Crown Commercial Service

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

CONSTRUCTION PROFESSIONAL services framework schedule

template call off agreement (INCORPORATING THE nec4 professional services contract JUNE 2017 (including amendments issued january 2019 and october 2020) AND contract data

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TABLE OF CONTENTS

1. Form of Agreement
2. Contract Data – Part one (Data provided by the *Client)*
3. Contract Data – Part two (Data provided by the *Consultant)*
4. Schedule 1 – Insurance Cover Clauses
5. Schedule 2 – Key Performance Indicators
6. Schedule 3 – Governance
7. Schedule 4 – Assurance and Acceptance Process
8. Schedule 5 – Exit Management
9. Annex A – Statement of Requirements (SOR)
10. Annex B – Requirements of Response (ROR)
11. Annex C – Tender Evaluation Plan (TEP)
12. Annex D – CCS Role Definitions
13. Annex E – Insurances Requirement of Response Table
14. Annex F – Order Form Template and Order Schedules
15. DEFFORM 94 – Confidentiality Agreement
16. DEFFORM 111 – Appendix to Contract - Addresses and Other Information
17. DEFFORM 539A – Tenderer’s Sensitive Information
18. DEFFORM 539B - Publishable Performance Information - Key Performance Indicator Data Report
19. DEFFORM 702 – Employee’s Acknowledgment to Employer of Obligations Relating to Confidentiality
20. DEFFORM 711 – Notification of Intellectual Property Rights (IPR) Restrictions
21. 20240422 - Security\_Aspects\_Letter\_to\_UK\_Contractor
22. Cyber Risk Profile RAR-240423A07

**Date 12/11/2024.**

# FORM OF AGREEMENT

**Incorporating the NEC4 Professional Services Contract June 2017
incorporating amendments January 2019 and October 2020**

**Between**

**The Ministry of Defence (MOD), Submarine Delivery Agency (SDA)**

**And**

**OCCAM GROUP Limited**

**For the provision of**

**The Delivery of Operational Safety Cases for HMNB Clyde**

**CCS Framework RM6242**

**SDA Contract Number 711717455**

**THIS AGREEMENT is made the 12th day of November 2024**

**PARTIES:**

1.The Submarine Delivery Agency (SDA) acting as part of the Secretary of State and (the "***Client***");

2. **Occam Group Limited** which is a company incorporated in and in accordance with the laws of **United Kingdom** (Company No. **11986732)** whose registered office address is at
**1 New Street, Wells, Somerset. BA5 2LA**(the "***Consultant***").

**BACKGROUND**

1. The Minister for the Cabinet Office (the "**Cabinet Office**") as represented by Crown Commercial Service, a trading fund of the Cabinet Office, without separate legal personality (the "***Client***"), established a framework for construction professional services for the benefit of public sector bodies.
2. The *Consultant* was appointed to the framework and executed the framework agreement (with reference number RM 6242) (the “**Framework Agreement**”). In the Framework Agreement, the Consultant is identified as the “Supplier”.
3. On the I,the *Client*, acting as part of the Crown, and in the Framework Agreement is identified as a “Contracting *Client*” invited the *Consultant* along with other framework suppliers to tender for the *Client’s* construction professional team services Deliverables in accordance with the Call Off Procedure (as defined in the Framework Agreement).
4. On the *27th of September 2024,* the *Consultant* submitted a tender response and was subsequently selected by the *Client* to provide the *service*.
5. The *Consultant* has agreed to Provide the Services in accordance with this agreement and the Framework Agreement.

**IT IS AGREED AS FOLLOWS:**

The *Client* will pay the *Consultant* the amount due and carry out his duties in accordance with the *conditions of contract* identified in the Contract Data and the Contract Schedules.

The *Consultant* will Provide the Service in accordance with the *conditions of contract* identified in the Contract Data and the Contract Schedules.

This contract incorporates the conditions of contract in the form of the NEC4 Professional Services Contract June 2017 Edition incorporating amendments January 2019 and October 2020 and incorporating the following Options:

**Option A** – Priced Contract with Activity Schedule W2 (Resolving issues)

 which together with the *additional conditions of contract* specified in Option Z, and the amendments specified in Option Z, form this contract together with the documents referred to in it. References in the NEC4 Professional Services Contract June 2017 Edition incorporating amendments January 2019 and October 2020 to "the contract" are references to this contract.

This contract [and the Framework Agreement RM6242] is the entire agreement between the parties in relation to the *service* and supersedes and extinguishes all prior arrangements, understandings, agreements, statements, representations or warranties (whether written or oral) relating thereto.

Neither party has been given, nor entered into this contract in reliance on any arrangements, understandings, agreements, statements, representations or warranties other than those expressly set out in this agreement.

Nothing in clauses 4 or 5 shall exclude liability in respect of misrepresentations made fraudulently.

**Executed under hand**

[Signed by [NAME OF DIRECTOR] for and on behalf of [NAME OF COMPANY]

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

[SIGNATURE OF DIRECTOR]

Director

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

[SIGNATURE OF WITNESS]

[NAME OF WITNESS [IN BLOCK CAPITALS]]

[ADDRESS OF WITNESS]

[OCCUPATION OF WITNESS]

**Professional Services Contract**

**Contract Data**

|  |
| --- |
| Part one – Data provided by the *Client* |
| 1 General | The *conditions of contract* are the core clauses and the clauses for the following main option, the option for resolving and avoiding disputes and the secondary Options of the NEC4 Professional Services Contract June 2017 incorporating amendments January 2019 and October 2020.**Main Option A** Option for resolving and avoiding disputes W2Secondary Options [X2, X18, Y(UK)1] and Z46, Z101 and Z102.Y(UK)2 and Z clauses of the Professional Services Contract as listed below. |
|  | The *service* is The Scope and *services* are defined in the attached Statement of Requirement (SOR)The *Client* is Ministry of Defence (MOD), Submarine Delivery Agency (SDA)*Address for communications* *Chris MacEwan**Commercial Manager*HMNB Clyde | Faslane | Rm41 Argyle Building | Helensburgh | G84 8HLAddress for electronic communications: chris.macewan100@mod.gov.uk |
|  | The *Service Manager* is Elian JonesApproving *Client**Address for communications* HMNB Clyde | Faslane | Rm313 Lomond Building | Helensburgh | G84 8HL*Address for electronic communications:* elian.jones102@mod.gov.uk |
|  | The Scope is in *services* are defined in the attached Statement of Requirement (SOR) - ***20240704 - 711717455 OSC Annex A SOR-OS*** |
|  | The *language of the contract* is English.*The* *law of the contract* is the law of England and Wales and the Courts of the country selected above, shall have exclusive jurisdiction with regard to any dispute in connection with this Agreement and the Parties irrevocably agree to submit to the jurisdiction of those courts. The *period for reply* is two weeks.The *period for retention* is 6 years following Completion or earlier termination. |
|  | The following matters will be included in the Early Warning Registerwar situation, army mobilization – other priorities  |
|  | Early warning meetings are held at intervals no longer than - as appropriate  |
| 2 The *Consultant’s* main responsibilities |  |
| If the *Client* has identified work which is set to meet a stated *condition* by a *key date* | As per *20240620-OSC project SOR 5 – 6. Key Milestones* |
| 3 Time | *The starting date* is the date of contract award |
|  |  |
|  | The *Consultant* submits revised programmes at intervals no longer than **30 Days**. |
| If the *Client* has decided the *completion date* for the whole of the *service* | The *completion date* for the whole of the *service* is **September 2028** |
| If no programme is identified in part two of the Contract Data | The period after the Contract Date within which the *Consultant* is to submit a first programme for acceptance is **two months** |
| 4 Quality Management | The period after the Contract Date within which the *Consultant* is to submit a quality policy statement and quality plan is **one month** The period between Completion of the whole of the *service* and the *d*e*fects date* is 52 weeks |
| 5 Payment | The *currency of the contract* is the pound sterling (£). |
|  | The *assessment interval* is **30 Days** |
| 6 Compensation events |  |
| If there are additional compensation events | **[NOT USED]**these will be managed through the Early Warning and Change Process in accordance with DEFCON 620 as per clause z46 of this agreement |
| 7 Rights to Material  | **[NOT USED]** |
| 8 Liability and insurance  | *The* *Consultant*'s total liability to the *Client* for all matters arising under or in connection with the contract, other than the excluded matters, is limited to £10,000,000 in the aggregate.Please refer to Schedule 1 for Insurance Cover Clauses |
| Resolving and avoiding disputes | **[NOT USED]**Dispute Resolution will be in accordance with DEFCON 530 as per clause Z46 of this agreement. |
| If the tribunal is arbitration  | **[NOT USED]** |
| Option X1 Price adjustment for inflation (used only with options A and C) | **[NOT USED]** |
| Option X2 Changes in the law | **Option X2 is USED***The* *law of the project* is the law of England and Wales  |
|  |  |
| Option X3 Multiple currencies | **[NOT USED]** |
| Option X5 Sectional Completion | **[NOT USED]** |
| Option X6 Bonus for early CompletionOption X7 Delay damages | **[NOT USED]****[NOT USED]** |
| Option X8 Undertakings to Others | **[NOT USED]**

