract and submit a Properly Submitted Invoice via e-mail in PDF format to accountspayable@dstl.gov.uk.
- 13.4 Invoices must quote "R-Cloud", Milestone/Progress number (where applicable) and purchase order number.
- 13.5 The Authority shall pay all Properly Submitted Invoices within 30 calendar days of receipt by Dstl Accounts Payable by means of the Bankers Automated Clearing Service (BACS) directly into the Supplier's nominated bank account. To facilitate payment by means of the BACS system, the Supplier shall provide the Authority in advance of the submission of valid invoices with details of the name and address of its bank, the sort code and account number.

14 RECOVERY OF SUMS DUE

- 14.1 Whenever under the Contract any sum of money, including all appropriate and relevant tax, shall be recoverable from or payable by the Supplier, the same may be deducted from any

sum, then due, or which at any time thereafter may become due, to the Supplier under the Contract, or under any other contract with the Authority, or with any Government Department.

15 PROMPT PAYMENT TO SUPPLIERS

- 15.1 Where the Supplier enters into a sub-contract with a supplier or contractor for the purpose of performing the Contract, it shall include a term in such sub-contract which requires payment to be made to the supplier or contractor within a specified period not exceeding 30 calendar days from receipt of a valid invoice (as defined in the subcontract).

SECTION D – CONTRACT ADMINISTRATION

16 PERFORMANCE MANAGEMENT

- 16.1 The Authority will monitor the participation of the Supplier in its research programmes using responses to expressions of interest, proposals and Contracts placed. If the Supplier has not actively participated in the programme, having been invited to respond then the Authority reserves the right to terminate this Framework Agreement in accordance with Clause 42.

- 16.2 The Authority employs a vendor rating system, through the completion of surveys within its electronic ordering system. Responses from Project Managers to these surveys will be considered when assessing the Supplier's performance against time, quality and cost.

17 PROVISION OF MANAGEMENT INFORMATION (MI)

- 17.1 On request by the Authority, the Supplier shall, at no charge to the Authority, submit to the Commercial Manager by email complete and accurate Management Information in accordance with the description below:

- a) Details of any GFA as defined in Schedule 1.
- b) Confirmation that any Controlled Information has been returned or destroyed as required by Clause 33.

- 17.2 Subject to reasonable notice, for the purposes of monitoring performance of the Framework Agreement, and any Task placed thereunder, the Supplier shall provide the Authority's representatives with any information as may be reasonably required.

- 17.3 The Supplier is responsible for monitoring and maintaining the supply chain and for keeping a record of the Tasks which have been placed with both themselves and through Sub-contractors. The Supplier shall keep a record of task values and who each task was placed with in a spreadsheet which is to be submitted to the Commercial Manager on conclusion of the Contract.

- 17.4 Throughout the duration of the Framework Agreement there may be some specific Management Information (MI) requirements regarding Tasks. There may also be ad hoc MI requirements throughout the duration of the Framework Agreement. (Note: Ad hoc MI requirements are irregular requests for additional information. It is the intention of the Authority to ensure these ad hoc requests are kept to a minimum. Where such requirements arise and requests are made, the Supplier is obliged to comply).

18 REPORTS AND PROGRESS MEETINGS

- 18.1 Progress meetings between the Supplier and the Authority may be held every three months during the duration of the delivery of Services under the Contract or at such other intervals as the Authority may reasonably request. During these meetings the Management Information provided under Clause 17 will be reviewed.

- 18.2 The Supplier is to supply a minutes secretary and produce minutes of the progress meetings. The front page of any minutes produced as a result of any meeting between the Authority and the Supplier shall state:

"Nothing in these minutes shall be construed as giving authority to proceed on work beyond that provided in the Contract or shall vary the terms and conditions of the Contract."

- 18.3 The Supplier shall submit any Interim Reports or Final Reports identified in the Contract. Reports shall be signed on the Supplier's behalf by a Person authorised to commit the Supplier. The Supplier shall follow the guidance and instruction held at: <https://www.gov.uk/guidance/submit-a-report-to-athena> for report submissions and format. Each report must include a Report Documentation Page. **Note: This Contract is R-Cloud Framework Agreement V3.0.**

19 CHANGE OF CONTROL

- 19.1 The Supplier shall notify the Authority, as soon as practicable, in writing of any material change in Control of the Supplier. The Supplier shall not be required to submit any notice which is unlawful or is in breach of either any pre-existing non-disclosure agreement or any regulations governing the conduct of the Supplier in the UK or other jurisdictions where the Supplier may be subject to legal sanction arising from issue of such notice.

20 SUPPLIER'S RECORDS

- 20.1 The Supplier shall maintain such records as are specified in the Contract and make them available to the Authority as the Authority may reasonably require upon reasonable notice. Subject to the provisions of Clause 31, the Supplier shall permit all such records to be examined, and if necessary copied, by or on behalf of the Authority.

SECTION E – SUPPLIER PERSONNEL AND SUPPLY CHAIN

21 SUPPLIER PERSONNEL - RESEARCH WORKERS

- 21.1 All Research Workers engaged in support of the Contract shall have appropriate qualifications and competence and be in all respects acceptable to the Authority. The Authority reserves the right to reject any proposed Research Worker(s) whom it considers unsuitable for any reason. The decision of the Authority shall be final and it shall not be obliged to provide any reasons.
- 21.2 The Authority shall approve Research Workers proposed by the Supplier to work directly on the Contract and the Supplier shall notify the Authority in writing prior to the relevant personnel starting work on the Contract.
- 21.3 A form detailing the personal particulars for each Research Worker shall be completed and submitted by the Supplier. The appropriate Authority and MOD administrative procedures shall need to have been completed to the satisfaction of the Authority before any additional Supplier personnel may start work on this Contract. For the avoidance of doubt, this requirement does not apply to any Supplier personnel who have already received adequate security clearance from the Authority and MOD.
- 21.4 The Supplier (and any sub-contractor) shall take all reasonable steps to avoid changes in the Research Workers once accepted by the Authority. Where such a change is necessary, the Supplier shall obtain the prior written consent of the Authority, which shall not be unreasonably withheld.

22 SUB-CONTRACTING AND SUPPLY CHAIN

- 22.1 The Supplier shall obtain the prior written consent of the Authority before entering into any sub-contracts in connection with the performance of the Contract. Entering into a sub-contract shall not relieve the Supplier of any of its obligations under the Contract.
- 22.2 The Authority's general policy is not to award Tasks under this Framework Agreement where more than 25% of the Task shall be sub-contracted out, measured as a % of the total offered Price of that Task. The Authority may at its discretion deviate from this policy under the following circumstances:
- (a) The Authority indicates in the invitation to suppliers that it is willing to waive this restriction; or
 - (b) The Authority may at its sole discretion accept an innovative proposal where a Supplier believes its proposal is enhanced by sub-contracting in excess of this policy. The Supplier shall evidence this in its proposal, as a minimum describing the added value provided by the Supplier as related to the work to be performed by the proposed sub-contractor(s) and identifying the costs associated with managing this. Along with any innovative proposal the Supplier shall also submit a conventional proposal adhering to the 25% sub-contract cap.
- For the avoidance of doubt Clause 22.2(b) shall not apply when the decision to derogate from the sub-contracting limit is made by the Authority prior to competing (i.e. EOI or ITT) the Task.
- (c) Also for the avoidance of doubt the purchase of materials, commercial off the shelf ("COTS") equipment or the hire of third party facilities shall not be included in the calculation of the 25%.
- 22.3 Where a sub-contract involves the design or development of defence equipment (including Software), the Supplier shall ensure that the sub-contractor enters into a direct agreement with the Authority in the form set out in Design Rights and Patents Sub-Contractor's Agreement (Appendix to Annex A to this Framework Agreement).
- 22.4 The relationship of the Supplier (and any individual of the Supplier engaged to provide the Services ("**an Individual**")) to the Authority will be that of independent Supplier, and nothing in this Framework Agreement shall render it (nor the Individual) an employee, worker, agent or partner of the Authority and the Supplier shall not hold itself out as such and shall procure that the Individual shall not hold himself out as such.
- 22.5 This Framework Agreement constitutes a contract for the provision of Services and not a contract of employment and accordingly the Supplier shall be fully responsible for and shall indemnify the Authority for and in respect of any liability arising from any employment-related claim or any claim based on worker status (including reasonable costs and expenses) brought by any Individual against the Authority arising out of or in connection with the provision of the Services. The Authority may at its option satisfy such indemnity (in whole or in part) by way of deduction from payments due to the Supplier.

SECTION F – INTELLECTUAL PROPERTY, DATA AND CONFIDENTIALITY

23 INTELLECTUAL PROPERTY RIGHTS (IPR) VESTED IN THE SUPPLIER

- 23.1 Subject to the Supplier complying with:
- (a) the terms and conditions of this Framework Agreement;
 - (b) any prior rights; and

(c) the rights of third parties,

all rights in relation to the Articles shall be vested in the Supplier. Where the Supplier is a Crown body, any copyright shall vest in the Crown. The IPR Terms (in Annex A) apply to all Technical Deliverables and Foreground IPR.

24 THIRD PARTY INTELLECTUAL PROPERTY – RIGHTS AND RESTRICTIONS

24.1 The Supplier shall promptly notify the Authority as soon as it becomes aware of:

- (a) any invention or design the subject of patent or registered Design Rights (or application thereof) owned by a third party which appears to be relevant to the performance of the Contract or to use by the Authority of anything required to be done or delivered under the Contract;
- (b) any restriction as to disclosure or use, or obligation to make payments in respect of any other intellectual property (including Technical Information) required for the purposes of the Contract or subsequent use by the Authority of anything delivered under the Contract and, where appropriate, the notification shall include such information as is required by Section 2 of the Defence Contracts Act 1958; and/or
- (c) any allegation of infringement of IPR made against the Supplier and which pertains to the performance of the Contract or subsequent use by the Authority of anything required to be done or delivered under the Contract.

