



2019

(1)

And

(2)

DESIGN SUPPLY AND INSTALL AGREEMENT

relating to Cleanrooms at
Zephyr Building
Harwell Science & Innovation Campus
Didcot
Oxfordshire
OX11 0RL

THIS DEED is made the day of 2019

BETWEEN

Satellite Applications Catapult Limited a company registered in England under number 07964746, whose registered office is at Electron Building, Fermi Avenue, Harwell, Didcot, Oxfordshire OX11 0QR ("the Employer"); and

[•] (**Company number [•]**) of [•] ("the Contractor")

And referred to as:
The Parties

BACKGROUND

1. The Employer has agreed with the Contractor for the Contractor to perform the Works in the Property.
2. The Parties have agreed that the Works shall be carried out in accordance with the terms of this Agreement including the Specification and in so far as the items plant and machinery or other matters are not included defined or detailed in such drawings plans and other data they nonetheless will be deemed to form part of the Specification.

IT IS HEREBY AGREED AS FOLLOWS

1 DEFINITIONS

- 1.1 Defined Terms.** Defined terms used in this Agreement and not otherwise defined in this Agreement will have the meaning given to them in **Schedule 1** hereto.

2 THE CONTRACTOR'S OBLIGATIONS

- 2.1** The Contractor shall undertake and shall carry out and complete the construction of (and, if responsible for the same, the design of the completion/development of the design of) the Works in accordance with the terms of this Agreement.
- 2.2** The Contractor warrants and undertakes the following structural design liabilities and limitations to the Employer :

- 2.2.1** the structural design of the Works (whether carried out by the Contractor or by any other person or persons) shall in respect of any inadequacy in such design have the same liability to the Employer, whether under Statute or otherwise as would an architect or other such professional designer who holds himself out as competent to take on the work for such design and who has supplied such design for or in connection with the works to be carried out and completed, irrespective of whether the design was completed by an independent contract the Contractor must ensure the design will be undertaken with all the reasonable skill, care and attention to be expected of a competent and qualified professional designer experienced in performing similar services and works of a similar nature, value, complexity and timescale to the Works; and,

- 2.2.2 that it has used only materials in accordance with the guidance contained in the publication “Good Practice in the Selection of Construction Materials” (2011 edition as may be amended from time to time).
 - 2.2.3 that the Works shall be performed in a good and workmanlike manner in accordance with good building practice using good quality materials in accordance with the Specification and in accordance with the Requisite Consents with due diligence and using all reasonable endeavours having regard to the requirement to achieve practical completion of the Works by the Completion Date.
- 2.3 The Contractor shall be responsible for any discrepancies and divergences between any of the documents that form part of the Specification.
- 2.4 The Contractor shall be deemed to have inspected and examined the Property and its surroundings and to have satisfied himself before the date of the Agreement as to the form and nature of the Property, the extent, nature and difficulty of the work and materials necessary for the completion of the Works, the means of communication with and restrictions of access to the Property, the accommodation it may require, and in general to have obtained for itself all necessary information as to risks, contingencies and all other circumstances influencing or affecting the Works. The Contractor shall not be entitled to any extension of time or to any additional payment on grounds of any misunderstanding or misinterpretation of any such matter, nor shall the Contractor be released from any of the risks accepted or obligations undertaken by it under this Agreement on the ground that it did not or could not have foreseen any matter which might affect or have affected the execution of the Works.
- 2.5 The Contractor hereby grants as beneficial owner and with full title guarantee in respect of copyright and all other intellectual property rights in the same to the Employer (or where it is not the beneficial owner shall use its reasonable endeavours to procure) an irrevocable, royalty-free and non-exclusive licence to use and reproduce for any purpose whatsoever connected with the Works or the completed Works any and all plans, drawings, specifications and other information and documents which have been or will be provided and prepared by the Contractor (the “**Proprietary Materials**”). Each such licence shall also carry the right to grant sub-licences and shall be transferable to third parties.
- 2.6 All royalties and other sums payable to any third party in respect of the use in execution of the Works or the incorporation in to the Works of any matter or thing which is the subject of any patent, copyright or other intellectual property right shall be deemed to be included in the Contract Sum, and the Contractor shall indemnify the Employer from and against any infringement or alleged infringement of any such patent, copyright or other intellectual property right.
- 2.7 The Contractor shall comply with the Requisite Consents and all relevant planning permissions and/or authority thereto and any statutory requirements and notices applicable to the Works and shall pay the fees and charges in respect of them.
- 2.8 The Contractor shall:
 - 2.8.1 comply with the requirements imposed by the Construction, Design Management Regulations (“CDM”) 2015; and
 - 2.8.2 without limiting **clause 2.8.1**, provide to the Employer copies of all health and safety files on the date of completion.