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|  |

 |
| Option X10 Information modelling | **[NOT USED]** |
| Option X12 Multiparty collaboration (not to be used with X20 | **[NOT USED]** |
| X13 Performance bond | **~~[~~NOT USED]** |
| Option X18 Limitation of liability  | **is USED**The *Consultant’s* liability to the *Client* for Defects that are not found until after the *defects date* is limited to **£10,000,000** in the aggregate. The *end of liability* date is 6 years after Completion of the whole of the *service*. |
| Option X20  | **NOT USED*** *The* *incentive schedule* for Key Performance Indicators is NOT USED. Refer to Clause Z102 – Key Performance Indicators
* A report of performance against each Key Performance Indicator is provided at intervals of one month – Refer to Schedule 2 – Key Performance Indicators
 |
| Option Y(UK)1 Project Bank Account | **NOT USED** |
| Charges made and interest paid by the project bank | **NOT USED** |
| Z |  Option Clauses

|  |
| --- |
| The *additional conditions of contract* are: Contract Data relating to Z clauses |
| Option Z2 | **Identified and defined terms**[does not apply] |
| Option Z4 | **Admittance to *Client*’s Premises**[does not apply] |
| Option Z5 | **Prevention of fraud and bribery**[does not apply] |
| Option Z6 | **Equality and diversity**[does not apply] |
| Option Z7 | **Legislation and Official Secrets** [does not apply] |
| Option Z8 | **Conflict of interest**[does not apply] |
| Option Z9 | **Publicity and Branding**[does not apply] |
| Option Z10 | **Freedom of information**[does not apply] |
| Option Z13 | **Confidentiality and Information Sharing**[does not apply] |
| Option Z14 | **Security Deliverables** [does not apply] |
| Option Z16 | **Tax Compliance**[does not apply] |
| Option Z22 | **Fair payment**[does not apply] |
| Option Z42 | **The Housing Grants, Construction and Regeneration Act 1996** [does not apply] |
| Option Z44 | **Intellectual Property Rights**[does not apply] |
| Option Z45 | **HMRC Deliverables**[does not apply] |

 |
| Option Z46 | This clause is to incorporate MoD special terms and conditions in the form of DEFCONs and DEFORMs as detailed at [https://www.gov.uk/guidance/knowledge-in-defence-kid](https://protect-eu.mimecast.com/s/NShMCNxBzcXyxEVcmva1a?domain=gov.uk)MoD DEFCON Requirements1. DEFCON 5J (Edn 18/11/16) - Unique Identifiers
2. DEFCON 15 (Edn 06/21) – Design Rights and Rights to use Design Information
3. DEFCON 76 (Edn 11/22) - Contractor's Personnel at Government Establishments
4. DEFCON 90 (Edn 06/21) - Copyright
5. DEFCON 91 (Edn 06/21) – Intellectual Property Rights in Software
6. DEFCON 129J (Edn 11/16) – The Use of the Electronic Business Delivery Form
7. DEFCON 501 (Edn 10/21) - Definitions & Interpretations
8. DEFCON 503 (Edn 06/22) - Formal Amendments to Contract
9. DEFCON 507 (Edn 07/21) - Delivery
10. DEFCON 513 (Edn 04/22) - Value Added Tax (VAT) and Other Taxes
11. DEFCON 514 (Edn 08/15) - Material Breach
12. DEFCON 515 (Edn 06/21) - Bankruptcy and Insolvency
13. DEFCON 516 (Edn 04/12) - Equality
14. DEFCON 518 (Edn 02/17) - Transfer
15. DEFCON 520 (Edn 08/21) - Corrupt Gifts and Payments of Commission
16. DEFCON 522 (Edn 11/21) - Payment and Recovery of Sums Dues
17. DEFCON 524 (Edn 12/21) – Rejection
18. DEFCON 525 (Edn 10/98) – Acceptance
19. DEFCON 526 (Edn 08/02) - Notices
20. DEFCON 527 (Edn 09/97) – Waiver
21. DEFCON 528 (Edn 10/23) – Import and Export Licences
22. DEFCON 529 (Edn 09/97) - Law (English)
23. DEFCON 530 (Edn 12/14) – Dispute Resolution (English Law)
24. DEFCON 531 (Edn 09/21) - Disclosure of Information
25. DEFCON 528 (Edn 07/21) - Import and Export Licences
26. DEFCON 532A (Edn 05/22) - Protection of Personal Data (Where personalData is not being Processed on behalf of the *Client*)
27. DEFCON 534 (Edn 06/21) - Sub-Contracting and Prompt Payment
28. DEFCON 537 (Edn 12/21) - Rights of Third Parties
29. DEFCON 538 (Edn 06/02) - Severability
30. DEFCON 539 (Edn 01/22) – Transparency
31. DEFCON 540 (Edn 05/23) – Conflicts of Interest
32. DEFCON 550 (Edn 02/14) - Child Labour and Employment Law
33. DEFCON 565 (Edn 07/23) – Supply Chain Resilience and Risk Awareness
34. DEFCON 566 (Edn 10/20) - Change of Control of Contractor
35. DEFCON 602A (Edn 04/23) – Quality Assurance (With Deliverable Plan)
36. DEFCON 604 (Edn 06/14) – Progress Reports
37. DEFCON 606 (Edn 07/21) – Change and Configuration Control Procedure
38. DEFCON 608 (Edn 07/21) – Access to Facilities to be provided by the Contractor
39. DEFCON 609 (Edn 07/21) – Contractors Records
40. DEFCON 611 (Edn 12/22) – Issued Property
41. DEFCON 620 (Edn 06/22) - Contract Change Control Procedure
42. DEFCON 632 (Edn 11/21) - Third Party Intellectual Property – Rights & Restrictions
43. DEFCON 642 (Edn 07/21) – Progress Meetings
44. DEFCON 647 (Edn 05/21) - Financial Management Information
45. DEFCON 656B (Edn 08/16) – Termination for Convenience – Over £5M
46. DEFCON 658 (Edn 10/22) - Cyber
47. DEFCON 659A (Edn 02/24) - Security Measures
48. DEFCON 660 (Edn 12/15) - Official-Sensitive Security Deliverables
49. DEFCON 670 (Edn 02/17) - Tax Compliance
50. DEFCON 687B (06/21) – Shared Data Environment system transfer arrangements
51. DEFCON 694 (Edn 07/21) - Accounting For Property of the *Client*
52. DEFCON 703 (Edn 06/21) - Intellectual Property Rights – Vesting in the *Client*
53. DEFCON 707 (Edn 10/23) – Rights in Technical Data
* In the event of a conflict between the NEC4 Z Clauses and the above DEFCONs, the DEFCONs shall take precedence.
 |
| Option Z47 | **Small and Medium Sized Enterprises (SMEs)** | [does not apply] |  |
| Option Z48 | **Apprenticeships** | [does not apply] |  |
| Option Z49 | **Change of Control** | [does not apply] |  |
| Option Z50 | **Financial Standing** | [does not apply] |  |
| Option Z51 | **Financial Distress** | [does not apply] |  |
| Option Z52 | **Records, audit access and open book data** | [does not apply] |  |
| Option Z100 | **Data Protection** | [does not apply] |  |
| Option Z101 | **Cyber Essentials** | does apply |  |
| Option Z102 | **Key Performance Indicators** **Does Apply**The performance of the *Consultant* will be managed and monitored by the *Client*, in accordance with the Key Performance Indicators (KPIs) at Schedule 2 of this agreement. |  |  |
|  |  |  |  |

|  |
| --- |
| Part two – Data provided by the *Consultant* |
| 1 Statements given in all contracts | The *Consultant* is [ ]*Address for communications [ ]* *Address for electronic communications [ ]*  |
|  | The *fee percentage* is [ ]% |
|  | The *key persons* are Name [ ]Job [ ]Responsibilities [ ]Experience [ ]* *[repeat as necessary]*
 |
|  | The following matters will be included in the Early Warning Register[….]. |
| 2 The *Consultant’s* main responsibilities |  |
| If the Consultant is to provide the Scope | The Scope provided by the *Consultant* is in [ ] |
| 3 Time |  |
| If a programme is to be identified in the Contract Data | The programme identified in the Contract Data is [ ] |
| If the *Consultant*  is to decide the *completion date* for the whole of the *service* | The *completion date* for the whole of the *service* is [….] |
| 5 Payment |  |
| **If the *Consultant* states any *expenses*** | The *expenses* stated by the *Consultant* are

|  |  |
| --- | --- |
| * **item**
 | * **amount**
 |
| * [ ]
 | * [ ]
 |

 |
|  |  |
| **If Option A or C is used**  | The *activity schedule* is ]The tendered total of the Prices is [ ] |
| **Resolving and avoiding disputes** | The *Representatives* of the *Consultant* are*[ insert name 1 ]** *Address for communications [ ]*

*Address for electronic communications [ ]**[ insert name 2 ]** *Address for communications [ ]*

*Address for electronic communications [ ]* |
|  | The *Senior Representatives* of the *Consultant* are*[ insert name 1 ]** *Address for communications [ ]*

*Address for electronic communications [ ]**[ insert name 2 ]** *Address for communications [ ]*