24.2 Clause 24.1 does not apply in respect of Deliverables normally available from the Supplier as a commercial off the shelf ("COTS") item or service.

24.3 If the Information required under Clause 24.1 has been notified previously, the Supplier may meet its obligations by giving details of the previous notification.

25 PATENTS AND REGISTERED DESIGNS IN THE UK – COTS ARTICLES OR SERVICES

25.1 In the event an allegation is made (to the Authority or Supplier, or otherwise) that the manufacture or provision under the Contract of Deliverables normally available from the Supplier as a COTS item or service is an infringement of a United Kingdom patent or registered design not owned or controlled by the Supplier or the Authority, the Supplier shall, subject to the agreement of the third party owning such patent or registered design, be given exclusive conduct of any and all negotiations for the settlement of any claim or the conduct of any litigation arising out of such question. The Supplier shall indemnify the Authority, its officers, agents and employees against any liability and cost arising from such allegation.

25.2 Clause 25.1 shall not apply if:

- (a) the Authority has made or makes an admission of any sort relevant to such allegation;
- (b) the Authority has entered or enters into any discussions on such allegation with any third party without the prior written agreement of the Supplier;
- (c) the Authority has entered or enters into negotiations in respect of any relevant claim for compensation in respect of Crown Use under Section 55 of the Patents Act 1977 or Section 12 of the Registered Designs Act 1977;
- (d) legal proceedings have been commenced against the Authority or the Supplier in respect of Crown Use, but only to the extent of such Crown Use that has been properly authorised.

25.3 The indemnity in Clause 25.1 does not extend to use by the Authority of anything supplied

under the Contract where that use was not reasonably foreseeable at the time of the Contract.

- 25.4 In the event that the Authority has entered into negotiation in respect of a claim for compensation, or legal proceedings in respect of the Crown Use have commenced, the Authority shall forthwith authorise the Supplier for the purposes of performing the Contract (but not otherwise) to utilise a relevant invention or design in accordance with Sections 55 and 56 of the Patents Act 1977 or Section 12 of the Registered Designs Act 1949 and to use any model, document or information relating to any such invention or design which may be required for that purpose.

26 PATENTS AND REGISTERED DESIGNS IN THE UK - ALL OTHER ARTICLES OR SERVICES

- 26.1 For all Deliverables patents and registered designs in the UK, other than those covered by Clauses 25.1 to 25.4 above, if a relevant invention or design has been notified to the Authority by the Supplier prior to the Effective Date of the Contract, then (unless it has been otherwise agreed) under the provisions of Sections 55 and 56 of the Patents Act 1977 or Section 12 of the Registered Designs Act 1949, the Supplier is hereby authorised to utilise that invention or design, notwithstanding the fact that it is the subject of a UK Patent or UK registered design, for the purpose of performing the Contract.

- 26.2 If, under Clause 24.1, a relevant invention or design is notified to the Authority by the Supplier after the Effective Date of Contract, then:

- (a) if the owner (or his exclusive licensee) takes or threatens in writing to take any relevant action against the Supplier, the Authority shall issue to the Supplier a written authorisation in accordance with the provisions of Sections 55 and 56 of the Patents Act 1977 or Section 12 of the Registered Designs Act 1949, and
- (b) in any event, unless the Supplier and the Authority can agree an alternative course of action, the Authority shall not unreasonably delay the issue of a written authorisation in accordance with the provisions of Sections 55 and 56 of the Patents Act 1977 or Section 12 of the Registered Designs Act 1949.

27 PATENTS, UTILITY MODELS AND REGISTERED DESIGNS OUTSIDE THE UK

- 27.1 The Authority shall assume all liability and shall indemnify the Supplier, its officers, agents and employees against liability, including the Supplier's costs, as a result of infringement by the Supplier or their suppliers of any patent, utility model, registered design or like protection outside the United Kingdom in the performance of the Contract when such infringement arises from or is incurred by reason of the Supplier following any specification, statement of requirement or instruction in the Contract or using, keeping or disposing of any item given by the Authority for the purpose of the Contract in accordance with the Contract.

- 27.2 The Supplier shall assume all liability and shall indemnify the Authority, its officers, agents and employees against liability, including the Authority's costs, as a result of infringement by the Supplier or their suppliers of any patent, utility model, registered design or like protection outside the United Kingdom in the performance of the Contract when such infringement arises from or is incurred otherwise than by reason of the Supplier following any specification, statement of requirement or instruction in the Contract or using, keeping or disposing of any item given by the Authority for the purpose of the Contract in accordance with the Contract.

28 ROYALTIES AND OTHER LICENCE FEES

- 28.1 The Supplier shall not be entitled to any reimbursement of any royalty, licence fee or similar expense incurred in respect of anything to be done under the Contract, where:

- (a) a relevant discharge has been given under Section 2 of the Defence Contracts Act

1958, or relevant authorisation in accordance with Sections 55 or 57 of the Patents Act 1977, Section 12 of the Registered Designs Act 1949 or Section 240 of the Copyright, Designs and Patents Act 1988 in respect of any intellectual property, or

- (b) any obligation to make payments for intellectual property has not been promptly notified to the Authority under Clause 24.1.

28.2 Where authorisation is given by the Authority under Clause 25.4, 26.1 or 26.2, to the extent permitted by Section 57 of the Patents Act 1977, Section 12 of the Registered Designs Act 1949 or Section 240 of the Copyright, Designs and Patents Act 1988, the Supplier shall also be:

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

29 COPYRIGHT, DESIGN RIGHTS ETC.

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

- (a) infringement or alleged infringement by the Supplier or its suppliers of any copyright, database right, Design Right or the like protection in any part of the world in respect of any item to be supplied under the Contract or otherwise in the performance of the Contract;
- (b) misuse of any confidential information, trade secret or the like by the Supplier in performing the Contract; and/or
- (c) provision to the Authority of any information or material which the Supplier does not have the right to provide for the purpose of the Contract.

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

- (a) infringement or alleged infringement by the Supplier or their suppliers of any copyright, database right, Design Right or the like protection in any part of the world in respect of any item provided by the Authority for the purpose of the Contract but only to the extent that the item is used for the purpose of the Contract; and/or
- (b) alleged misuse of any confidential information, trade secret or the like by the Supplier as a result of use of information provided by the Authority for the purposes of the Contract, but only to the extent that Supplier's use of that information is for the purposes intended when it was disclosed by the Authority.

30 AUTHORISATION AND INDEMNITY - GENERAL

30.1 Clauses 24.1 – 29.2 represent the total liability of each party to the other under the Contract in respect of any infringement or alleged infringement of patent or other Intellectual Property Rights (IPR) owned by a third party.

30.2 Neither party shall be liable to the other for any consequential loss or damage arising as a result, directly or indirectly, of a claim for infringement or alleged infringement of any patent or other IPR owned by a third party.

- 30.3 A party against whom a claim is made or action brought shall promptly notify the other party in writing if such claim or action appears to relate to an infringement which is the subject of an indemnity or authorisation given under this Framework Agreement by such other party. The notification shall include particulars of the demands, damages and liabilities claimed or made of which the notifying party has notice.
- 30.4 Subject to the provisions of Clause 25.1, the party benefiting from the indemnity or authorisation shall allow the other party, at its own expense, to conduct any negotiations for the settlement of the same, and any litigation that may arise therefrom and shall provide such information as the other party may reasonably require.
- 30.5 Following a notification under Clause 30.3, the party notified shall advise the other party in writing within 30 days whether or not it is assuming conduct of the negotiations or litigation. In that case the party against whom a claim is made or action brought shall not make any statement which might be prejudicial to the settlement or defence of such a claim without the written consent of the other party.
- 30.6 The party conducting negotiations for the settlement of a claim or any related litigation shall, if requested, keep the other party fully informed of the conduct and progress of such negotiations.
- 30.7 If at any time a claim or allegation of infringement arises in respect of copyright, database right, Design Right or breach of confidence as a result of the provision of any Supplier Deliverable by the Supplier to the Authority, the Supplier may at its own expense replace the item with an item of equivalent functionality and performance so as to avoid infringement or breach. The Parties will co-operate with one another to mitigate any claim or damage which may arise from use of third party Intellectual Property Rights.
- 30.8 The Supplier shall secure from any sub-contractor the prompt notification to the Authority of the information required by Clause 24.1. On receipt of any such notification, the Authority will issue a written authorisation to the sub-contractor in accordance with Clause 26.2. Any such authorisation will be subject always to Clauses 28.1, 28.2 and 30.1 as though the sub-contractor was the Supplier. If any claim or action relevant to such authorisation arises, it shall be promptly notified to the Authority. The Supplier is not authorised to enter into any substantive correspondence in such matter nor in any way to act on behalf of the Authority in such claim or action. Any arrangement between the Supplier and sub-contractor to enable the Supplier to underwrite its indemnities to the Authority under this Condition is a matter between the Supplier and the sub-contractor.
- 30.9 Nothing in Clause 24.1 shall be taken as an authorisation or promise of an authorisation under Section 240 of the Copyright, Designs and Patents Act 1988.