- 2.8.3 in addition to the above obligations in relation to the health and safety files, the Contractor shall file before completion of Works without charge to the Employer such design documents and related information to show or describe the Works as built or relate to the maintenance and operation of them or their installations.
- 2.9 Without limiting either Party's statutory and/or regulatory duties and responsibilities, the Parties will endeavour to foster and establish a culture and working environment in which health and safety is of paramount importance to everybody involved in the project. In addition to the specific health and safety requirements of this Contract, the Contractor accepts without limitation liability and responsibility for health and safety requirements in respect of the Works and undertakes to:
- 2.9.1 comply with all health and safety requirements promulgated by the Health and safety Executive;
- 2.9.2 ensure that all personnel engaged by the Contractor and members of the Contractors supply chain on-site, receive appropriate site-specific health and safety induction training and regular refresher training if needed;
- 2.9.3 ensure all personnel have access at all times to competent health and safety advice in accordance with regulation 7 of the management of Health and Safety at Work regulations 1999; and
- 2.9.4 ensure that there is a full and proper health and safety consultation with all such personnel in accordance with health and Safety (Consultation with Employees) Regulations 1996;
- 2.9.5 ensure guidance provided by HSE Fire Safety in Construction is followed to manage any fire risks carrying the Works and to prevent and mitigate any risk to the Main Building and is responsible for connecting a compatible fire alarm system to the existing Main Building fire alarm system;
- 2.9.6 produce for inspection to the Employer before commencement of Works a professional indemnity insurance certificate with limits of indemnity;
- 2.9.7 maintain such insurance until the completion of the Works.
- 2.10 The Contractor shall at all times prevent any public or private nuisance (including, without limitation, any such nuisance caused by noxious fumes, noisy working operations or the deposit of any material or debris on the public highway) or other interference with the rights of any adjoining or neighbouring landowner, tenant or occupier or any statutory undertaker arising out of the carrying out of the Works and shall assist the Employer in defending any action or proceedings which may be instituted in relation thereto. In particular, the Contractor is responsible for:
- 2.10.1 ensuring the cleanroom is fully ventilated using the relevant ISO 14644-1 classification guidelines maintaining air quality and cleanliness by particle concentration, and ensuring cleanroom limits for airborne particle contamination are within the limits; and the requisite air changes per hour are conducted;
- 2.10.2 ensure the lighting and emergency lighting is in conformity with the requisite Electrical Contractors Association regulations and is linked to the main distribution board;
- 2.10.3 ensure the installation of a mini distribution board for all power to supply the

clean room.

2.10.4 ensure a proposal is submitted to Employer in relation to heating the clean room; and

2.1.5 the Contractor shall be responsible for and shall indemnify the Employer from and against any and all expenses, liabilities, losses, claims and proceedings whatsoever resulting from any such nuisance or interference, save only where such nuisance or interference is the consequence of a written instruction of the Employer or the Employer's Agent. Without prejudice to the Contractor's obligations under this clause, the Contractor shall ensure that there is no trespass on or over any adjoining or neighbouring property arising out of or in the course of or caused by the carrying out of the Works.