*Address for electronic communications [ ]* |
| Option X10 Information modelling*[Include if used]* | [NOT USED] |
| If an *information execution plan* is to be identified in the Contract Data | The Information Execution Plan identified in the Contract Data is [ ] |
| Option Y(UK)1 Project bank account | NOT USED |
|  |
|  |
| Data for the Schedule of Cost Components (used only with Options A and C) |  |
|  | The *overhead percentages* for the cost of support people and office overhead arelocation  *overhead percentage*[ ] [ ][ ] [ ][ ] [ ]  |
| Data for the Schedule of Cost Components (used only with Option A) |  |
|  | The *people rates* are:Category of person Unit Rate[ ] [ ] [ ][ ] [ ] [ ][ ] [ ] [ ]  |

**Schedule 1 – Insurance Cover Clauses**

|  |  |  |
| --- | --- | --- |
| **Insurance Cover****Requirement to maintain** | **84****84.1** | Without prejudice to its obligation to indemnify or otherwise be liable to the *Client* under this contract, the *Contractor* will, from the date of this contract, take out and maintain or procure the taking out and maintenance in full force and effect insurances in accordance with the Deliverables specified in the Insurance Table (at clause 84.14) and any other insurances as may be required by law or relevant regulation (together the Required Insurances).The *Contractor* will ensure that the Required Insurances are effective in each case not later than the date on which the relevant risk commences. |
| **Quality of the insurances** | **84.2** | The Required Insurances referred to in clause 84.1 will be taken out and maintained with insurers who (in the reasonable opinion of the *Client*) are of good financial standing, appropriately regulated and of good repute in the United Kingdom insurance market. |
| **Non invalidation obligations** | **84.3** | The *Contractor* will not (and the *Contractor* will procure that none of its Subcontractors of any tier will not) take any action, or permit anything to occur in relation to it, which would entitle any insurer to refuse to pay any claim under any insurance policy in which that party is an insured, a co-insured or additional insured person. |
| **Insurance of the contract** | **84.4** | The Insurances referred to in clause 84.1 will:a) Where specified in the Insurance Table (at clause 84.14), contain an indemnity to principals clause under which the *Client* is indemnified in respect of claims made against the *Client* arising from death or bodily injury or third party property damage for which the *Contractor* is legally liable in respect of this contract.b) Be maintained from the date referred to in clause 84.1 above and until at least the expiry or termination of this contract and for such further period as may be specified in the Insurance Table (at clause 84.14) subject to the terms, cover features and extensions and principal exclusions as specified in the Insurance Table (at clause 84.14). |
| **Deliverables of the *Contractor***  | **84.5** | The *Contractor* will:a) Without limiting any specific Deliverables in this contract, take or procure the taking of all reasonable risk management and risk control measures in relation to this contract as it would be reasonable to expect of a contractor, acting in accordance with industry best practice, including but not limited to the investigation and reporting of its claims to insurers.b) Use reasonable endeavours to procure that all insurance brokers through whom any Required Insurances to be effected by the *Contractor* are effected or maintained will maintain intact their files (including all documents disclosed and correspondence in connection with the placement of those Required Insurances and the payment of premiums and claims under such Required Insurances). |
| **Evidence of the Required Insurances** | **84.6** | The *Contractor* will provide, on request, to the *Client*:a) Evidence of the Required Insurances, in a form satisfactory to the *Client*; andb) Evidence, in a form satisfactory to the *Client*, that the premiums payable under the Required Insurances have been paid and that the insurances are in full force and effect and meet the insurance Deliverables of the *Contractor* in respect thereof.c) Neither inspection, nor receipt of such evidence, will constitute acceptance by the *Client* of the terms thereof, nor be a waiver of the *Contractor’s* liability under this contract. |
|  | **84.7** | Evidence, in a form satisfactory to the *Client*, of the insurances required by clause 84.1 (Requirement to Maintain) will be obtained as and when requested and certified copies will be forwarded to the *Client* as soon as possible but in any event no later than two (2) weeks following the *Client* request or the relevant insurance policy renewal date. |
| **Cancellation** | **84.8** | a) Where the insurers purport to cancel, suspend or terminate the Required Insurances, the *Contractor* will procure that the insurers will, as soon as is reasonably practicable, notify the *Contractor* in writing in the event of any such proposed suspension, cancellation or termination.b) Where the *Contractor* receives notification from insurers pursuant to clause 84.8a), the *Contractor* will promptly notify the *Client* in writing of receipt of such proposed suspension, cancellation or termination |
| **Insurance claims** | **84.9** | The *Contractor* will promptly notify to insurers any matter arising from or in relation to this contract from which it may be entitled to claim under any of the Required Insurances. |
|  | **84.10** | Except where the *Client* is the claimant party and without limiting the other provisions of this clause, the *Contractor* will notify the *Client* immediately, (such notification to be accompanied by reasonable particulars of the incident or circumstances giving rise to such claim):* + - 1. Of any incident or circumstances which may give rise to any claim amounting to or in excess of fifty thousand pounds (£50,000) in connection with this contract under any of the Required Insurances.
			2. If the incident or circumstances may give rise to any claim in connection with this contract, which may be in excess of the limits of the Required Insurances.
 |
| **Failure to insure** | **84.11** | If the *Contractor* is in breach of clause 84.1 the *Client* may pay (at its option) any premiums, Insurance Premium Tax and insurance broker costs required to keep such insurance in force or itself procure such insurance, and in either case, recover such amounts from the *Contractor* on written demand, together with all reasonable expenses incurred in procuring such insurance. |
| **Premiums** | **84.12** | Where any policy requires the payment of a premium, the *Contractor* will be liable for such premium. |
| **Deductibles or excess** | **84.13** | a) Where any insurance is subject to an excess or deductible below which the indemnity from the insurers is excluded, the *Contractor* will be liable for such excess or deductible.b) The *Contractor* will not be entitled to recover from the *Client* any sum paid by way of excess or deductible under the insurances whether under the terms of this contract or otherwise. |

**Insurance Table 84.14**

**1**. **Third Party Public and Products Liability Insurance**

1.1 Insured

*Contractor*

1.2 Interest

 To indemnify the insured (as specified in paragraph 1.1 above) in respect of all sums that the insured (as specified in paragraph 1.1 above) may become legally liable to pay whether contractually or otherwise (including claimant’s costs and expenses) as damages in respect of accidental;

1. death or bodily injury, illness or disease contracted by any person;

2. loss or damage to property;

3. interference to property or any easement right of air, light, water or way or the enjoyment or use thereof by obstruction, trespass, nuisance, loss of amenities;

 happening during the period of insurance (as specified in paragraph 1.6 below) and arising out of or in connection with this contract.

1.3 Limit of indemnity

 Not less than ten million pounds (£10,000,000) in respect of any one occurrence, the number of occurrences being unlimited in any annual policy period, but in the annual aggregate in respect of products or pollution liability (to the extent insured by the policy).

1.4 Maximum deductible threshold

 Not to exceed two hundred and fifty pounds (£250) each and every occurrence of third party property damage.

1.5 Territorial limits

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

1.6 Period of insurance

 From the date of this contract for the duration of this contract renewable on an annual basis unless agreed otherwise by the parties

1.7 Cover features and extensions

1. Munitions of war

2. Cross liability clause

3. Contingent motor vehicle liability

4. Legal defence costs

5. Waiver of subrogation in accordance with clause 84.4(c)

6. Indemnity to principals clause in accordance with clause 84.4 (d).

7. Health & Safety at Work Act(s) clause

8. Data protection legislation clause

9. Defence appeal and prosecution costs relating to the Corporate Manslaughter and Corporate Homicide Act 2007

10. Where applicable, airside liability insurance in respect of relevant risks associated with the Contract.

1.8 Principal exclusions

1. War and related perils.

2. Nuclear/radioactive risks.

3. Liability for death, illness, disease or bodily injury sustained by employees of the insured (as specified in paragraph 1.1 above) arising out of the course of their employment.

4. Liability arising out of the use of mechanically propelled vehicles whilst required to be compulsorily insured by legislation in respect of such vehicles.

5. Liability in respect of predetermined penalties or liquidated damages imposed under any contract entered into by the insured (as specified in paragraph 1.1 above).

6. Liability in respect of loss or damage to property in the care, custody and control of the insured (as specified in paragraph 1.1 above) but this exclusion is not to apply to all property belonging to the *Client* which is in the care, custody and control of the insured (as specified in paragraph 1.1 above).

7. Events more properly covered under a professional indemnity insurance policy (as specified in paragraph 2 below).

8. Liability arising from the ownership, possession or use of any aircraft or marine vessels.

9. Liability arising from pollution and contamination unless caused by a sudden, unintended, unexpected and accidental occurrence.

10. Liability arising from toxic mould

11. Liability arising from asbestos

12. Cyber risks

**2. Professional Indemnity Insurance**

2.1 Insured

*Contractor*

2.2 Interest

To indemnify the insured (as specified in paragraph 2.1 above) for all sums which the insured (as specified in paragraph 2.1 above) may become legally liable to pay (including claimant’s costs and expenses) as a result of any claim or claims first made against the insured (as specified in paragraph 2.1 above) during the period of insurance (as specified in paragraph 2.6 below) by reason of any act, error and/or omission arising from or in connection with professional services, advice, design and specification in relation to this contract.

2.3 Limit of Indemnity

Not less than ten million pounds (£10,000,000) in respect of any one claim, and in the annual aggregate during the period of insurance (as specified in paragraph 2.6 below).

2.4 Maximum deductible threshold

Not to exceed ten thousand pounds (£10,000) each and every claim.