31 CONFIDENTIALITY AND DISCLOSURE OF INFORMATION

- 31.1 The provisions of this Clause apply to:
- (a) this Framework Agreement (including tasking order forms, proposals and Contracts issued under Clause 6);
 - (b) any Information disclosed by either party prior to the issue of a tasking order form and in contemplation of required Services being placed by the Authority under a Contract; and
 - (c) any Contract placed under this Framework Agreement, provided that Information provided to a party for the purpose of tendering for a Contract shall only be used for that tendering purpose in accordance with Clause 6, and Information provided to a party for delivering the Service placed on it under this Framework Agreement shall only be used for the performance of that Contract.

- 31.2 Nothing in this Clause shall affect the Parties' obligations of confidentiality where information is disclosed orally in confidence. The provisions of this Clause shall survive the expiration or termination of the Framework Agreement or any Contract or the decision not to proceed with the issue of a Contract.
- 31.3 Subject to Clauses 31.6 and 31.7 each party:
- (a) shall treat in confidence all Information it receives from the other;
 - (b) shall not disclose any of that Information to any third party without the prior written consent of the other party, which consent shall not unreasonably be withheld, except that the Supplier may disclose Information in confidence, without prior consent, to such persons and to such extent as may be necessary for the performance of the Contract;
 - (c) shall not use any of that Information otherwise than for the purpose of the Contract; and
 - (d) shall not copy any of that Information except to the extent necessary for the purpose of exercising its rights of use and disclosure under the Contract.
- 31.4 The Supplier shall take all reasonable precautions necessary to ensure that all Information disclosed to the Supplier by or on behalf of the Authority under or in connection with the Contract:
- (a) is disclosed to its employees and sub-contractors only to the extent necessary for the performance of the Contract; and
 - (b) is treated in confidence by them and not disclosed except with prior written consent or used otherwise than for the purpose of performing work or having work performed for the Authority under the Contract or any sub-contract under it.
- 31.5 The Supplier shall ensure that its employees are aware of its arrangements for discharging the obligations at Clauses 31.3 and 31.4 before they receive Information and take such steps as may be reasonably practical to enforce such arrangements.
- 31.6 Clauses 31.3 and 31.4 shall not apply to any Information to the extent that either party:
- (a) exercises rights of use or disclosure granted otherwise than in consequence of, or under, the Contract;
 - (b) has the right to use or disclose the Information in accordance with other conditions of the Contract; or
 - (c) can show:
 - (i) that the Information was or has become published or publicly available for use otherwise than in breach of any provision of the Contract or any other agreement between the parties;
 - (ii) that the Information was already known to it (without restrictions on disclosure or use) prior to it receiving it under or in connection with the Contract;
 - (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 its records that the same information was derived independently of that

received under or in connection with the Contract;

(d) provided the relationship to any other Information is not revealed.

31.7 Neither party shall be in breach of this Clause 31 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 party making the disclosure shall ensure that the 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 Clause.

32 FREEDOM OF INFORMATION

32.1 The Supplier acknowledges that the Authority is subject to the requirements of the Freedom Of Information Act (FOIA) and the Environmental Information Regulations (EIRs). The Supplier shall:

(a) provide all necessary assistance and cooperation as reasonably requested by the Authority to enable the Authority to comply with its obligations under the FOIA and EIRs;

(b) transfer to the Authority all requests for information relating to this Agreement that it receives as soon as practicable and in any event within two (2) Business Days of receipt;

(c) provide the Authority with a copy of all Information belonging to the Authority requested in the request for information which is in its possession or control in the form that the Authority requires within five (5) Business Days (or such other period as the Authority may reasonably specify) of the Authority's request for such Information; and

(d) not respond directly to a request for information unless authorised in writing to do so by the Authority.

32.2 The Supplier acknowledges that the Authority may be required under the FOIA and EIRs to disclose Information without consulting or obtaining consent from the Supplier. The Authority shall take reasonable steps to notify the Supplier of a request for information (in accordance with the Secretary of State's section 45 Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the FOIA) to the extent that it is permissible and reasonably practical for it to do so but (notwithstanding any other provision in this Agreement) the Authority shall be responsible for determining in its absolute discretion whether any information is exempt from disclosure in accordance with the FOIA and/or the EIRs.

33 CONTROLLED INFORMATION

33.1 This Clause 33 shall apply in addition to any other confidentiality provisions in the Contract and/or under this Framework Agreement.

33.2 The Supplier shall:

(a) hold the Controlled Information and not use it other than for the purpose of discharging its' obligations under the Contract;

(b) not copy the Controlled Information except as strictly necessary for the purpose of discharging its' obligations under the Contract, and only with the prior written authorisation of the Authority (which shall not be unreasonably withheld);

- (c) not disclose the Controlled Information to any third party unless authorised in writing beforehand by the Authority;
- (d) protect the Controlled Information diligently against unauthorised access and against loss;
- (e) act diligently to ensure that:
 - (i) Controlled information is disclosed to its' employees only to the extent necessary for the purpose of discharging its' obligations under the Contract;
 - (ii) employees to whom Controlled Information is disclosed are made aware of and required to comply with the terms of this Clause.

33.3 Where Controlled Information is provided to the Supplier, it shall;

- (a) compile a register of that Controlled Information, which shall include explicit description of the Controlled Information, a record of the number of copies made and a record of all access to the Controlled Information including access to any copies of the Controlled Information.
- (b) maintain this register for the duration of the Contract and for two (2) years following completion of the Task(s);
- (c) make a register of access available to the Authority upon reasonable notice for inspection and audit for so long as it is required to be maintained under this Condition; and,
- (d) at the completion of the Contract, return to the Authority all original and duplicate copies of the Controlled Information, or else at the Authority's option destroy these copies and provide a certificate of destruction to the Authority.

33.4 This Clause shall not diminish or extinguish any right of the Supplier to copy, use or disclose any other information to the extent that it can show:

- (a) that the information concerned was or has become published or publicly available for use without breach of any provision of the Contract and this Framework Agreement or any other agreement between the Parties;
- (b) that the information was already known to it (without restrictions on disclosure or use) prior to receiving it under or in connection with the Contract;
- (c) that the information concerned was lawfully provided by a third party without restriction on use or further disclosure, or
- (d) from it's records, that the information was derived independently of the Controlled Information;

To the extent that such copying, use or disclosure of this other information shall not disclose it's relationship to any Controlled Information.

34 TRANSPARENCY

34.1 The Parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA, the content of this Framework Agreement is not Confidential Information. The Authority shall be responsible for determining in its absolute discretion whether any of the content of the Framework Agreement is exempt from disclosure in accordance with the provisions of the FOIA.

- 34.2 Notwithstanding any other term of this Framework Agreement, the Supplier hereby gives its consent for the Authority to publish the Framework Agreement in its entirety, including from time to time agreed changes to the Framework Agreement, to the general public. The Supplier shall assist and co-operate with the Authority to enable the Authority to publish this Framework Agreement.
- 34.3 To enable the Authority to apply any exemptions in the FOIA and the EIR the Supplier should provide to the Authority details to explain which parts of their proposals they consider to be commercially sensitive and a contact name.

SECTION G – INDEMNITIES, LIABILITY AND INSURANCE

35 INDEMNITIES

Performance/Non-performance of Obligations

- 35.1 The Supplier shall indemnify the Authority against all claims, proceedings, actions, damages, costs, expenses and other liabilities which may arise out of, or as a result of, the supply of the Deliverables or the performance or non-performance by the Supplier of its obligations under the Contract, including in respect of any death or Personal Injury and Loss of Property (including GFA).
- 35.2 The Supplier shall not be responsible for any injury, loss, damage, cost or expense referred to in Clause 35.1 if and to the extent that it is caused by the negligence or wilful misconduct of the Authority or by breach by the Authority of its obligations under the Contract.

Supplier's Personnel at Government Establishments

- 35.3 The Supplier shall, except as otherwise provided for in the Contract, make good or, at the option of the Authority, pay compensation for all damage occurring to any Government property, which includes land or buildings, occasioned by the Supplier, or by any of its Representatives, arising from its or their presence on a Government Establishment in connection with the Contract, provided that this Clause shall not apply to the extent that the Supplier is able to show that any such damage was not caused or contributed to by any circumstances within its or their reasonable control.

36 NO CONSEQUENTIAL LOSS

- 36.1 There shall be no right to claim damages for breach of the Contract, in tort or on any other basis whatsoever to the extent that any Loss claimed by either party is for consequential loss or indirect loss of any nature suffered or allegedly suffered by either party.

37 TOTAL LIABILITY

- 37.1 Including the Supplier's liability for:
- (a) death or Personal Injury caused by the negligence of the Supplier, its employees or agents;
 - (b) any act of wilful misconduct or fraud or fraudulent misrepresentation on the part of the Supplier, his employees or agents;
 - (c) any liability concerning IPR addressed under Clauses 23 - 30; or
 - (d) any liability under Clauses 13.2, 22.5 and/or 25.1,

the total liability of the Supplier in relation to each Contract shall be uncapped.

Limiting a Contractor's Liability

- 37.2 A Supplier may seek a Limitation of a Contractor's Liability (LoCL) which shall be considered by the Authority on a case-by-case basis.
- 37.3 If seeking a LoCL, the Supplier shall be required to provide the necessary evidence to support their case and to allow the Authority to conduct a realistic and robust risk assessment to understand the potential financial liability being passed from the Supplier to the Authority. The Supplier must demonstrate that it is reasonable for the Authority to limit their liability against any proposed risk(s) and the Authority must be satisfied that it is value for money to do so.
- 37.4 As it is agreed on a case-by-case basis, a LoCL does not set a precedent for any extant contracts or subsequent contracts which the Supplier may enter into with the Authority.
- 37.5 Where the Authority deems it appropriate to include a LoCL, the following condition shall be included in the issue of an electronic acceptance notification.