- 2.11 Notwithstanding any sub-contracting by the Contractor of any of its obligations under this Agreement, the Contractor is and shall remain liable to the Employer for any and all elements of the design and construction of the Works carried out by others and for all acts, omissions and defaults of all its employees, agents, consultants, sub-contractors and suppliers as if the same had been carried out by or were the acts, omissions or defaults of the Contractor.

3 REPRESENTATIONS AND WARRANTIES

- 3.1 The Employer warrants to the Contractor as follows:

3.1.1 Status and Power. The Employer has all requisite capacity, power and authority to enter into, and carry out the transactions contemplated by this Agreement.

3.1.2 Authorisation and Enforcement of Documents. All necessary action has been taken to authorize the execution, delivery and performance of this Agreement by the Employer and the Employer has duly executed and delivered this Agreement. These Agreements are legal, valid and binding obligations of Employer, enforceable against Employer by the Contractor in accordance with their respective terms.

3.1.3 The Employer will not materially obstruct the Contractor in the carrying out of the Contractor's obligations under this Agreement.

- 3.2 The Contractor hereby represents and warrants to Employer that it shall hold in trust for the benefit of Employer warranties provided by any third party supplier and/or manufacturer relating to any component part of the Works. The Contractor shall deal with the suppliers and/or manufacturers in attempting to ensure that the applicable warranties are honoured and shall pass the benefit of such warranties to Employer. Nothing in this clause shall be construed as limiting or reducing the liability of the Contractor as otherwise provided for in this Agreement.

4 COMMENCEMENT AND COMPLETION

- 4.1 The Contractor may commence the Works on the Commencement Date and the Contractor shall complete the Works on or before the Completion Date (or, as may be the case, the relevant Adjusted Completion Date).

- 4.2 The Employer's Agent shall make any adjustments to a Completion Date and/or an Adjusted Completion Date as may be fair and reasonable as a result of any one of the events (called "Relevant Events") set out below:

- 4.2.1 any instruction (including any Variation) issued by either or both the Employer's Agent and the Employer in accordance with this Agreement;
- 4.2.2 the exercise by the Contractor of any right of suspension pursuant to clause 9.12; or
- 4.2.3 any breach or act of prevention on the part of the Employer or those for whom the Employer is responsible

provided always that the Contractor shall not be entitled to any extension of time where and to the extent that any event referred to in clause 4.2.1, 4.2.2 or 4.2.3 results from any negligence, default or breach of contract on the part of the Contractor, its servants or agents, or any sub-contractor or supplier or their respective servants or agents or where (and to the extent that) the delay in question is concurrent with another delay caused by the Contractor.

- 4.3 If at any time the Contractor considers that a Relevant Event has occurred (and that such Relevant Event has caused or will/is likely to cause a delay to the Completion Date) the Contractor shall immediately notify the Employer's Agent in writing details of the Relevant Event, the impact that the Contractor considers that its occurrence is likely to have on the time for performance of the Works (and any likely impact on the Contract Sum) and the Contractor shall provide all information that the Employer's Agent reasonably requires in order to enable the Employer's Agent to assess whether any extension of time (or adjustment to the Contract Sum) is due.

- 4.4 The procedure for determining whether practical completion of the Works has occurred shall be as follows:-

- 4.4.1 the Contractor shall give the Employer's Agent notice in writing when it considers that the Works have reached practical completion.
- 4.4.2 If the Employer's Agent considers in its reasonable opinion that practical completion has occurred it shall issue a certificate to that effect (the "Certificate of Practical Completion").
- 4.4.3 If the Employer's Agent does not consider in its reasonable opinion that practical has occurred it shall notify the Contractor setting out those aspects of the Works which it considers are not complete. The Contractor shall forthwith carry out and complete the items set out in the Employer's Agent's notice and the Contractor shall thereafter serve a further notice in accordance with clause 4.4.1 above.
- 4.4.4 The procedure set out in clauses 4.4.1 to 4.4.3 (inclusive) shall be repeated as often as shall be necessary.