2.5 Territorial limits

 United Kingdom.

2.6 Period of insurance

 From the date of this contract for the duration of this contract renewable on an annual basis unless agreed otherwise by the parties and a period of six (6) years following the expiry or termination of this contract whichever occurs earlier.

2.7 Cover features and extensions

1. Loss of documents and computer records extension.

2. Legal liability assumed under contract, duty of care agreements and collateral warranties.

3. Retroactive cover from the date of this contract or retroactive date no later than the date of this contract in respect of any policy provided on a claims made form of policy wording.

2.8 Principal exclusions

1. War and related perils.

2. Nuclear/radioactive risks.

3. Insolvency of the insured (as specified in paragraph 2.1 above).

4. Bodily injury, sickness, disease or death sustained by any employee of the insured (as specified in 2.1 above).

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

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

*Client*s’ liability insurance

The limit of indemnity for the *Client*s' liability insurance shall be any one occurrence inclusive of costs, the number of occurrences being unlimited in any annual period of insurance.

Motor vehicle insurance

The limit of indemnity for motor vehicle third party liability insurance shall be any one occurrence the number of occurrences being unlimited in any annual period of insurance.

Where relevant, motor third party airside liability insurance with a limit of indemnity of not less than fifty million pounds (£50,000,000) in respect of any one occurrence the number of occurrences being unlimited in any annual period of insurance in respect of any relevant claims associated with the Contract.

**Schedule 2 –**

**Key Performance Indicators and Performance**

* + - 1. Key Performance Indicators
				1. The KPIs set out the Performance Measures for meeting the Deliverables.
				2. Each KPI has a set of Performance Measures applicable to it, which will be used to determine the actual performance of the *Contractor* against the Deliverables.
				3. The level of the *Contractor*'s performance against the Performance Measures will result in a Red, Amber or Green rating being allocated to each KPI using the applicable Rating Criteria. This criteria will be used to allocate Performance Retentions and/or Performance Deductions (as hereinafter defined) in accordance with Paragraph ‎3 (*Performance Retentions and Deductions*) of this ‎Schedule 2
			2. **Performance Management**
				1. The *Contractor* shall, within ten (10) Business Days after the end of each Contract Month, provide a report detailing:

the *Contractor*'s proposed rating for each KPI (with reference to the compliance with the Performance Measures for each KPI) within a Reporting Period falling due for measurement at the end of the previous Contract Month;

where a KPI is given a rating of Amber or Red a remedial plan detailing the steps the *Contractor* will take to ensure compliance with the KPI in the next Reporting Period;

KPI Performance Retentions and Deductions to be made; and

KPI Performance Retentions that should be released.

* + - * 1. Where the report identifies that any KPI has not been met, the *Client* may withhold or deduct payment in relation to that KPI pursuant to Paragraph ‎3 (*Performance Retentions and Deductions*)
			1. Performance Retentions and Deductions
				1. Subject to Paragraph ‎1.3, if the *Contractor*'s performance against:

the KPIs is determined to be Amber in any Reporting Period (subject to Paragraph ‎3.2 below) the *Client* shall be entitled to withhold the amount detailed in the "Retention/Deduction" column in the table at Annex 1 (a **Performance Retention**);

a KPI is determined to be Amber in two (2) consecutive Reporting Periods:

the rating for the first of the two (2) consecutive Reporting Periods shall be treated as Red and the *Client* may permanently retain the amount previously retained (a **Performance Deduction**);

if in the Reporting Period following the two (2) consecutive Reporting Periods referred to in Paragraph 2.1(b)(i) above, the relevant KPI is determined to be Green, the Performance Retention for the Amber rating in the second of the two (2) consecutive Reporting Periods shall be released; and

if a KPI is determined to be Red in any circumstance a Performance Deduction shall be made in the immediately following Contract Month.

* + - * 1. In two (2) consecutive Reporting Periods, where a KPI is determined to be Amber in the first of the two consecutive Reporting Periods and Green in the second of the two (2) consecutive Reporting Periods, the Performance Retention for the Amber rating in the first of the two (2) consecutive Reporting Periods shall be released.
			1. Termination for Performance Failures
				1. For the purposes of Clause 1.3 a *Contractor* Default shall occur if:

50% of the KPIs in aggregate are Red in any three (3) consecutive Reporting Periods; and/or

provided that the circumstances capable of giving rise to a Performance Retention or Performance Deduction cannot give rise to breach for the purposes of DEFCON 514 - Material Breach.

**ANNEX 1 – CONTRACT KPIs**

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
|   | **KEY PERFORMANCE INDICATOR** | **PERFORMANCE MEASURES** | **REPORTING PERIOD** | **RATING CRITERIA** | **% RETENTION / DEDUCTIONS**  |
| KPI.01 | The *Contractor* shall ensure the delivery of Nuclear Safety Reviews and Plans  | Measurement:This KPI will measure failure to deliver output in accordance with the jointly agreed dates recorded on the agreed OSC programme. This is assumed to be delivery of the completed Safety Case.KPI measurement shall be assessed on:Delivery to schedule – which shall be assessed as the submission of the relevant documentation to the Client (following one (1) round of consolidated comments that will have been incorporated (provided that such comments are reasonable and appropriately justified by the Client) by the Contractor into the updated documentation) such that agreed programme dates recorded on the OSC programme are met. No further comments on documentation will be considered when assessing whether the delivery date has been met for this KPI. Final submission is 5% or more overdue (calculated by number of days) when measured against the agreed programme dates for final submission recorded on the SOR = 1 failureTasks shall be omitted from consideration, where the Contractor and Client agree that the challenge associated with the development and presentation of the ‘argument’ is so significant that there is high likelihood of failure at due process and a collaborative approach is required or there is an urgent/emergent operational safety proposal required. | Monthly | Green = 1 failureAmber = 2 failuresRed = 3 or more failures | 7% Retention or Deduction of the Monthly Profit Amount |
| KPI.02 | The *Contractor* shall ensure the delivery of Nuclear Safety Reviews and Plans  | Measurement:This KPI will measure failure to deliver output in accordance with the jointly agreed dates recorded on the agreed OSC programme. This is assumed to be delivery of the completed Safety Case.KPI measurement shall be assessed on:Quality – Where the quality of submission and adequacy of the argument (technical and coherence) falls below the requirement on the second Approving *Client* assessment except where there is a lack of consensus between the *Client* and the *Contractor* that the failure is for minor or presentational reasons which will be arbitrated by DHDA (i.e. the safety argument is not changed)) = 1 failure. The process is the Approving *Client* safety case comments matrix and associated scoring process.Tasks shall be omitted from consideration, where the Contractor and Client agree that the challenge associated with the development and presentation of the ‘argument’ is so significant that there is high likelihood of failure at due process and a collaborative approach is required or there is an urgent/emergent operational safety proposal required. | Monthly | Green = 1 failureAmber = 2 failuresRed = 3 or more failures | 7% Retention or Deduction of the Monthly Profit Amount |
| KPI 03 | The Contractor shall ensure delivery of enhanced environmental or sustainability benefits and/or improvements.  | Measurement:This KPI will measure failure to deliver output in accordance with the jointly agreed dates recorded on the Project Sustainability Plan. This is assumed to be the delivery of the options outlined and agreed in the Sustainability Plan.The KPI Measurement shall be assessed on:Delivery to schedule - which shall be assessed as the submission of relevant documentation to the client (following up to two (2) rounds of consolidated comments that will be incorporated (provided that such comments are reasonable and appropriately justified by the Client). No further comments on documentation will be considered when assessing whether the delivery date has been met for this KPI. Final submission is 5% or more overdue (calculated by number of days) when measured against the agreed programme dates for final submission recorded on the SOR = 1 failure.Tasks shall be omitted from consideration, where the Contractor and Client agree that the challenge associated with the development and presentation of the ‘argument’ is so significant that there is high likelihood of failure at due process and a collaborative approach is required or there is an urgent/emergent operational safety proposal required.  | Quarterly | Green = 1 failureAmber = 2 failures  Red = 3 or more failures  | 7% Retention or Deduction of the Monthly Profit Amount  |

**Schedule 3 –**

**Governance**

1. **Governance**
	1. Both parties shall convene monthly and quarterly and be chaired by the *Client* Representative (or, where relevant a Delegated Manager).
	2. The chair of the monthly and quarterly meetings shall have the power to:
2. convene and chair meetings;
3. arrange for other parties to attend as appropriate and as agreed by the Parties;
4. determine the agenda for each meeting;
5. monitor the progress of any follow up tasks and activities agreed to be carried out following the meetings.
	1. The monthly meeting shall be no later than three (3) Business Days after the first (1st) Business Day of the month.
	2. The quarterly meeting shall be held every three (3) months.
	3. At each monthly meeting, both Parties shall:
6. undertake a joint review of the status and progress of the Deliverables;
7. review scope change to any Deliverables;
8. review any reports provided by the *Contractor* and/or *Client* Representative pursuant to item(s) of The Deliverables
9. discuss any matters relating to payments or invoices in respect of The Deliverables;
10. discuss acceptance pursuant to The Deliverables
11. agree on payment in line with Completion of specific Milestone(s) subject to the approval of the *Client* Representative;
12. review key risks and mitigation plans pursuant to the Contract;
13. review such other matters as may be relevant to the management of the Contract.
	1. At each quarterly meeting, both Parties shall:
14. monitor and assure the effectiveness of financial controls and conduct financial management relating to the Contract;
15. review compliance with contractual process to ensure effective Contract assurance;
16. consider and resolve any issues between the Parties;
17. plan for, and review the implementation of any changes necessary to improve the effectiveness and efficiency of managing the Contract.
	1. The *Client* shall issue the record of decisions made and actions placed including their status within five (5) business days of a monthly or quarterly meeting. Both Parties shall, within five (5) Business Days of the date of issue of such record, either agree that record or revise and agree an amended record.
	2. The *Client* shall circulate an agenda and any supporting material/management information five (5) Business Days prior to a monthly or quarterly meeting.