1. The Contractor's liability under or in relation to the contract shall be limited in respect of the following risks as set out below:

- a. [loss of, or damage to, Issued Property - £XM];*
- b. [loss of, or damage to, Articles - £XM];*
- c. [Third Party claims - £XM];*
- d. [death, personal injury, or damage to property arising from maritime claims - £XM];*
- e. [Default - £XM];*
- f. [negligence - £XM];*
- g. [consequential / indirect costs - £XM].*

2. The Authority has agreed the above limitation[s] of the Contractor's liability based on the risk assessment and proposed risk mitigation activities provided by the Contractor and set out at Annex [X] of the contract.

3. Nothing in this clause shall exclude or limit the Contractor's liability in respect of the following:

- a. Any liability arising under or by reason of the Contractor's indemnities granted to the Authority set out in Clauses 25.1, 27.2, 29.1, 24 & 35.1 as applicable.*
- b. Death or personal injury.*
- c. Fraud or fraudulent misrepresentation.*
- d. Wilful misconduct.*

Note: The Authority shall insert the information at the square brackets as necessary.

38 SUPPLIER'S PROPERTY

- 38.1 All property of the Supplier and its representatives shall be at the risk of the Supplier whilst it is on any Government Establishment, and the Authority shall accept no liability for any loss or damage howsoever occurring thereto or caused thereby, except as follows:

- (a) where any such loss or damage was caused or contributed to by any act, neglect or default of any Servant of the Crown, agent or Supplier then the Authority shall accept liability therefor to the extent to which such loss or damage is so caused or contributed to as aforesaid; and
- (b) where any property of the Supplier has been taken on charge by the Project Manager, and a proper receipt has been given therefor, then the Authority shall be liable for any loss or damage occurring to that property while held on such charge as aforesaid.

39 INSURANCES

- 39.1 The Supplier shall effect with a reputable insurance company a policy or policies of insurance covering all the matters which are the subject of indemnities under this Framework Agreement (as defined in Clause 37.1) and shall at the request of the Authority produce the relevant policy or policies together with receipts or other evidence of payment of the latest premium due thereunder. In addition to the compulsory insurances, such insurances shall include: "All Risks" Insurance (where required for performance of Contract is at sites of the Authority); "Third Party" "Public" and "Products Liability" insurance; and "Professional Risks" insurance.

40 GUARANTEE

- 40.1 The Authority may, at its absolute discretion, determine that a Task requires protection in the form of guarantee. The Supplier shall obtain a guarantee in the form of a bond, parent company guarantee or letter of credit, if requested, before the Contract is formally accepted by the Authority.

SECTION H – TERMINATION AND EXIT MANAGEMENT

41 TERMINATION ON SUPPLIER'S INSOLVENCY

- 41.1 Without prejudice to any other rights or remedies of the Authority under this Framework Agreement, the Authority shall have the right forthwith to terminate this Framework Agreement and/or any Contract by written notice to the Supplier (or its trustee in bankruptcy or receiver or (if a company) liquidator or administrator) if the Supplier shall have a receiver appointed over all or a substantial part of its assets or (if an individual) be declared bankrupt or (if a company) shall go into liquidation or have an administrator appointed to manage its affairs.

42 TERMINATION FOR CONVENIENCE

- 42.1 The Authority shall have the right at any time and for any reason to terminate any Contract in whole or in part by giving the Supplier written notice to expire at the end of twenty (20) Business Days.
- 42.2 In the event that the Authority exercises its rights in accordance with Clause 42.1, the Authority shall (subject to Clause 37) indemnify the Supplier against any commitments, liabilities or expenditure which are reasonably and properly chargeable by the Supplier in connection with the Contract and which would otherwise represent an unavoidable loss by the Supplier by reason of termination of the Contract or the relevant part thereof. The Authority's total liability under this Clause 42.2 shall be limited to the total price of the Deliverables payable under the Contract or the relevant part thereof, including any sums paid, due or becoming due to the Supplier at the date of termination.

43 MATERIAL BREACH

- 43.1 In addition to any other rights and remedies, the Authority shall have the right to terminate the Contract (in whole or in part) with immediate effect by giving written notice to the Contractor where the Contractor is in material breach of its obligations under the Contract.

- 43.2 Where the Authority has terminated the Contract under Clause 43.1 the Authority shall have the right to claim such damages as may have been sustained as a result of the Contractor's material breach of the Contract, including but not limited to any costs and expenses incurred by the Authority in:
- (a) carrying out any work that may be required to make the Contractor Deliverables comply with the Contract; or
 - (b) obtaining the Contractor Deliverable in substitution from another supplier.

44 CONTINUING OBLIGATIONS

- 44.1 The provisions of these Clauses, 12 (Pricing), 23 to 31 (Intellectual Property), 31 (Confidentiality and Disclosure of Information), 35 (Indemnities), 36 (No Consequential Loss), 41 to 43 (Termination and Supplier Breach) , 50 (Governing Law), 51 (Dispute Resolution), shall survive the expiry or termination of the Framework Agreement or any Contract.

SECTION I – MISCELLANEOUS AND GOVERNING LAW

45 WAIVER

- 45.1 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.
- 45.2 No waiver in respect of any right or remedy shall operate as a waiver in respect of any other right or remedy.

46 CORRUPT GIFTS AND PAYMENTS OF COMMISSION

- 46.1 The Supplier shall not do, and warrants that in entering the Framework Agreement it has not done, any of the following prohibited acts:
- (a) offer, give or agree to give to any Servant of the Crown any gift or consideration of any kind as an inducement or reward:
 - (i) for doing or not doing (or for having done or not having done) any act in relation to the obtaining or execution of this or any other contract with the Crown; or
 - (ii) for showing or not showing favour or disfavour to any Person in relation to this or any other contract with the Crown.
 - (b) enter into this or any other Order or Contract with the Authority or the Crown in connection with which commission has been paid or has been agreed to be paid by it or on its behalf, or to his knowledge, unless before the Contract is made particulars of any such commission and of the terms and conditions of any such agreement for the payment thereof have been disclosed in writing to the Authority.
- 46.2 The Supplier shall not:
- (a) offer or agree to give any person working for or engaged by the Authority or any other Crown body any gift or other consideration which could act as an inducement or a reward for any act or failure to act connected to the Contract, or any other agreement between the Supplier and the Authority or any Crown body, including its award to the Supplier and any of the rights and obligations contained within it; nor
 - (b) enter into this Framework Agreement or associated Contract if it has knowledge that,

in connection with it, any money has been, or will be, paid to any person working for or engaged by the Authority or any other Crown body by or for the Supplier, or that an agreement has been reached to that effect, unless details of any such arrangement have been disclosed in writing to the Authority before execution of the Contract.

46.3 If the Supplier (including any Supplier employee, sub-contractor or agent, in all cases whether or not acting with the Supplier's knowledge) breaches Clause 46.2 or the Prevention of Corruption Acts 1889 - 1916 in relation to this Framework Agreement or any other contract with the Authority or any Crown body, the Authority may (without prejudice to any right or remedy which has already accrued, or subsequently accrues, to the Authority) terminate the Framework Agreement or associated Contract by written notice with immediate effect.

46.4 Any dispute relating to the interpretation of Clauses 46.2 and 46.3 or the amount or value of any gift, consideration or commission, shall be determined by the Authority and the decision shall be final and conclusive.

47 AMENDMENTS TO THE FRAMEWORK AGREEMENT OR CONTRACT

47.1 Only the Authority shall be authorised to vary the scope, terms and conditions of the Framework Agreement or any Contract in any way, provided that the Authority shall be free to amend the format of the tasking order form and/or the expression of interest form. Any such changes shall be formally notified to the Supplier and no change shall be effective until mutually agreed and issued as a formal amendment and accepted by the Supplier.

48 NOTICES

48.1 Any notices given under or pursuant to the Framework Agreement or Contract shall be given in writing and shall be addressed to the appropriate department or officer and be marked in a prominent position with the relevant reference number such as a purchase order number.

48.2 Any notices given under or pursuant to the Framework Agreement or Contract may be sent by hand or by post or by registered post or by the recorded delivery service or transmitted by electronic mail where such a means of communication has been agreed for the purposes of the Framework Agreement or Contract and transmitted to the address of the party detailed in the Acceptance notice, or to such other address as the party may by notice to the other have substituted therefor.

48.3 Any notices given under or pursuant to the Framework Agreement or Contract shall be deemed effectively given on the day when in the ordinary course of the means of transmission it would be received by the addressee in normal business hours.

49 NON-EXCLUSIVITY

49.1 The Supplier acknowledges that, in entering this Framework Agreement, no form of exclusivity or volume guarantee has been granted by the Authority for Services from the Supplier and that the Authority is at all times entitled to enter into other contracts and arrangements with other providers for the provision of any or all services which are the same as or similar to the Services.

50 GOVERNING LAW

50.1 The Contract shall be considered as a contract made in England and subject to English Law. Both Parties irrevocably submit to the exclusive jurisdiction of the English courts.

51 DISPUTE RESOLUTION

51.1 The Parties will attempt in good faith to resolve any dispute or claim arising out of or relating to the 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 procedure on which the Parties may agree.