- 4.5 The Certificate of Practical Completion shall not be regarded as evidence as to the absence of defects in the Works.

5 PARTIAL POSSESSION

- 5.1 If at any time or times before the date of practical completion the Employer wishes to take possession of any part and the consent of the Contractor (which consent shall

not be unreasonably withheld or delayed) has been obtained, then notwithstanding anything expressed or implied elsewhere in this Agreement, the Employer may take possession thereof. The Employer's Agent shall thereupon issue to the Contractor a written statement identifying the part taken into possession and, notwithstanding anything expressed or implied elsewhere in this Agreement, the following provisions of clause 5 shall apply.

- 5.2 For the purposes of clause 4 completion of the relevant part shall be deemed to have occurred (and the Employer's Agent shall issue a notice pursuant to clause 4.4.2 that effect) and the Defects Liability Period in respect of the relevant part shall be deemed to have commenced on the date on which the Employer shall have taken possession of the relevant part.
- 5.3 When in the opinion of the Employer's Agent any defects, shrinkages or other faults in the relevant part which it may have required to be made good under clause 6.1 shall have been made good it shall issue a certificate to that effect.
- 5.4 As from the date on which the Employer shall have taken possession of the relevant part the obligations under clause 10.3.3 shall terminate in respect of the relevant part (but not further or otherwise).

6 DEFECTS

- 6.1 Any defects, shrinkages or other faults which shall appear in the Works within 12 months after the completion of the Works (the “**Defects Liability Period**”) and which are due to failure of the Contractor to comply with its obligations under this Agreement shall be specified by the Employer's Agent in a schedule of defects which it shall deliver to the Contractor as an instruction of the Employer's Agent as soon as reasonably practicable. Unless the Employer's Agent shall otherwise instruct, the Contractor shall forthwith upon receipt of such schedule commence and diligently proceed with the making good of any defects, shrinkages and other faults therein specified at no cost to the Employer: and, if the Employer's Agent shall otherwise instruct, a reasonable deduction in respect of any such defects, shrinkages and other faults not made good shall be made from the Contract Sum.
- 6.2 Notwithstanding clause 6.1, the Employer's Agent may, whenever it considers it necessary to do so, issue instructions requiring any defects, shrinkages or other faults referred to in this clause 6.1 to be made good. The Contractor shall forthwith upon receipt of such instructions comply with the same at no cost to the Employer; or, if the Employer's Agent shall otherwise instruct, a reasonable deduction in respect of any such defects, shrinkages and other faults not made good shall be made from the Contract Sum.
- 6.3 Where the Employer notifies to the Contractor that any defect, shrinkage or other fault:-
 - 6.3.1 is affecting the use or occupation of the completed Works; or
 - 6.3.2 gives rise to a health and safety risk; or
 - 6.3.3 is causing damage;

or is likely to do so if not rectified without delay, the Contractor shall ensure that the required works of making good are commenced as soon as practicable (and in the event of emergency within 24 hours of being requested to do so) or at such time and date as the Employer may reasonably require and thereafter diligently carried out and completed in accordance with the Employer's reasonable requirements.

- 6.4 When in the opinion of the Employer's Agent any defects, shrinkages or other faults which it may have required to be made under good **clause 6.1** and/or **clause 6.2** shall have been made good it shall issue a certificate (the "Certificate of Making Good Defects") to that effect.

7 OCCUPATION AND ACCESS

- 7.1 The Employer shall provide the Contractor with a working environment suitable for the carrying out of its obligations under this Agreement as more particularly described in clause 7.2 as the "Operational Conditions" from the Commencement Date at the Property and at the Employer's expense where appropriate.

- 7.2 The Operational Conditions are as follows:

7.2.1 access from 8 am to 6 pm Monday to Friday to the Property; and

7.2.2 electricity, water and lighting.