**Schedule 4 –**

**Assurance and Acceptance Process**

* 1. Assurance and Acceptance Process
		1. Part 1 - General Procedure
1. Assurance Procedure

**General**

* 1. The provisions of this Schedule 4 (*Assurance and Acceptance Process*) shall:
		1. apply whenever any items or documents are required to be reviewed, assured, approved or otherwise processed and Accepted in accordance with the Assurance and Acceptance Process; and
		2. not, for the avoidance of doubt, apply to the review, assurance, approval and/or processing of any *Client* Change or *Contractor* Change, such changes being reviewed, assured, approved and/or processed in accordance with DEFCON 620.

**General Assurance Review**

* 1. The *Contractor* acknowledges and agrees that any items or documents to be provided by the *Contractor* as part of the *Contractor* Deliverables in accordance with this Contract shall be reviewed, assured, approved or otherwise processed in accordance with a General Assurance Review (“**Review**”) whether such *Contractor* Deliverable is a Programmed *Contractor* Deliverable or an Unprogrammed *Contractor* Deliverable.
	2. The *Contractor* acknowledges and agrees that:
		1. where the *Contractor* is required to develop, create, produce, provide and/or deliver any items or documents which are Programmed *Contractor* Deliverables;
		2. where the *Contractor* is required to develop, create, produce, provide and/or deliver any items or documents or any other required *Contractor* Deliverables in accordance with *20240704 - 711717455 OSC Annex A SOR-OS* for which there is no Review Date and/or Submission Date identified as at the Effective Date; [[1]](#footnote-2)
		3. where, during the Contract Period, the *Contractor* is required to develop, create, produce, provide and/or deliver any additional items or documents or any other required *Contractor* Deliverables as the result of an approved Change in accordance with DEFCON 620, in respect of which there is no Review Date and/or Submission Date identified on the Contract Programme (as no such date was identified pursuant to the approved Change) (the items in this paragraph 1.3.3 together with the items referred to in 1.3.2 (“**Unprogrammed Contractor Deliverables**”),

then:

(a) such items or documents (including any Relevant Deliverable) shall be subject to a Review (but in the case of Unprogrammed *Contractor* Deliverables, only where the *Client* has notified the *Contractor* of a Review Date and Submission Date for such *Contractor* Deliverable as contemplated in paragraphs 1.4.1 and 1.4.2); and

(b) failure to satisfy KPI(s) shall permit the *Client* to make Deductions as set out in Schedule 2

* 1. In relation to each Review, the following procedure shall apply:
		1. the *Contractor* shall or shall procure that the relevant Programmed *Contractor* Deliverable or Unprogrammed *Contractor* Deliverable (“**Relevant Deliverable**”) together with any other information required by the *Client* in accordance with the Assurance and Acceptance Process, is provided to the *Client*'s Representative on or prior to the Submission Date (and the *Contractor* acknowledges that the *Client* may notify the *Contractor* from time to time (in writing or orally during a Performance Review Meeting) the Submission Date for any Relevant Deliverable which is an Unprogrammed Contract Deliverable); and
		2. after the Review Period has commenced and on or prior to the Review Date (and the *Contractor* acknowledges that the *Client* may notify the *Contractor* from time to time (in writing or orally during a Performance Review Meeting) the Review Date for any Relevant Deliverable which is an Unprogrammed Contract Deliverable), the *Client*'s Representative shall notify the *Contractor* (in writing) whether it has any comments or objections in relation to the Relevant Deliverable.
	2. If the *Client*'s Representative intends to raise comments and/or raise objections to any Relevant Deliverable, they shall state the reasons for (and shall provide such evidence or other information as may be reasonably necessary to substantiate) such comments or objections.
	3. The *Contractor* acknowledges and agrees that:
		1. a Review shall not (unless otherwise agreed in writing by the *Client*’s Representative) take place if the Entry Criteria in respect of that Review has not been satisfied;
		2. the Review Period shall not (unless otherwise agreed in writing by the *Client*’s Representative) commence until receipt by the *Client*’s Representative of the Relevant Deliverable together with any other further information required by the *Client* in accordance with this Assurance and Acceptance Process;
		3. in the case of Programmed *Contractor* Deliverables the *Client* has specified and in the case of the Unprogrammed *Contractor* Deliverables the *Client* will specify the relevant Submission Dates and Review Dates on the assumption that the *Contractor* has fully complied (and, at all times throughout the Contract Period, continues to fully comply) with all of its obligations and where the *Contractor* shall not have complied with all such obligations, the *Client* shall be entitled to such extension to such dates and period as it considers reasonable in the circumstances to enable the *Client* to review and consider in full any Relevant Deliverable.
	4. No review, comment, approval by the *Client* under this Schedule 4 (*Assurance and Acceptance Process*) shall operate to exclude or limit the *Contractor*'s obligations or liabilities under this Contract (or the *Client*'s rights under this Contract), including (without limitation) the *Contractor*’s obligation to deliver the *Contractor* Deliverables in accordance with the Contract Programme.
1. Further Information
	1. The *Contractor* shall submit any further or other information, data, documents and/or items that the *Client*'s Representative reasonably requires in relation to any Review to be conducted under this Schedule 4 (*Assurance and Acceptance Process*).
	2. If the *Contractor* does not submit any such information, data, documents and/or items, the *Client*'s Representative shall be entitled to:
		1. comment on or object to the Relevant Deliverables on the basis of the information, data, documents and/or items which have been provided; or
		2. reject the Relevant Deliverables on the grounds that insufficient information, data, documents and/or items have been provided.
2. Effect Of Review
	1. Where the Exit Criteria in respect of a Review has been achieved on the Review Date:
		1. any Relevant Deliverable (and/or any further information, data, documents and/or items submitted as part of the Entry Criteria for that Review) in respect of which the *Client*'s Representative has confirmed that it does not have any comments or objections shall:
			1. where there is no further work to be carried out by the *Contractor* in respect of the Relevant Deliverable, be considered for Acceptance in accordance with paragraph 6 (*Acceptance*); or
			2. where there is further work to be carried out by the *Contractor* in respect of the Relevant Deliverable, be further developed by the *Contractor* and submitted for review by the *Client* at the next relevant Review Date; or
		2. if the *Client*'s Representative raises comments or objections in relation to a Relevant Deliverable (and/or in relation to any further information, data, documents and/or items submitted as part of the Entry Criteria for that Review) but notwithstanding such comments or objections the *Client*’s Representative (in his absolute discretion) is satisfied that the Exit Criteria for that Review can be considered to have been achieved,

the *Contractor* shall:

* + - 1. to the extent that such comments or objections do not require the *Contractor* to undertake further or additional activities and re-submit the Relevant Deliverable (and/or any information, data, documents and/or items submitted as part of the Entry Criteria for that Review) to the *Client* for further review prior to complying with and/or proceeding on the basis of and/or undertaking such further and/or additional activities in respect of (as the case may be) such Relevant Deliverable, comply with and/or proceed on the basis of and/or undertake such further and/or additional activities in respect of (as the case may be) such Relevant Deliverable (and/or such information, data, documents and/or items submitted as part of the Entry Criteria for that Review) after amendment and/or adjustment (as the case may be) in accordance with the comments or objections of the *Client*'s Representative and such Relevant Deliverable should only be considered for Acceptance in accordance with paragraph 6 (*Acceptance*) when the Relevant Deliverable has been amended and/or updated (as the case may be) and reissued by the *Contractor* to the *Client*;
			2. to the extent that such comments or objections do require the *Contractor* to undertake further or additional activities and re-submit the Relevant Deliverable (and/or any information, data, documents and/or items submitted as part of the Entry Criteria for that Review) to the *Client* for further review:
				1. not act on and/or proceed on the basis of the Relevant Deliverable (and/or any such information, data, documents and/or items submitted as part of the Entry Criteria for that Review) or the relevant part of such Relevant Deliverable (and/or any such information, data, documents and/or items submitted as part of the Entry Criteria for that Review) to which such comments or objections relate (as the case may be);
				2. undertake such further or additional activities as are necessary to address each of the comments and/or objections of the *Client*’s Representative; and
				3. re-submit the Relevant Deliverable and/or such information, data, documents and/or items submitted as part of the Entry Criteria for that Review (as amended and specifically identifying the amendments, adjustments and/or changes made to such Relevant Deliverable (and/or such information, data, documents and/or items) to address the comments or objections raised by the *Client*’s Representative) to the *Client*’s Representative within such period and in the manner as the *Client*’s Representative shall specify at the time of issuing such comments or objections to the *Contractor* or as otherwise specified at the relevant Review,

provided always that where:

the *Contractor* does not comply with the provisions of this paragraph 3.1.2 within such time period and/or in such manner specified; and/or

the *Client*’s Representative has further comments and/or objections in relation to such amendments, adjustments and/or changes (and/or any failure by the *Contractor* to make such amendments, adjustments and/or changes as would be reasonably required to address such comments and/or objections of the *Client*’s Representative) when the Relevant Deliverable (and/or any such information, data, documents and/or items submitted as part of the Entry Criteria for the relevant Review) is re-submitted,

then such Relevant Deliverable (and such information, data, documents and/or items) shall be deemed to be required to be submitted as part of any subsequent Review as may be notified by the *Client*’s Representative;