51.2 In the event that the dispute or claim is not resolved pursuant to Clause 51.1 the dispute shall be referred to arbitration. Unless otherwise agreed in writing by the Parties, the arbitration and this Clause 51.2 shall be governed by the Arbitration Act 1996. For the purposes of the arbitration, the arbitrator shall have the power to make provisional awards pursuant to Section 39 of the Arbitration Act 1996.

51.3 For the avoidance of doubt, anything said, done or produced in or in relation to the arbitration process (including any awards) shall be confidential between the Parties, except as may be lawfully required in judicial proceedings relating to the arbitration or otherwise.

52 RIGHTS OF THIRD PARTIES

52.1 Notwithstanding anything to the contrary elsewhere in the Framework Agreement or Contract, no right is granted to any Person who is not a party to the Framework Agreement or Contract to enforce any term of the Framework Agreement or Contract in his own right and the Parties to the Framework Agreement or Contract declare that they have no intention to grant any such right.

53 SEVERANCE

53.1 If any provision of this Framework Agreement or Contract is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, such provision shall be severed without effect to the remaining provisions.

54 VESTING

54.1 Ownership of any Articles, purchased or constructed by the Supplier in accordance with the Framework Agreement, or any task placed hereunder, including any component parts or equipment to be incorporated, shall vest in the Authority.

54.2 As soon as construction begins or materiel is acquired specifically for its allocation or incorporation in the Articles ownership shall vest in the Authority.

54.3 The Supplier shall clearly mark and record any materiel acquired specifically for, or which is allocated for incorporation in any of the Articles, as the property of the Authority.

54.4 Any Articles rejected by the Authority shall immediately re-vest in the Contractor.

54.5 If the Framework Agreement, or any task thereunder, is terminated (except under Clause 42 – Termination for Convenience), any Articles not already accepted by the Authority in accordance with Clause 8 - Acceptance shall re-vest in the Supplier 30 days from the date of termination, unless the Authority has given prior notice of its intention to retain the Articles. The Contractor shall bear any cost of resuming possession and control of the Articles. The Authority shall pay a fair and reasonable price for any Articles which it chooses to retain.

54.6 In accordance with this Condition, any payment made by the Authority in respect of any Articles which re-vest in the Contractor shall be recoverable from the Contractor.

54.7 Any item which the Authority has elected to retain the property of under this Condition shall be promptly handed over by the Supplier. If there is any failure to do so, the Authority shall have the right to enter the Contractor's premises, or any sub-contractor's, and remove the Articles and recover from the Supplier the cost of doing so.

54.8 The Supplier shall ensure that all sub-contractors and other persons dealing with any such Articles under the Framework Agreement, or any task placed thereunder, are made aware of the provisions of this Condition.

SCHEDULE 1

1 DEFINITIONS AND INTERPRETATION

1.1 In this Framework Agreement, except where the context requires a different meaning:

"Articles" means all goods including reports containing Intellectual Property Rights (IPR) and Technical Deliverables (excluding Services) which the Supplier is required under the Contract to produce, supply or use in the provision of the Services pursuant to the Contract issued;

"Authority" means Dstl;

"Business Day" means any day excluding:

- (a) Saturdays, Sundays and public and statutory holidays in the jurisdiction of either party; and
- (b) such periods of holiday closure of the Supplier's premises of which the Authority is given written Notice by the Supplier at least ten (10) Business Days in advance;

"Collaborative Defence Agreement" means any treaty, agreement, Memorandum Of Understanding (MOU) or other like formal arrangement entered into by or on behalf of the UK Government, the Authority or any other UK Government Department with another government, government agency, intergovernmental organisation or its agency, for the UK Government's own or its shared defence, civil defence, or security or national or international intelligence purposes;

"Commercial Manager" & "Commercial Officer" means the person defined as the Authority's commercial contact, as defined in the Task;

"Contract" means an agreement made between the Authority and the Supplier under the terms of this Framework Agreement for the provision of Services by the Supplier for the consideration agreed between the Parties as recorded by the Authority's issue of an Acceptance notice in response to the Supplier's proposal or any electronic documents referenced therein;

"Control" means the power of a Person to secure that the affairs of the Supplier are conducted in accordance with the wishes of that person:

- (a) by means of the holding of shares, or the possession of voting powers in, or in relation to, the Supplier; or
- (b) by virtue of any powers conferred by the constitutional or corporate documents, or any other document, regulating the Supplier and a change of control occurs if a Person who controls the Supplier ceases to do so or if another Person acquires control of the Supplier.

"Controlled Information" means any information in any written or tangible form which is disclosed to the Supplier by or on behalf of the Authority under or in connection with the Contract, and which is identified by the legend "Controlled Information" or other approved legend notified to the Supplier. Controlled Information shall exclude information provided by oral communication;

"Crown Use" in relation to a patent means the doing of anything by virtue of Sections 55 to 57 of the Patents Act 1977 which otherwise would be an infringement of the patent and in relation to a registered design has the meaning given in paragraph 2A(6) of the First Schedule to the Registered Designs Act 1949;

"Deliverables" means the Articles and Services identified in the Task which the Supplier is required to supply under the Contract;

"Design Right" means the meaning ascribed to it by Section 213 of the Copyright, Designs and Patents Act 1988;

"Effective Date" means the effective date for commencement of this Framework Agreement;

"EIRs" means the Environmental Information Regulations 2004, together with any guidance and/or codes of practice issued by the Information Commissioner or any Central Government Body in relation to such Regulations;

"Final Report" means a report describing the entire work performed under the Contract in sufficient detail to explain comprehensively the work undertaken and results achieved including all relevant technical details of any hardware, software, process or system developed thereunder. The technical detail shall be sufficient to permit independent reproduction of any such process or system. The delivery date will be determined in the Task.

"Firm Price" means a price agreed for the Services which is not subject to variation;

"Firm Price Hourly Rate" means the maximum chargeable Supplier hourly rates as set out in the pricing matrix in the web application. Such rates shall be inclusive of all overheads, administration and profit elements but exclusive of VAT;

"FOIA" means the Freedom of Information Act 2000 and any subordinate legislation made under that Act from time to time, together with any guidance and/or codes of practice issued by the Information Commissioner or any relevant Central Government Body in relation to such Act;

"Foreground IPR" means all IPR in Foreground Technical Information, including patents for any inventions generated in the performance of work under the Contract, and patents for any inventions conceived out of the technical requirements of the Contract if these have been first enabled in the performance of work under the Contract;

"Foreground Technical Information" means Technical Information which is generated in the performance of work under the Contract;

"Framework Agreement" means this agreement, including its Annexes, entered into by the Authority and the Supplier;

"Full Rights Information" means Foreground Technical Information together with the following (which may not wholly consist of Foreground Technical Information):

- (a) data and information resulting from studies analyses or tests that are conducted in the performance of work under the Contract;
- (b) any item which is specifically required to be produced in the performance of work under the Contract, such as a mathematical model, algorithm or software program; and
- (c) a requirement document or specification which is specifically required to be produced in the performance of work under the Contract.

"Full Rights Version" means a version of a Technical Deliverable which comprises Full Rights Information and which is coherent in itself.

"Government Establishment" shall be deemed to include any of Her Majesty's Ships or Vessels and Service Stations;

"Government Furnished Assets" or **"GFA"** means Government Furnished Resource (Authority personnel loaned (issued) to the Supplier in connection with the Contract by or on behalf of the Authority), Government Furnished Information (information or data issued or made available to the Supplier in connection with the Contract by or on behalf of the Authority), Government Furnished Facilities (buildings, parts of buildings, sites and other infrastructure issued or made available to the Supplier in connection with the Contract by or on behalf of the Authority) or Government Furnished Equipment (which is the generic term for materiel loaned to a Supplier);

"Information" means any information in any written or other tangible form disclosed to one party by or on behalf of the other party under or in connection with the Contract.

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

"Interim Report" means a report detailing, documenting, and summarising the results of work carried out during the period covered and shall be sufficiently detailed to comprehensively explain the results achieved; substantive performance; a description of current substantive performance and any problems encountered and/or which may exist along with proposed corrective action. An explanation of any difference between planned progress and actual progress, why the differences have occurred, and if behind planned progress what corrective steps are planned. The frequency will be determined in the Task.

"Knowhow" means all information not in the public domain held in any form (including, without limitation, that comprised in or derived from oral and written instructions, diagrams, drawings, data formulae, patterns, specifications, notes, samples, chemical compounds, biological materials, computer software, component lists, instructions, manuals, brochures, catalogues and process descriptions and scientific approaches and methods) used in connection with or arising as a result of the Task.

"Limited Rights Information" means Technical Information which is neither in the public domain nor Full Rights Information, whether owned by the Supplier, a sub-contractor or a third party, and which comprises details of any of the following:

- techniques of design or test or data management,
- manufacturing methods and processes, products (including software) or materials;
- and any other category specifically identified in the Contract as being Limited Rights Information when the requirements for Technical Deliverables are agreed.

"Limited Rights Version" means a version of a Technical Deliverable specifically comprising or including Limited Rights Information.

"Loss" means any liability including without limitation any damages, fine, loss, cost or expense of any kind whatsoever, including all costs of investigation and defence (including legal costs and expenses on an indemnity basis)

"Loss of Property" includes damage to property, caused by the Supplier as a result of its negligence or misconduct, and, subject to any express statement to the contrary, applies to property belonging to the Authority or any other person;

"Management Information" or **"MI"** shall include, but not be limited to, the following information to be provided by the Supplier to the Authority:

- (a) details of any GFA currently held by the Supplier, including information regarding Government Furnished Equipment that requires disposal.
- (b) Confirmation that any GFA has been returned or destroyed as required by the Authority.