- 7.3 The Employer and its advisers may at all reasonable times from the date of this Agreement on reasonable notice to the Contractor enter the Property in order to inspect and view the state and progress of the Works

8 EMPLOYER'S INSTRUCTIONS AND VARIATIONS

- 8.1 The Contractor shall comply with all instructions in writing relating to the Works issued to it by either the Employer's Agent or the Employer save that where such instruction requires a Variation, the Contractor need not comply to the extent that it makes reasonable objection in writing to both the Employer's Agent and the Employer to such compliances provided always that the absence of agreement as to the adjustment to the Contract Sum in respect of any such Variation shall not be considered a reasonable ground for objection.

- 8.2 The Employer's Agent may issue instructions requiring a Variation. No Variation required by the Employer's Agent shall vitiate this Agreement.

- 8.3 Subject to **clause 8.4.1**, the Contractor shall not immediately comply with any instruction under **clause 8.2** but shall first submit to the Employer's Agent as soon as practicable (but in any event within 5 working days) following receipt of such instruction a budget price for the Variation reflective of the market conditions at the time of the Variation being requested, supported by a detailed breakdown showing how the budget price has been calculated, and shall thereafter submit to the Employer's Agent within 21 days (or such other period as may be stipulated or allowed by the Employer's Agent) following receipt of such instruction:

8.3.1 the Contractor's valuation of the Variation, supported by all necessary calculations;

8.3.2 the amount of any additional payment required by the Contractor in order to enable each Adjusted Completion Date to be maintained or (if in the reasonable opinion of the Contractor the same is unachievable) any adjustment of each Adjusted Completion Date, together with the Contractor's proposals for the minimising the same; and

8.3.3 the amount of any direct loss and/or expense which may be incurred by the Contractor arising out of or by reason of compliance with such instruction.

Thereafter the Contractor and the Employer's Agent shall take all reasonable steps to agree such details and any agreement so reached and confirmed by the Employer's Agent in writing shall be binding upon the parties to this Agreement. The Contractor shall thereafter forthwith comply with such instruction. The Employer's Agent shall make the agreed adjustment (if any) of each Adjusted Completion Date under **clause 4.2** and the Contract Sum shall be adjusted by the agreed amount.

- 8.4 Should it not be practicable for the Contractor and the Employer's Agent to agree on all or any of the matters referred to in **clause 8.3** prior to the Contractor complying with an instruction under **clause 8.2**, or if within a reasonable time the Contractor and the Employer's Agent cannot agree on all or any of such matters, the Employer's Agent may either:

8.4.1 instruct the Contractor to comply with the instruction under **clause 8.2** in the absence of such agreement, in which event the provisions of **clause 8.5** shall thereafter apply; or

8.4.2 withdraw the instruction under **clause 8.2**, in which event the Contractor shall have no claim against the Employer arising out of or in connection with such instruction or failure to reach agreement.

- 8.5 Upon the issue of an instruction under **clause 8.4.1** the Contractor shall forthwith comply with the same. The Contractor and the Employer's Agent shall take or continue to take all reasonable steps to agree a fair valuation of the Variation reflective of the market conditions at the time of the Variation being requested including any direct loss and/or expense which may be incurred by the Contractor arising out of or by reason of compliance with such instruction. Any agreement so reached and confirmed by the Employer's Agent in writing shall be binding upon the parties to this Agreement.

- 8.6 The Contractor shall not be entitled to recover the cost of any additional or varied work unless such work has been undertaken pursuant to an instruction issued under this **clause 8**.

9 PAYMENT

- 9.1 The Employer shall pay the Contractor the Contract Sum in accordance with the terms of this Agreement.

- 9.2 The final date for payment shall be [28] days after the due date (in each case the "Final Date").