* + - 1. if the *Contractor* does not accept the comments or objections of the *Client*'s Representative (and the Parties are otherwise unable to agree such matter), refer the matter for determination in accordance with the Dispute Resolution Procedure (and the *Contractor* shall not act on and/or proceed on the basis of the Relevant Deliverable and/or such information, data, documents) until such matter is so determined in accordance with this paragraph 3.1.2(iii) or otherwise agreed in writing).
	1. Where, subject to paragraph 3.1.2, the Exit Criteria in respect of a Review has not been achieved on the Review Date, then that Review shall be repeated (the “**Subsequent** **Review**”) in accordance with the following procedure:
		1. if the *Client*'s Representative raises comments or objections in relation to a Relevant Deliverable (and/or any information, data, documents and/or items submitted as part of the Entry Criteria for that Review), the *Contractor* shall:
			1. to the extent that such comments or objections require the *Contractor* to undertake further or additional activities and re-submit the Relevant Deliverable (and/or any such information, data, documents and/or items submitted as part of the Entry Criteria for that Review) to the *Client* for further review at the Subsequent Review:
				1. not act on and/or proceed on the basis of the Relevant Deliverable (and/or such information, data, documents and/or items submitted as part of the Entry Criteria for that Review) or the relevant part of such Relevant Deliverable (and/or such information, data, documents and/or items submitted as part of the Entry Criteria for that Review) to which such comments or objections relate (as the case may be);
				2. undertake such further or additional activities as are necessary to address each of the comments and/or objections of the *Client*’s Representative; and
				3. re-submit the Relevant Deliverable (and/or such information, data, documents and/or items submitted as part of the Entry Criteria for that Review) as amended and specifically identifying the amendments, adjustments and/or changes made to such Relevant Deliverable (and/or such information, data, documents and/or items) to address the comments or objections raised by the *Client*’s Representative for the Subsequent Review; or
			2. if it does not accept the comments or objections of the *Client*'s Representative (and the Parties are otherwise unable to agree such matter), refer the matter for determination in accordance with the Dispute Resolution Procedure and the *Contractor* shall not act on and/or proceed on the basis of the Relevant Deliverable and/or such information, data, documents and/or items submitted as part of the Entry Criteria for that Review until such matter is so determined in accordance with this paragraph 3.2.1(ii) or otherwise agreed in writing;
		2. the *Client*'s Representative shall notify the *Contractor* of:
			1. a further date for the Subsequent Review at which the Review in question shall be repeated and such date shall be deemed to be the Review Date for that Subsequent Review; and
			2. the Submission Date for that Subsequent Review;
		3. the items required for that Subsequent Review shall be the Relevant Deliverable together with any additional information, data, documents and/or items referred to in (and/or as the *Client*’s Representative may require) pursuant to paragraph 2.1 above,

and the provisions of this Schedule 4 (*Assurance* *and Acceptance Process*) shall apply to such Subsequent Review as if it was the original Review, changed according to context.

* 1. Confirmation by the *Client*’s Representative that it has no comments and/or objections shall mean that the Relevant Deliverable may be used or implemented (or the *Contractor* may proceed on the basis of that Relevant Deliverable) for the purposes for which it is intended but, save to the extent expressly stated in this Contract, such confirmation shall not otherwise relieve the *Contractor* of its obligations under this Contract nor is it an acknowledgement by the *Client* that the *Contractor* has complied with such obligations.
1. Document Management
	1. The *Contractor* shall issue each Relevant Deliverable to the *Client*'s Representative in a format required by the *Client* as notified by the *Client* from time to time.
	2. The *Contractor* shall compile and maintain a register of the date of receipt and content of all Relevant Deliverables that are returned by the *Client*'s Representative.
2. Variations
	1. No approval or comment or any failure to give or make an approval or comment under this Schedule 4 (*Assurance and Acceptance Process*) shall constitute a Client Change, save to the extent implemented in accordance with DEFCON 620 (Edn 06/22) – Contract Change Control Procedure as contemplated in paragraph 5.2.
	2. If, having received comments or objections from the *Client*'s Representative, the *Contractor* considers that compliance with those comments or objections would amount to a Client Change, the *Contractor* shall, before complying with the comments or objections, notify the *Client* of the same and, if it is agreed by the Parties or determined pursuant to the Dispute Resolution Procedure that a Client Change would arise if the comments or objections were complied with, the *Client* may, if it wishes, implement the *Client* Change and it shall be dealt with in accordance with DEFCON 620 (Edn 06/22) – Contract Change Control Procedure.
	3. Any failure by the *Contractor* to notify the *Client* that it considers compliance with any comments or objections of the *Client*'s Representative would amount to a *Client* Change shall constitute an irrevocable acceptance by the *Contractor* that any compliance with the *Client*'s comments or objections shall be without cost to the *Client* and without any further relief for the *Contractor*.
3. Acceptance
	1. The *Client* shall be deemed to have Accepted each Relevant Deliverable which:
		1. satisfies the requirements of paragraph 3.1.1(i);
		2. is of the type described in paragraph 3.1.1(ii) and where the further work required to be undertaken is carried out and the Relevant Deliverable is appropriately and correctly updated or amended (as the case may be) and reissued to the *Client* at a later Review (in accordance with paragraph 3.1.2(i)) and ultimately satisfies the requirements of paragraph 3.1.1(i);
		3. did not satisfy the requirements of paragraph 3.1.1(i) and is the subject of a Subsequent Review or Subsequent Reviews and ultimately satisfies the requirements of paragraph 3.1.1(i);
		4. following a determination pursuant to paragraph 3.1.2(iii) that the Relevant Deliverable satisfies the requirements of paragraph 3.1.1(i),

in each case when the Exit Criteria for the Relevant Review have been satisfied and the Relevant Deliverable is in Final Form on the relevant Review Date (being the Review Date when such Exit Criteria were satisfied or are later determined to have been satisfied).

* + 1. Part 2 – Entry Criteria and Exit Criteria
1. Entry Criteria
	1. The receipt by the *Client*’s Representative of the Relevant Deliverable (together with any additional information required by the *Client* and notified to the *Contractor* prior to such Submission Date) at a level of maturity that can be reasonably be expected to be achieved by the *Contractor* at the then relevant stage of the Assurance Process.
2. Exit Criteria
	1. Where:
		1. the *Client*’s Representative is satisfied that the *Contractor* has developed the Relevant Deliverable to an appropriate level of maturity on or prior to the Submission Date and where the *Client* has received all information it has requested from the *Contractor* in accordance with paragraph 2 (*Further Information*) of Part 1 of Schedule 3 (*Assurance and Acceptance Process*) ; and
		2. the *Client*’s Representative has confirmed to the *Contractor* that it has no comments and/or objections in relation to the Relevant Deliverable; or
		3. the *Client*’s Representative, having raised comments and/or objections in accordance with Part 1 of this Schedule 4 (*Assurance* *and Acceptance* *Process*), is satisfied that the Relevant Deliverable has been reviewed, amended, developed, modified and/or updated (as necessary) to address such comments and/or objections; and
		4. subject to and in accordance with paragraph 3.1.2 of Part 1 of this Schedule 4 (*Assurance* *and Acceptance Process*), the *Client*’s Representative is satisfied that the Exit Criteria for the relevant Review can be considered to have been achieved.
		5. Part 3 – Programmed Contractor Deliverables

The Programmed *Contractor* Deliverables at the Effective Date are those Contractor Deliverables identified by the following Serial IDs in the Statement of Requirements:

Serial IDs of Programmed Contractor Deliverables as at the Effective Date

All Contractor Deliverables set out in or referred to in paragraph 4 (*Requirement & Deliverables*) of **Annex A SOR** as at the Effective Date for Review by the date as set out in the Table 1 below.