"Maximum Price Payable" means the total amount stated (if any) to be payable by the Authority under the Contract;

"Maximum Price Target Cost [MPTC]" means the mechanism for the agreement of a target cost and a target allowance for profit, along with a procedure for sharing of savings or overrun in expenditure. The entire arrangement is underpinned by a Maximum Price Payable.

"Milestone/Progress" shall bear the meaning given to it in the Contract;

"month" means calendar month;

"Parties" means the Authority and the Supplier;

"Person" means any legal or natural person or persons;

"Personal Injury" includes sickness and death, caused as a direct result of the Supplier, and, subject to any express statement to the contrary, applies to personal injury whether suffered by a Servant of the Crown or any other person;

"Price" means the consideration agreed between Parties that the Authority shall pay as determined in the Contract;

"Project Manager" or **"Technical Authority"** means the authority so designated in the Contract;

"Properly Submitted Invoice" means an invoice that complies with HMRC requirements as defined at: <http://www.hmrc.gov.uk/vat/managing/charging/vat-invoices.htm>

"Representative of the Authority" in any provision of the Contract means the person duly authorised by the Authority to act for the purposes of the provision and identified in the Contract or in any subsequent notice to act for the purposes of the provision;

"Research and Technology Agreement" means a Collaborative Defence Agreement, not being one established for the development or procurement of specific equipment, which is within the field of research and technology and which may provide, without limitation, for information exchanges, information awareness or assessment, research projects, or technology demonstrator projects.

"Research Workers" means students, supervisors or other representatives, agents or employees of the Supplier (or any sub-contractor);

"Servant of the Crown" includes any person who is a servant of the Crown when any relevant Personal Injury or Loss of Property occurred, even if he has ceased to be such before any payment in respect of the Personal Injury or Loss of Property is made and, where he has ceased to be such by reason of his death, includes his personal representative;

"Services" means any services to be provided by the Supplier under the Contract to produce, supply and/or deliver Articles.

"Statement of Requirement" means that part of the Contract which identifies, either directly or by reference in the tasking form, the Services to be supplied or carried out, the quantities involved, the quality required and the price or pricing terms in relation to each Article or Service;

"Supplier" means the entity with whom the Authority has placed a Task under the terms of this Framework Agreement, for the provision of Services.

"Supplier Breach" means any of the following acts by the Supplier:

- (a) failure to supply the Deliverables by the applicable dates set out in the Statement of Requirements;
- (b) supply of Deliverables which do not comply with the Statement of Requirements;
- (c) continuing to commit a persistent breach or breaches of its obligations where such breaches would not individually amount to a material breach but are of a nature and regularity where the Authority acting reasonably believes the cumulative effect is of a material nature; or
- (d) otherwise committing a material breach of its' obligations under this Framework Agreement or the Contract, and such breach is capable of remedy but is not remedied within 30 calendar days, or is not capable of remedy;

"Task" means any request for Services placed under Clause 6 which the Supplier is required to perform pursuant to this Framework Agreement;

"Technical Authority" means the authority so designated in the Contract (for example a Project Manager);

"Technical Deliverable" means a document or product comprising Technical Information which is required to be provided to the Authority under the terms of the Contract.

"Technical Information" means information of a scientific or technical nature (including information in the form of Knowhow, inventions, designs, secret formulae and processes, and other confidential information) which is recorded or documented in any medium and whether or not in human readable format, but excluding unrecorded information communicated solely by oral communications. It may be presented in the form of documents, pictorial reproductions, drawing and other graphical representations, disc and film recordings (magnetic, optical and laser), computer software both programmatic and data base, and computer memory printouts or data retained in computer memory, or other form;

"UK National Defence Agreement" means any invitation to tender, agreement, or contract, issued or entered into by or on behalf of the Authority in any territory pursuant to its own defence, civil defence, or security or intelligence purposes and which may provide, without limitation, for information awareness or assessment, or research, or design development, integration, manufacture, provision or support of any equipment materials tools or services;

"Use" means utilisation of Technical Deliverables and Technical Information in accordance with the conditions in Annex A for the purposes provided hereunder and, within these limitations, shall include the reproduction and modification of Technical Deliverables.

ANNEX A - IPR TERMS

Ownership of IPR

- 1 All Foreground IPR shall belong to the Supplier and shall be subject to this Annex A.
- 2 The Supplier shall ensure that the terms of engagement of all individuals carrying out work for it under the Contract are such as to vest the ownership required by paragraph 1 above.
- 3 The Supplier shall ensure that no part of the work to be performed under the Contract is subcontracted to a legal entity without the prior written agreement of the Authority, except as follows:
 - (a) by first ensuring that the sub-contractor has entered into an agreement with the Authority, in the form a Sub-Contractor's Agreement (template attached in Design Rights and Patents Sub-Contractor's Agreement (the Appendix to this Annex A), which invokes this paragraph in regard to the subcontract work; or alternatively
 - (b) by placing a contract which provides that the Supplier shall own the Foreground IPR arising from the performance of work under the subcontract, and subject to these being licensed to the Authority by the Supplier under the terms of this Annex A.
- 4 In the event that the Supplier assigns its ownership of any Foreground IPR, it shall secure for the Authority the continuance of the Authority's rights under this Annex A.

PUBLICATION

- 5 The Authority may, at any time, publish or have published a brief summary indicating the nature of work to be carried out under the Contract.
- 6 The Authority may publish, or have published, an abstract, of a commercially non-sensitive nature, of the Full Rights Versions of the Technical Deliverables. The Supplier may supply an acceptable abstract of that Full Rights Version for this purpose. In the absence of such an acceptable abstract, the Authority may produce an abstract itself but it shall not publish this without first consulting the Supplier allowing 45 Business Days for a response.
- 7 The Supplier may publish the Foreground Information or any part of it, provided that the Contract, or the pertinent work package within the Contract, is OFFICIAL, unless exceptionally the Authority considers that the publication is not in the national interest. The Supplier shall give written prior notice of intended publication to the Authority and allow 45 Business Days for the Authority to raise an objection on national interest grounds. In the absence of such an objection from the Authority within this period, the Supplier shall be entitled to proceed with publication.

PROVISION AND USE OF TECHNICAL INFORMATION AND RETENTION OF RECORDS

- 8 The Supplier shall provide Full Rights Versions of Technical Deliverables as required by the Contract. The Supplier shall not be required to include, and shall not include, Limited Rights Information in Full Rights Versions. Where a Full Rights Version does not contain all deliverable Technical Information, the Supplier shall provide a Limited Rights Version of such other deliverable Technical Information.
- 9 To allow for the provision of further Foreground Technical Information under paragraph 10 the Supplier shall retain, for the duration of the Contract and for a period of five years thereafter (or such alternative period as may be specified in the Schedule of Requirements), a record of the work performed under the Contract and of the results obtained.

- 10 The Authority shall have the right to acquire from the Supplier additional Full Rights Information not contained in the Technical Deliverables comprising data and information resulting from studies analyses or tests that are conducted in the performance of work under the Contract, for so long as this exists. This right shall be exercisable by separate order and on agreement of a fair and reasonable price and other relevant terms.
- 11 The Authority shall have the right to Use all Full Rights Versions and Full Rights Information in confidence, as provided below:
- (a) to disclose to and authorise Use within any United Kingdom Government Department (which term shall include the United Kingdom Armed Forces) and the UK police and civil defence agencies, for any purposes;
 - (b) to disclose to and authorise Use by any party under, and solely for the purposes of, any UK National Defence Agreement;
 - (c) to disclose to any governmental or intergovernmental body under any Research and Technology Agreement, and to allow onward release in confidence to Suppliers to the extent only that such onward release is authorised by the Authority in the circumstance that the Research and Technology Agreement provides for these releases on a reciprocal basis, and to authorise Use by these parties in accordance with, and solely for the purposes set out in, the Research and Technology Agreement concerned;
 - (d) to disclose to any governmental or intergovernmental body under any Collaborative Defence Agreement other than a Research and Technology Agreement, to allow onward release in confidence to a Supplier to the extent only that such onward release is authorised by the Authority and complies with the Collaborative Defence Agreement, and to authorise Use by these parties in accordance with, and solely for the purposes set out in, that Collaborative Defence Agreement, providing that:
 - (i) unless the Collaborative Defence Agreement is one which has been identified in the Contract at the time of Contract placement or exceptionally is one subject to security restrictions to a degree which precludes its identification to the Supplier, the Authority shall not exercise its rights under this sub-Clause without first informing the Supplier adequately of its intentions and giving the Supplier an opportunity to make representations; and
 - (ii) whilst the Authority's decision shall be final between the Parties, it shall pay due regard to the Supplier's representations when making its decision;
 - (e) where any Technical Information is to be disclosed to a Supplier of another governmental or inter-governmental body under paragraphs 11(c) or 11(d) above, the Authority will use all reasonable endeavours to release to the Supplier and other Suppliers to the Authority relevant Technical Information received from the other body under the relevant Collaborative Defence Agreement commensurate with the terms of release and use set out in that Agreement; and
 - (f) to disclose to and permit Use by any party as reasonably necessary in connection with the sale or disposal of anything made pursuant to paragraph 11(b), which is surplus to requirements.
- 12 Subject to the availability of the relevant expertise and on a request made by the Authority within the period specified in paragraph 9, the Supplier shall provide assistance in understanding any Full Rights Versions to the Authority or any other Person to whom the Authority may provide it in accordance with paragraph 11. The degree of assistance shall be

limited to that required for a Person competent in the relevant area of technology to interpret the results of the Contract. The assistance shall be made available within a reasonable period of the request and on fair and reasonable terms and conditions.