- 9.3 The Employer shall pay the Notified Sum on or before the Final Date without deduction unless it gives notice (a "Pay Less Notice") to the Contractor no later than 5 days before the Final Date specifying:

9.11.1 the sum that the Employer considers to be due on the date the Pay Less Notice is served; and

9.11.2 the basis on which that sum is calculated.

- 9.4 A Pay Less Notice may be given separately or as part of a Payment Notice provided always that it complies with the requirements of **clause [9.3]**.

- 9.5 If the Employer fails to pay any sum that has fallen due by the Final Date then,

unless the Employer has served a valid Pay Less Notice, the Employer shall pay to the Contractor in addition to any amount not properly paid simple interest thereon at a rate of 5% per annum above the base rate of the Bank of England for the period until such payment is made.

- 9.6 The Employer shall be entitled to retain 5% (Five percent) (as hereafter provided) of the total amount of the value of the work, materials and goods covered by any Approved Invoice. The percentage to be retained shall be the Retention Percentage in relation to work which has not reached completion and half the Retention Percentage in relation to work which has reached completion but in respect of which no Certificate of Making Good Defects has been issued. The Employer shall not be obliged to place any amount so retained in a separate bank account and may apply such amount in whole or in part in satisfaction of any amount due or becoming due from the Contractor to the Employer under this Agreement.
- 9.7 Without prejudice to any other rights or remedies which the Contractor may possess, if the Employer fails to pay to the Contractor any sum properly due under this Agreement by the Final Date and such failure continues for 7 days after the Contractor has given to the Employer written notice of its intention to suspend performance of its obligations under this Agreement, the Contractor may suspend such performance until the outstanding amount is paid in full and such suspension shall not be treated as a default.
- 9.8 VAT shall be payable in addition in respect of those parts of the Works which are subject to VAT. The Contractor shall provide to the Employer valid Value Added Tax invoices in respect of every sum that falls due under this Agreement but provision of such invoices shall not be conditions precedent to payment. However, the Employer shall not be liable to pay interest (pursuant to clause [9.5]) in respect of any sum that has fallen due if the Contractor has failed to provide an invoice in relation to such sum under this clause.
- 9.9 The Contractor's entitlement in respect of the design, carrying out and completion of the Works shall not exceed the Contract Sum and the Contract Sum shall not be adjusted except by agreement or as otherwise expressly provided for in this Agreement.

10 LIABILITY AND INSURANCE

10.1 Limitation of Liability.

- 10.1.1 Neither party excludes or restricts its liability for death or personal injury resulting from its own negligence or for fraudulent misrepresentation, or to the extent it is not permitted to do so by law.
- 10.1.2 No action or proceedings for any breach of this Agreement shall be commenced after the expiry of twelve years from the date of the completion of the Works or such longer period as may reflect the duration of any maintenance contract(s) as may be agreed by the parties in respect of the completed Works (or any part thereof).

10.2 Indemnities.

- 10.2.1 The Contractor shall be liable for and shall indemnify the Employer from and against any losses, damages, expenses, liabilities, claims, costs or proceedings suffered incurred or payable by the Employer in respect of personal injury to or death of any person or injury or damage to any real or personal property (other than damages to the Works or to any unfixed materials and equipment delivered to or placed on or adjacent to the Works and intended therefore) insofar as the same arise by reason of the carrying out of the Works except to the extent that the same arise by reason of any breach, failure, negligence or other default of the Employer or any person for whom the Employer is responsible.

10.3 Insurance.

- 10.3.1 The Contractor shall purchase from and maintain with a company or companies lawfully authorised to do business in the jurisdiction of the Property insurance for each of:

10.3.1.1 protection from claims under workers' or workmen's compensation acts and other employee benefit acts which are applicable written for £10,000,000;

10.3.1.2 claims that may arise under or pursuant to **clause 10.2** written for £5,000,000 (five million pounds).

- 10.3.2 Certificates of such insurance shall be made available to the Employer upon request.

- 10.3.3. The Contractor shall take out (in the joint names of the Contractor and the Employer) an All Risks Insurance Policy in relation to the Works and shall maintain the same until possession of the Property is handed over to the Employer.