Table 1

|  |  |  |
| --- | --- | --- |
| **OSC Serial ID number** | **Deliverable** | **Programmed Deliverabable Date** |
| OSC.M1 | Delivery of methodology paper referred to in OSC.01. | Within 2 months of Contract Award |
| OSC.M2 | Initial Probabilistic Safety Assessment (PSA) Strategy identifying the dependencies on interfacing organisations and an outline plan for producing the PSA.  | Within 2 months of Contract Award |
| OSC.M3.1 | Consolidate and review shortfalls dependent on the OSC Uplift Programme for resolution on the HMNB(C) Periodic Review of Safety (PRS) database and identify close out actions or justify where this will not be done. | Within 2 months of Contract Award |
| OSC.M3.2 | Agree conclusions to OSC.M3.1 with the Clyde Approving *Client* | Within 1 month of delivery of the document delivered to Clyde Approving *Client* referred to in OSC.M3.1 |
| OSC.M4 | Human Factors Integration Plan | Within 3 months of Contract Award |
| OSC.M5 | Delivery of detailed programme– this will include the detailed plan of supporting safety assessment deliverables. The programme will propose quarterly milestones against which progress can be measured to inform the payment schedule. | Within 3 months of Contract Award |
| OSC.M6 | Generate briefing packs to support quarterly stakeholder review meetings demonstrating progress against milestones and developments over the reporting period and covering high level details for the subsequent 3-month period. | Quarterly with first review 3 months after Contract Award |
| OSC.M7 | All HMNB(C) Dreadnought Safety Case Documents must have entered HMNB(C) due process. They must have completed a robust internal and stakeholder review and be of sufficient quality to commence Independent Peer Review. | 12 months prior to Dreadnought Readiness date |
| OSC.M8 | All Dreadnought Safety Case documents must have been authorised and fully implemented. | Dreadnought Readiness date (Currently Nov 2027) |
| OSC.M9 | End of Project. Vanguard and Astute Class OSCs Authorised and fully implemented. | End of September 2028 |
| OSC.M10 | Project Sustainability Plan delivered, agreed and fully implemented. | Document Delivery within 6 months of contract award.Outcome implementation by 3 months prior to contract end date. |

Schedule 5

Exit Management

1. Definitions
	1. In this Schedule, the following words shall have the following meanings:

|  |  |
| --- | --- |
| "*Client* Data" | the data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media, and which are:* + - * 1. supplied to the *Contractor* by or on behalf of the *Client*; and/or
				2. which the *Contractor* is required to generate, process, store or transmit pursuant to this Contract;
 |
| “Default” | any breach of the obligations of the Consultant (including abandonment of a Contract in breach of its terms) or any other default (including material default), act, omission, negligence or statement of the Consultant, of its Subcontractors or any Consultant Staff howsoever arising in connection with or in relation to the subject-matter of a Contract and in respect of which the Supplier is liable to the Relevant Authority; |
| "Exclusive Assets" | *Contractor* Assets used exclusively by the *Contractor* [or a Key Sub *Contractor*] in the provision of the Deliverables (The Scope as per NEC4); |
| "Exit Information" | has the meaning given to it in paragraph 3.1 of this Schedule; |
| "Exit Manager" | the person appointed by each Party to manage their respective obligations under this Schedule; |
| "Registers" | the register and configuration database referred to in paragraph 2.2 of this Schedule;  |
| "Replacement Services" | any services which are substantially similar to any of the Services and which the *Client* receives in substitution for any of the Services following the End Date, whether those goods are provided by the *Client* internally and/or by any Third Party; |
| "Termination Assistance" | the activities to be performed by the *Contractor* pursuant to the Exit Plan, and other assistance required by the *Client* pursuant to the Termination Assistance Notice; |
| "Termination Assistance Notice" | has the meaning given to it in paragraph 5.1 of this Schedule; |
| "Termination Assistance Period" | the period specified in a Termination Assistance Notice for which the *Contractor* is required to provide the Termination Assistance as such period may be extended pursuant to paragraph 5.2 of this Schedule; |
| "Transferable Contracts" | Sub-Contracts, licences for *Contractor's* Software, licences for Third Party Software or other agreements which are necessary to enable the *Client* or any Replacement *Contractor* to provide the Deliverables and/or Replacement Services, including in relation to licences all relevant Documentation; |
| "Transferring Assets" | has the meaning given to it in paragraph 8.2.1 of this Schedule; |
| "Transferring Contracts" | has the meaning given to it in paragraph 8.2.3 of this Schedule. |

1. *Contractor* must always be prepared for contract exit
	1. During the Contract Period, the *Contractor* shall promptly:
		1. create and maintain a detailed register of Sub-contracts and other relevant agreements required in connection with the Deliverables; and
		2. create and maintain a configuration database detailing the technical infrastructure and operating procedures through which the *Contractor* provides the Deliverables,

("**Registers**").