- 13 The Authority shall have the right to Use in confidence all Limited Rights Versions and Limited Rights Information as provided below:
- (a) to disclose to and authorise Use within any United Kingdom Government Department (which term shall include the United Kingdom Armed Forces) and the UK police and civil defence agencies, for any purposes;
 - (b) to disclose to and authorise Use by a service provider, under a UK National Defence Agreement, solely for the purposes of the provision of a service to the Authority which, unless otherwise identified in the Contract or agreed by the Supplier, shall be limited to managing, monitoring, evaluating, assessing or auditing the work under the Contract, provided that the service provider is identified for this purpose in the Contract at the time of Contract placement or is one later agreed with the Supplier with a view to avoiding any conflict of interests.
- 14 Subject to the limitation imposed by paragraph 15, the rights granted under paragraphs 11 and 13 shall be free of payment to the Supplier in respect of any IPR owned or controlled by the Supplier.
- 15 The freedom from payment granted under paragraph 14 shall not extend to Use of any patents, or registered designs other than those comprising Foreground IPR, but shall be without prejudice to the rights of the Authority arising under any separate contract or agreement or arising under statute.

MARKING OF INFORMATION

- 16 The Supplier shall mark each Technical Deliverable with a proprietary legend in which the owner of the rights shall be identified and references to the Contract and this Annex A included. The legend may also make other IPR statements reserving rights to the Supplier provided that these are stated in terms consistent with the Authority's rights under this Annex A. All Limited Rights Versions shall be clearly marked as such.
- 17 The Authority shall not remove or modify any marking properly applied to Technical Deliverables in accordance with paragraph 16, shall perpetuate the marking on any copies it makes of Technical Deliverables and their contents, and shall require any third parties to whom the Technical Deliverable or Technical Information is provided to preserve that marking on all copies.

APPLICATIONS FOR PATENTS AND REGISTERED DESIGNS

- 18 The Supplier shall provide the Authority's Director of Intellectual Property Rights with the following notifications and copies:
- (a) a notification of the first application for patent or like protection (wherever made) for an invention comprising Foreground IPR, which identifies the country and the application number and number of the Contract, together with a copy of the application;
 - (b) a notification of the first application for registration of a design (wherever made) for a design generated in the performance of work under the Contract, which identifies the country and the application number and the number of the Contract, together with a copy of the application;

- (c) a notification of the grant of any patent or like protection effective in the UK secured for an invention comprising Foreground IPR or the grant of registered design protection effective in the UK for a design generated in the performance of work under the Contract, which gives identification details for the rights granted.
- 19 All notifications under paragraph 18, together with the accompanying material as required, shall be provided by the Supplier within 45 Business Days of receipt by him of the corresponding certificate of filing or grant, save as provided in paragraph 20 below.
- 20 In lieu of providing individual notifications under Clause 18, the Supplier shall be entitled to provide a notification, aggregated across the Contract and any other contracts, of all applications and grants which are subject to this Annex A (such as a notification in the form of a data base print or extract), as long as this is provided no less frequently than quarterly and as long as the copies required by paragraph 18 are provided at the same time.
- 21 The Authority undertakes to hold all copies provided under paragraph 18 in confidence and to use them only for the purpose of ascertaining the Authority's rights, unless and until they are published in the normal way.
- 22 The Supplier shall, at the request and expense of the Authority, take all reasonable steps necessary to enable the Authority to register, at the UK Patent Office or elsewhere, its interest in inventions or designs notified under this Annex A.
- 23 If the Contract, or a package of work under the Contract, has a national security grading of or equivalent to "OFFICIAL" or higher, then the Supplier shall prepare and file all patent applications for any invention generated in the performance of work under the Contract or that package of work, in accordance with his appropriate national security laws and procedures, using persons having appropriate security clearance for the purpose. This obligation on the Supplier shall apply also to the making of any patent applications for other inventions which discloses any matter connected with the Contract, or a package of work under the Contract, so graded.
- 24 If the Supplier's national security laws and procedures require it to make a patent application for an invention to which paragraph 23 applies otherwise than to the UK Patent Office, it shall secure the Authority's consent (which shall not be unreasonably withheld) before making the patent application.
- 25 When a patent application for an invention to which paragraph 23 applies is made at the UK Patent Office, the Supplier shall ensure that it is filed directly with the Security Section. When making such a patent application the Supplier shall comply with the following:
- (a) it shall provide authorisation to the UK Patent Office, at the appropriate stage in the proceedings, to provide a copy of the patent application to the Authority in confidence, solely for the purpose of assessing the correct national security grading; and
- (b) for inventions which constitute Foreground IPR, it shall state in writing when the application is made that the invention concerned is related to UK Government work and it shall quote the number of the Contract and the name and address of the Authorised Representative of the Authority.
- 26 Any patent application made in accordance with paragraphs 24 to 26 shall be considered to have been made with the prior consent of the Authority.
- 27 The Supplier shall have no right to compensation under Section 22(7)(b) of the Patents Act 1977 in relation to any invention comprising Foreground IPR.

- 28 The provisions of paragraphs 23 to 25 do not apply to any individual patent application made or proposed to be made if the whole content of that application has been reviewed and assessed by an appropriate UK national classification authority as having a national security grading of or equivalent to "OFFICIAL".

PATENTS ETC – RIGHTS OF THE AUTHORITY

- 29 The Authority shall have an irrevocable, world-wide non-exclusive payment-free licence with the right to sub-license, for the Services of the United Kingdom Government as follows:

- (a) to do in relation to any patent or like protection of the Supplier for an invention comprising Foreground IPR, any act as defined in Section 55(1) (a) to (e) of the Patents Act 1977 or
- (b) to make, use, have used, import, keep, offer to sell or sell a registered design comprising Foreground IPR;

and this shall include the right to grant a licence, with the right to sub-license, to another government, government agency, intergovernmental organisation or its agency under the terms of a Collaborative Defence Agreement to permit use of the invention or registered design in any joint activity with the Authority under the Collaborative Defence Agreement (including the provision to all parties to that Agreement of any defence equipment which is produced by the joint activity).

- 30 The Authority shall inform the Supplier when the Authority exercises its rights under paragraph 29.

EXPLOITATION

- 31 The Supplier shall notify the Authority promptly if it is not able, or does not wish, to take responsibility for the utilisation, management and exploitation of the Foreground Technical Information or Foreground IPR so that the Authority can consider alternative options. Unless such a notification has been given, paragraphs 33 to 36 shall apply.

- 32 The responsibility for securing effective utilisation, management and exploitation of the Foreground Technical Information and Foreground IPR shall fall to the Supplier concomitant upon his ownership of these under paragraph 1 of this Annex A.

- 33 The Authority shall be entitled to require the Supplier, at reasonable intervals during the Contract and for a period of five years thereafter or such other period as may be set down in the Contract, to inform it of the plans for and the extent to which the Foreground Technical Information and Foreground IPR are being exploited in both the defence market and other markets. The Authority may review from time to time the technology arising from the Contract and may require the Supplier to engage in discussions with a view to promoting commercial exploitation. The Authority may conduct this review itself, or may engage a Supplier to conduct a review on its behalf providing that this Supplier is reasonably acceptable to the Supplier and is bound by an obligation of confidence.

- 34 If the Supplier wishes to grant a licence including any provision which conflicts with a provision of this Annex A, it shall inform the Authority's Director of Intellectual Property Rights giving full details of the proposed licence and the conflict of provisions. If, having regard to the territories and/or goods or services to which the licence relates, it appears to the Authority that the proposed licence is unlikely to inhibit its defence interests it will consent to the licence or consent to the grant on modified terms. No such licence may be granted unless the Authority's consent has been given.

- 35 Subject always to the Authority's existing obligations at the time of the request, the Authority will favourably consider the grant of a licence to the Supplier (with the right to sub-license) to use information provided by and belonging to the Authority as necessary to enable the Supplier to exploit Foreground Information and Foreground IPR commercially. Such a licence shall be non-exclusive and on fair and reasonable terms, taking account of all the circumstances.

GENERAL

- 36 For the avoidance of doubt, nothing in this Annex A shall:
- (a) restrict the entitlement of either party to make use of information once it enters the public domain;
 - (b) extinguish any entitlement to use information and IPR which has been acquired under any separate contract or agreement; or
 - (c) override any applicable security restriction or constitute an export licence for Technical Information.
- 37 This Annex A shall constitute 'an agreement to the contrary' for the purposes of Section 48(5) of the Copyright, Designs and Patents Act 1988.
- 38 The terms of this Annex A shall survive the cessation of the Contract.
-

**APPENDIX TO ANNEX A – DESIGN RIGHTS AND PATENTS SUB-CONTRACTOR’S
AGREEMENT**

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

Notes for Guidance

- 1 This note has been devised as an aid to the completion of the Sub-Contractor’s Agreement.
- 2 This top sheet is to be detached before inclusion of the Agreement in a Contract or before submission to a sub-contractor.
- 3 Use a blank template of the Sub-Contractor’s Agreement and insert:
 - (a) *the date of the Agreement;
 - (b) *the sub-contractor’s full name;
 - (c) *the sub-contractor’s registered address;
 - (d) paragraph 1 - the full name of the main Supplier;
 - (e) paragraph 1 - the Contract number of the main contract;
 - (f) paragraph 1 - the description of the equipment being designed and developed under the main contract as shown on the Schedule of the Contract;
 - (g) * Schedule A - List of items appropriate to the sub-contract in question (the sub-contractor may insert these himself if necessary);
 - (h) Schedule B - List of the relevant IPR conditions applicable to the Contract.
- 4 It will also be necessary to amend the references to "design and development" should the subject Contract be a Feasibility Study, Project Definition etc.
- 5 Similarly, as Sub-Contractor’s Agreement is a drafting form, it will require that any references required in the Contract should refer to "the Agreement in the form set out in Annex to the Contract".
- 6 Two copies of the Sub-Contractor’s Agreement should be signed by a responsible officer on behalf of the sub-contractor and both of these should be returned for signature by the Representative of the Authority. One copy is for the sub-contractor to retain, and the other is for retention by the Authority.