- 10.3.4 The Contractor shall maintain professional indemnity insurance in an amount of not less than [£5,000,000] ([five] million pounds) for any one occurrence or series of occurrences arising out of any one event (except in respect of claims arising from contamination or pollution where an aggregate will apply) for a period from the date hereof until the date referred to in **clause 10.1.2** provided always that such insurance is available at commercially acceptable rates and terms. the Contractor shall immediately inform the Employer if such insurance ceases to be available at commercially reasonable rates in order that the Contractor and the Employer can discuss means of best protecting the respective positions of the Employer and the Contractor in the absence of such insurance.

- 10.3.5 Both the Contractor and the Employer shall provide to the other party upon request copies of the insurance policies referred to in this **clause 10.3** together with evidence of payment of the premiums and of any renewal premiums.

11 ASSIGNMENT

- 11.1 This Agreement shall be binding upon the parties hereto and their representatives, successors, and permitted assigns. the Contractor shall not be permitted to assign the benefits or the burdens of this Agreement without the prior written consent of the Employer. The Employer shall have the right, without the consent of the Contractor, to assign its rights and interest arising under or in connection with this Agreement to any person with or acquiring an interest in the Property or part thereof. Neither party shall novate any or all of its obligations under this

Agreement without agreement by both parties, such agreement to be in each party's discretion, in writing and made as a deed.

12 TERMINATION

12.1 Defaults by Employer.

12.1. In the event that the Employer materially fails to perform or comply with the terms and conditions of this Agreement (which includes a failure to pay any amount properly due to the Contractor under this Agreement), and such default is not remedied within (30) thirty days of written notice of such default delivered by the Contractor to Employer, the Contractor shall have the right, without prejudice to any other right it may have, to terminate this Agreement with immediate effect by notice to Employer.

12.2 The Employer has the right to terminate the Agreement at any time by notice to the Contractor.

12.3 Defaults by the Contractor.

12.3 In the event the Contractor materially fails to perform or comply with the terms and conditions of this Agreement, and such default is not remedied within 30 days of written notice of such default delivered by Employer to the Contractor, the Employer shall have the right, without prejudice to any other right it may have, to terminate this Agreement with immediate effect by notice to the Contractor.

12.4 In the event of termination of this Agreement pursuant to **clause 12.1 or 12.2** (but not if pursuant to **clause 12.2.3**) the Contractor shall be entitled to:

12.4.1 payment accordance with this Agreement for the period up to the date of determination;

12.4.2 payment of any retention retained by the Employer pursuant to **clause 9.6** and

12.4.3 reimbursement of any reasonable additional costs arising from it including any reasonable costs of materials or goods properly ordered for the Works for which the Contractor shall have paid or for which the Contractor is legally bound to pay and on such payment by the Employer any materials or goods so paid shall become the property of the Employer.

12.5 In the event of termination of this Agreement pursuant to **clause 12.3**, the Contractor shall allow or pay to the Employer the amount of any loss and/or damage caused directly to the Employer by the determination.

12.6 In no event shall the Contractor be entitled to any loss of profits by reason of the determination of this Agreement.

12.7 Subject to **clause 12.4 to 12.6** inclusive, in the event of termination of this Agreement the following shall be included in the respective rights and duties of the Employer and the Contractor:

12.7.1 The Contractor shall immediately vacate the Property in the orderly manner (subject to **clause 12.7.6**) provided that the Contractor shall carry out such works as the Employer's Agent may instruct to secure and protect the Works prior to vacating the Property as

aforesaid such works to secure and protect to be at the Contractor's cost in the event of termination of this Agreement pursuant to **clause 12.3** but otherwise at the Employer's cost (such costs to be reasonable and agreed).

12.7.2 The Contractor shall forthwith deliver to the Employer's Agent copies of all the Proprietary Materials (whether in the course of preparation or completed).