* 1. The *Contractor* shall procure that all licences for Third Party Software and all Sub-Contracts shall be assignable and/or capable of novation (at no cost or restriction to the *Client*) at the request of the *Client* to the *Client* (and/or its nominee) and/or any Replacement Contractor upon the *Contractor* ceasing to provide the Deliverables (or part of them) and if the *Contractor* is unable to do so then the *Contractor* shall promptly notify the *Client* and the *Client* may require the *Contractor* to procure an alternative Subcontractor or provider of Deliverables.
	2. Each Party shall appoint an Exit Manager within three (3) months of the Start Date. The Parties' Exit Managers will liaise with one another in relation to all issues relevant to the expiry or termination of this Contract.
1. Assisting re-competition for Deliverables
	1. The *Contractor* shall, on reasonable notice, provide to the *Client* and/or its potential Replacement Contractors (subject to the potential Replacement Contractors entering into reasonable written confidentiality undertakings), such information (including, without limitation, any access and an inventory of *Client* Data in the *Contractor’s* possession or control) as the *Client* shall reasonably require in order to facilitate the preparation by the *Client* of any invitation to tender and/or to facilitate any potential Replacement Contractors undertaking due diligence (the "**Exit Information**").
	2. The *Contractor* acknowledges that the *Client* may disclose the *Contractor*'s Confidential Information (excluding the *Contractor*’s or its SubContractors’ prices or costs) to an actual or prospective Replacement Contractor to the extent that such disclosure is necessary in connection with such engagement.
	3. The *Contractor* shall provide complete updates of the Exit Information on an as-requested basis as soon as reasonably practicable and notify the *Client* within five (5) Working Days of any material change to the Exit Information which may adversely impact upon the provision of any Deliverables (and shall consult the *Client* in relation to any such changes).
	4. The Exit Information shall be accurate and complete in all material respects and shall be sufficient to enable a Third Party to prepare an informed offer for those Deliverables; and not be disadvantaged in any procurement process compared to the *Contractor*.
2. Exit Plan
	1. The *Contractor* shall, within three (3) months after the Start Date, deliver to the *Client* an Exit Plan which complies with the Deliverables set out in paragraph 4.3 of this Schedule and is otherwise reasonably satisfactory to the *Client*.
	2. The Parties shall use reasonable endeavours to agree the contents of the Exit Plan. If the Parties are unable to agree the contents of the Exit Plan within twenty (20) Working Days of the latest date for its submission pursuant to paragraph 4.1, then such Dispute shall be resolved in accordance with the Dispute Resolution Procedure.
	3. The Exit Plan shall set out, as a minimum:
		1. a detailed description of both the transfer and cessation processes, including a timetable;
		2. how the Deliverables will transfer to the Replacement *Contractor* and/or the *Client*;
		3. details of any contracts which will be available for transfer to the *Client* and/or the Replacement *Contractor* upon the Expiry Date together with any reasonable costs required to effect such transfer;
		4. proposals for the training of key members of the Replacement *Contractor*’s staff in connection with the continuation of the provision of the Deliverables following the expiry or sooner determination of this Contract;
		5. proposals for providing to the *Client* or to a Replacement *Contractor* copies of all documentation relating to the use and operation of the Deliverables and required for their continued use;
		6. proposals for the assignment or novation of all services utilised by the *Contractor* in connection with the supply of the Deliverables;
		7. proposals for the identification and return of all *Client* Data in the possession of and/or control of the *Contractor* or any Third Party;
		8. a proposed plan for the migration of the *Client* Data to the *Client* and/or the Replacement *Contractor*;
		9. how the *Contractor* will ensure that there is no disruption to or degradation of the Deliverables during the Termination Assistance Period; and
		10. any other information or assistance reasonably required by the *Client* or a Replacement Contractor.
	4. The *Contractor* shall:
		1. maintain and update the Exit Plan (and risk management plan) no less frequently than:
			1. every twelve (12) months throughout the Contract Period; and
			2. no later than twenty (20) Working Days after a request from the *Client* for an up-to-date copy of the Exit Plan;
			3. as soon as reasonably possible following a Termination Assistance Notice, and in any event no later than ten (10) Working Days after the date of the Termination Assistance Notice;
			4. as soon as reasonably possible following, and in any event no later than twenty (20) Working Days following, any material change to the Deliverables (including all changes under the Change Procedure); and
		2. jointly review and verify the Exit Plan if required by the *Client* and promptly correct any identified failures.
	5. Only if (by notification to the *Contractor* in writing) the *Client* agrees with a draft Exit Plan provided by the *Contractor* under paragraph 4.2 or 4.4 (as the context requires), shall that draft become the Exit Plan for this Contract.
	6. A version of an Exit Plan agreed between the Parties shall not be superseded by any draft submitted by the *Contractor*.
3. Termination Assistance
	1. The *Client* shall be entitled to require the provision of Termination Assistance at any time during the Contract Period by giving written notice to the *Contractor* (a **"Termination Assistance Notice"**) at least four (4) months prior to the Expiry Date or as soon as reasonably practicable (but in any event, not later than one (1) month) following the service by either Party of a Termination Notice. The Termination Assistance Notice shall specify:
		1. the nature of the Termination Assistance required; and
		2. the start date and period during which it is anticipated that Termination Assistance will be required, which shall continue no longer than twelve (12) months after the date that the *Contractor* ceases to provide the Deliverables.
	2. The *Client* shall have an option to extend the Termination Assistance Period beyond the Termination Assistance Notice period provided that such extension shall not extend for more than six (6) months beyond the end of the Termination Assistance Period and provided that it shall notify the *Contractor* of such this extension no later than twenty (20) Working Days prior to the date on which the provision of Termination Assistance is otherwise due to expire. The *Client* shall have the right to terminate its requirement for Termination Assistance by serving not less than (20) Working Days' written notice upon the *Contractor*.
	3. In the event that Termination Assistance is required by the *Client* but at the relevant time the Parties are still agreeing an update to the Exit Plan pursuant to paragraph 4, the *Contractor* will provide the Termination Assistance in good faith and in accordance with the principles in this Schedule and the last *Client* approved version of the Exit Plan (insofar as it still applies).
4. Termination Assistance Period
	1. Throughout the Termination Assistance Period the *Contractor* shall:
		1. continue to provide the Deliverables (as applicable) and otherwise perform its obligations under this Contract and, if required by the *Client*, provide the Termination Assistance;
		2. provide to the *Client* and/or its Replacement *Contractor* any reasonable assistance and/or access requested by the *Client* and/or its Replacement *Contractor* including assistance and/or access to facilitate the orderly transfer of responsibility for and conduct of the Deliverables to the *Client* and/or its Replacement *Contractor*;
		3. use all reasonable endeavours to reallocate resources to provide such assistance without additional costs to the *Client*;
		4. subject to paragraph 6.3, provide the Deliverables and the Termination Assistance at no detriment to the Performance Indicators (PI’s) or Service Levels, the provision of the Management Information or any other reports nor to any other of the *Contractor*'s obligations under this Contract;
		5. at the *Client*'s request and on reasonable notice, deliver up-to-date Registers to the *Client*;
		6. seek the *Client*'s prior written consent to access any *Client* Premises from which the de-installation or removal of *Contractor* Assets is required.
	2. If it is not possible for the *Contractor* to reallocate resources to provide such assistance as is referred to in paragraph 6.1.2 without additional costs to the *Client*, any additional costs incurred by the *Contractor* in providing such reasonable assistance shall be subject to the Change Procedure.
	3. If the *Contractor* demonstrates to the *Client*'s reasonable satisfaction that the provision of the Termination Assistance will have a material, unavoidable adverse effect on the *Contractor*'s ability to meet one or more particular Deliverable(s), the Parties shall vary the relevant Deliverable(s) accordingly.
5. Obligations when the contract is terminated
	1. The *Contractor* shall comply with all of its obligations contained in the Exit Plan.
	2. Upon termination or expiry or at the end of the Termination Assistance Period (or earlier if this does not adversely affect the *Contractor*'s performance of the Deliverables and the Termination Assistance), the *Contractor* shall:
		1. vacate any *Client* Premises;
		2. cease to use the *Client* Data;
		3. provide the *Client* and/or the Replacement *Contractor* with a complete and uncorrupted version of the *Client* Data in electronic form (or such other format as reasonably required by the *Client*);
		4. erase from any computers, storage devices and storage media that are to be retained by the *Contractor* after the end of the Termination Assistance Period all *Client* Data and classified documents issued to the *Contractor* by the *Client* pursuant to (or for the purposes of the execution of) this Contract and promptly certify to the *Client* that it has completed such deletion;
		5. return to the *Client* any parts of the IT Environment and any other equipment which belongs to the *Client* as is in the *Contractor’s* possession or control;
		6. remove the *Contractor* Equipment together with any other materials used by the Contractor to supply the Deliverables and shall leave the Sites in a clean, safe and tidy condition. The *Contractor* is solely responsible for making good any damage to the Sites or any objects contained thereon, other than fair wear and tear, which is caused by the *Contractor*;
		7. provide access during normal working hours to the *Client* and/or the Replacement *Contractor* for up to twelve (12) months after expiry or termination to:
			1. such information relating to the Deliverables as remains in the possession or control of the *Contractor*; and
			2. such members of the *Contractor* Staff as have been involved in the design, development and provision of the Deliverables and who are still employed by the *Contractor*, provided that the *Client* and/or the Replacement Contractor shall pay the reasonable costs of the *Contractor* actually incurred in responding to such requests for access;
	3. Except where this Contract provides otherwise, all licences, leases and authorisations granted by the *Client* to the *Contractor* in relation to the Deliverables shall be terminated with effect from the end of the Termination Assistance Period.
	4. On termination or expiry of this Contract (as the case may be) or at the end of the Termination Assistance Period (or earlier if this does not adversely affect the *Contractor*’s performance of the Services and its compliance with the other provisions of this Schedule), the *Contractor* shall return to the other Party (or if requested, destroy or delete) all Confidential Information of the other Party in respect of the terminated Services and shall certify that it does not retain the other Party’s Confidential Information save to the extent (and for the limited period) that such information needs to be retained by the Party in question for the purposes of providing or receiving any Services or for statutory compliance purposes.
6. Assets, Sub-contracts and Software
	1. Following notice of termination of this Contract and during the Termination Assistance Period, the *Contractor* shall not, without the *Client*'*s* prior written consent:
		1. terminate, enter into or vary any Sub-contract or licence for any software in connection with the Deliverables; or
		2. [(subject to normal maintenance Deliverables) make material modifications to, or dispose of, any existing *Contractor* Assets or acquire any new *Contractor* Assets.]
	2. Within twenty (20) Working Days of receipt of the up-to-date Registers provided by the *Contractor*, the *Client* shall notify the *Contractor* setting out:
		1. which, if any, of the Transferable Assets the *Client* requires to be transferred to the *Client* and/or the Replacement Contractor ("**Transferring Assets**");
		2. which, if any, of:
			1. the Exclusive Assets that are not Transferable Assets; and
			2. the Non-Exclusive Assets,

the *Client* and/or the Replacement Contractor requires the continued use of; and

* + 1. which, if any, of Transferable Contracts the *Client* requires to be assigned or novated to the *Client* and/or the Replacement Contractor (the **"Transferring Contracts"**),

in order for the *Client* and/or its Replacement *Contractor* to provide the Deliverables from the expiry of the Termination Assistance Period. The *Contractor* shall provide all reasonable assistance required by the *Client* and/or its Replacement *Contractor* to enable it to determine which Transferable Assets and Transferable Contracts are required to provide the Deliverables and/or Replacement Services.

* 1. With effect from the expiry of the Termination Assistance Period, the *Contractor* shall sell the Transferring Assets to the *Client* and/or the Replacement Contractor for their Net Book Value less any amount already paid for them through the Charges.
	2. Risk in the Transferring Assets shall pass to the *Client* or the Replacement *Contractor* (as appropriate) at the end of the Termination Assistance Period and title shall pass on payment for them.
	3. Where the *Client* and/or the Replacement *Contractor* requires continued use of any Exclusive Assets that are not Transferable Assets or any Non-Exclusive Assets, the *Contractor* shall as soon as reasonably practicable:
		1. procure a non-exclusive, perpetual, royalty-free licence for the *Client* and/or the Replacement *Contractor* to use such assets (with a right of sub-licence or assignment on the same terms); or failing which
		2. procure a suitable alternative to such assets, the *Client* or the Replacement *Contractor* to bear the reasonable proven costs of procuring the same.
	4. The *Contractor* shall as soon as reasonably practicable assign or procure the novation of the Transferring Contracts to the *Client* and/or the Replacement *Contractor*. The *Contractor* shall execute such documents and provide such other assistance as the *Client* reasonably requires to effect this novation or assignment.
	5. The *Client* shall:
		1. accept assignments from the *Contractor* or join with the *Contractor* in procuring a novation of each Transferring Contract; and
		2. once a Transferring Contract is novated or assigned to the *Client* and/or the Replacement *Contractor*, discharge all the obligations and liabilities created by or arising under that Transferring Contract and exercise its rights arising under that Transferring Contract, or as applicable, procure that the Replacement *Contractor* does the same.
	6. The *Contractor* shall hold any Transferring Contracts on trust for the *Client* until the transfer of the relevant Transferring Contract to the *Client* and/or the Replacement Contractor has taken place.
	7. The *Contractor* shall indemnify the *Client* (and/or the Replacement *Contractor*, as applicable) against each loss, liability and cost arising out of any claims made by a counterparty to a Transferring Contract which is assigned or novated to the *Client* (and/or Replacement *Contractor*) pursuant to paragraph 8.6 in relation to any matters arising prior to the date of assignment or novation of such Transferring Contract. Clause [19] (Other people's rights in this contract) shall not apply to this paragraph 8.9 which is intended to be enforceable by Third Parties Beneficiaries by virtue of the CRTPA.
1. No charges
	1. Unless otherwise stated, the *Client* shall not be obliged to pay for costs incurred by the *Contractor* in relation to its compliance with this Schedule.
2. Dividing the bills
	1. All outgoings, expenses, rents, royalties and other periodical payments receivable in respect of the Transferring Assets and Transferring Contracts shall be apportioned between the *Client* and the *Contractor* and/or the Replacement *Contractor* and the *Contractor* (as applicable) as follows:
		1. the amounts shall be annualised and divided by 365 to reach a daily rate;
		2. the *Client* or Replacement *Contractor* (as applicable) shall be responsible for or entitled to (as the case may be) that part of the value of the invoice pro rata to the number of complete days following the transfer, multiplied by the daily rate; and
		3. the *Contractor* shall be responsible for or entitled to (as the case may be) the rest of the invoice.
1. [↑](#footnote-ref-2)