*N.B. This information will not necessarily be available at the drafting stage.

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 Supplier") 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 Supplier 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 Supplier.
- 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 Supplier shall not enter into any sub-contract for any component aforesaid without obtaining the prior approval of the Secretary of State.
- 4 The main Supplier 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 Schedule B (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 Schedule B hereto.
- 2 No extension alteration or variation in the terms of the sub-contract between the main Supplier and the Sub-Contractor and no other agreement between the main Supplier 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

SCHEDULE A

The Sub-Contract Items are:



SCHEDULE B

The Clauses which apply to this Agreement are:

To be

inserted as

appropriate

except that:

- (i) Where "the Supplier" 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.
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ANNEX B – PRICING MATRIX

Pricing matrix for 1 March 2018 – 29 February 2020

Grade - Industry	Grade - Academia	Firm Price Maximum Hourly Rate £
Director	Head of School	
Senior Business Manager / Department Manager	Professor	
Department Manager	Reader / Business Manager	
Senior Principal	Senior Lecturer	
Principal	Lecturer	
Practitioner	Post-doctoral Scientist	
Junior Practitioner	PhD Student	
Technician	Technician	
Administrator	Administrator	

“Firm Price Maximum Hourly Rate”: The maximum chargeable Supplier hourly rates as set out in the pricing matrix in the web application. Such rates shall be inclusive of all overheads, administration and profit elements but exclusive of VAT

**ANNEX C – FEDERAL ACQUISITION REGULATIONS AND DEFENSE FEDERAL ACQUISITION
REGULATION SUPPLEMENTS FLOWDOWN PROVISIONS FOR SUBCONTRACTS UNDER A
UNITED STATES (US) DEPARTMENT OF DEFENCE (DOD) PRIME CONTRACT**

INCORPORATION OF FAR AND DFAR CLAUSES

1. In addition to the terms and conditions of the Framework Agreement, the following shall apply to Firm Price sub-contracts entered into by the Authority with a UK Contractor in support of a United States Government DoD prime contract.
2. Nothing in the Contract shall grant the Contractor a direct claim or cause of action against the United States Government.
3. The FAR and DFAR clauses referenced below are incorporated herein by reference, with the same force and effect as if they were given in full text, and are applicable, including any notes following the clause citation, to this Contract. The edition of the FAR or DFAR which is current at the time of sub-contract award shall apply to the sub-contract.
4. Copies of the FAR and the DFAR clauses can be obtained from the US Government Acquisition Internet Site:

(FAR) <https://www.acquisition.gov/?q=browsefar>

(DFARS) <http://www.acq.osd.mil/dpap/dars/dfarspgi/current/>

5. The Contractor shall include in each lower-tier sub-contract the appropriate flow down clauses as required by the FAR and DFAR clauses included in this Contract.
6. When a FAR or DFAR clause uses a specific word or term, those words or terms shall have the meaning as in FAR 2.101 with the following exceptions:

"Contracting Officer" shall mean the relevant Dstl Commercial Officer;

"Contractor" and **"Offeror"** means the Contractor, which is the party with whom the Authority is contracting for the purposes of this contract;

"Prime Contract" means the contract between the US Government and the Authority;

"Subcontract" means any contract placed by the Contractor on lower-tier sub-contractors under this Contract.

7. If there is any inconsistency between the terms and conditions of this Framework Agreement and any Contract, a descending order of precedence shall be accorded to:

The FAR and DFAR clauses;

The terms and conditions of this Framework Agreement;

The requirement and any additional terms, specified as part of the tasking process, incorporated into the Contract.

8. As this is a sub-contract under a US DoD prime contract, the Contractor must not sub-contract with any party that the US Government have debarred, suspended, or proposed for debarment and who are excluded from performing work under US Government contracts. The

list of ineligible parties is available via the US Government General Services Administration (GSA) web-based [System for Award Management](#) (SAM).

Applicable to all contracts:

- 2.101 Definitions
- 52.225-13 Restrictions on Certain Foreign Purchases
- 252.244-7000 Subcontracts for Commercial Items and Commercial Components (DoD Contracts)
- 252.227-7037 Validation of Restricted Markings on Technical Data
- 252.227-7019 Validation of Asserted Restriction - Computer Software
- 252.227-7016 Rights in Bid or Proposal Information
- 252.227-7014 Rights in Non-Commercial Computer Software and Non-Commercial Computer Software Documentation
- 252.227-7013 Rights in Technical Data - Non-Commercial Items
- 252.223-9000 Reporting of Contractor Acquired Radioactive Materials
- 252.203-9000 Prohibition on the Use of Senior Mentors

Applicable to contracts over \$150,000:

- 52.203-12 Limitation on Payments to Influence Certain Federal Transactions.
- 52.203-6 Restrictions on Subcontractor Sales to the Government.
- 52.203-7 Anti-Kickback Procedures
- 52.227-1 Authorization and Consent
- 52.227-2 Notice and Assistance Regarding Patent and Copyright Infringement.

Applicable to contracts over the simplified acquisition threshold which in addition to the meaning at FAR 2.101 (\$150,000) means \$300,000 when soliciting or awarding contracts to be awarded and performed outside the United States:

- 52.215-23 Limitations on Pass-Through Charges.
- 52.215-2 Audit and Records – Negotiation.
- 52.215-14 Integrity of Unit Prices.

Applicable to contracts that exceed the threshold for submission of certified cost or pricing data \$750,000 (FAR 15.403-4):

- 52.215-12 Subcontractor Certified Cost or Pricing Data.

Applicable to contracts exceeding \$1,000,000 with a UK firm:

- 252.225-7033 Waiver of United Kingdom Levies

Applicable to contracts that may include research involving human subjects:

252.235-7004 Protection of Human Subjects

Applicable to contracts for experimental, developmental, or research work to be performed by a small business concern or non-profit organization:

For the purposes of this contract, the following conditions shall supersede DEFCON 705 - Intellectual Property Rights - Research And Technology:

52.227-11 Patent Rights – Ownership by the Contractor

252.227-7013 Rights in technical data - Noncommercial items

Intellectual Property Rights for the Authority

1.1 The word Use, in this Condition, shall mean the utilisation of Contract Deliverables in accordance with this Condition for the purposes provided hereunder and, within these limitations shall include the reproduction and modification of Contract Deliverables.

1.2 In addition to rights afforded to the US Government under the FAR 52.227-11 and DFAR 252.227-7013, the Contractor grants the Authority the right to Use (as defined in Condition 1.1) in confidence all Contract Deliverables as provided below:

1.2.1 To disclose to and authorise Use within any United Kingdom Government Department (which term shall include the United Kingdom Armed Forces) and the UK Police and civil defence agencies, for any purpose; and

1.2.2 To disclose to and authorise Use by any party under, and solely for the purposes of, any UK National Defence Agreement;

1.2.3 To disclose to any governmental or intergovernmental body under any Research and Technology Agreement, and to allow onward release in confidence to contractors to the extent only that such onward release is authorised by the Authority in the circumstance that the Research and Technology Agreement provides for these releases on a reciprocal basis, and to authorise Use by these parties in accordance with, and solely for the purposes set out in, the Research and Technology Agreement concerned;

1.2.4 To disclose to any governmental or intergovernmental body under any Collaborative Defence Agreement other than a Research and Technology Agreement, to allow onward release in confidence to a contractor to the extent only that such onward release is authorised by the Authority and complies with the Collaborative Defence Agreement, and to authorise Use by these parties in accordance with, and solely for the purposes set out in, that Collaborative Defence Agreement, providing that:

1.2.4.1 Unless the Collaborative Defence Agreement is one which has been identified in the Contract at the time of Contract placement or exceptionally is one subject to security restrictions to a degree which precludes its identification to the Contractor, the Authority shall not exercise its rights under this Condition without first informing the Contractor adequately of its intentions and giving the Contractor an opportunity to make representations; and

1.2.4.2 Whilst the Authority's decision shall be final between the parties it shall pay due regard to the Contractor's representations when making its decision;

1.2.5 Where any Technical Information is to be disclosed to a contractor of another governmental or inter-governmental body under Conditions 1.2.3 or 1.2.4, the

Authority will use all reasonable endeavours to release to the Contractor and other contractors to the Authority relevant Technical Information received from the other body under the relevant Collaborative Defence Agreement commensurate with the terms of release and use set out in that Agreement; and

- 1.2.6 To disclose to and permit Use by any party as reasonably necessary in connection with the sale or disposal of anything made pursuant to Condition 1.2.2, which is surplus to requirements.
 - 1.3 Subject to the limitation imposed by Condition 1.4, the rights granted under Condition 1.2 shall be free of payment to the Contractor in respect of any IPR owned or controlled by him.
 - 1.4 The freedom from payment granted under Condition 1.3 shall not extend to Use of any patents, or registered designs but shall be without prejudice to the rights of the Authority arising under any separate contract or agreement or arising under statute.
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