12.7.3 The Employer may employ and pay other persons to carry out and complete the design and construction of the Works and/or the making good of any defects, shrinkages or other faults it may enter upon the Works and use any materials on site and any temporary buildings, plant, tools and equipment at the Property and may purchase any materials and goods necessary for the carrying out and completion of the Works and/or the making good of defects, shrinkages or other faults as aforesaid.

12.7.4 If so required by the Employer, the Contractor shall assign to the Employer the entire benefit of any rights arising under any agreement for the supply of materials, goods or services and/or for the execution of any work for the purposes of this Agreement. The Contractor shall, within 14 days of the Employer's request so to do, execute such documents and do such acts as may be necessary to render such right effective.

12.7.5 The Employer may pay any sub-contractor direct for any materials, goods or services supplied or works executed for the purposes of this Agreement (whether before or after the date of determination) in so far as the Contractor has not already paid for the same.

12.7.6 The Contractor shall within 30 days of receipt in writing by the Employer so to do (but not before) remove from the Property any temporary buildings, plant, tools, equipment, goods and materials belonging to or hired by it.

12.8 Subject to **clause 12.6, clauses 12.4 and 12.5** shall be without prejudice to any other rights and remedies which either party may possess.

13 GENERAL PROVISIONS

13.1 Severability. If any provisions of this Agreement or the application thereof to any circumstances shall be held to be invalid or unenforceable, then the remaining provisions of this Agreement or the application thereof to other circumstances shall be affected hereby and shall be valid and enforceable to the fullest extent permitted by law.

13.2 No Partnership. The Employer and the Contractor have entered into this Agreement for the limited purpose set out herein and agree that the Contractor is acting solely as an independent contractor. Nothing contained in this Agreement, nor any act of the Employer or the Contractor in fulfilling their respective rights and obligations pursuant to this Agreement, will be construed so as to:

13.2.1 create a partnership relationship between the Employer and the Contractor;

- 13.2.2 constitute the Contractor, or any of its employees, as employees or agents of, or co-venturers or partners with, the Employer; and
 - 13.2.3 constitute the Contractor as an employer of the Employer, or any of the Employer's employees.
- 13.3 **Waiver.** Waiver of any performance or breach of this Agreement shall not constitute a waiver of any subsequent performance or breach of a requirement herein.
- 13.4 **Amendment.** No amendment to this Agreement or any waiver of a right flowing from it will have any effect unless it is explicit and evidenced in writing and duly executed by each of the parties hereto.
- 13.5 **Dispute Resolution.**
 - 13.5.1 If any dispute or difference as to the construction of this Agreement or any matter or thing of whatsoever nature arising under or in connection therewith shall arise between Employer and the Contractor it may be referred to the Court of Arbitration based in London. When Employer or the Contractor requires any matter to be referred to Arbitration then either Employer or the Contractor shall give written notice to the other to such effect and such matters shall be referred to Arbitration.
 - 13.5.2 The Arbitrator shall give reasons for his decision and shall have discretion as to how the cost of the Adjudicator's fee is apportioned between the parties.
 - 13.5.3 The Arbitrator's decision shall be final and binding.
- 13.7 **Notices.** Any legal notice shall be in writing and given by actual delivery by registered post or recorded delivery. If sent by registered post or recorded delivery the notice shall, subject to proof to the contrary, be deemed to have been received 48 hours after the date of posting (excluding Saturday and Sunday and public holidays).
- 13.8 Notices shall be given to the following:
 - Head of Legal & The Construction Manager
 - Satellite Applications Catapult Limited
 - Electron Building, Fermi Avenue
 - Harwell, Oxfordshire, OX11 0QR
 - Tel. 01235 567999
- 13.9 **Entire Agreement.** This Agreement together with the Schedules hereto the entire agreement and understanding of the parties in connection with the subject matter of this Agreement and supersedes and extinguishes all previous agreements between the parties relating to the subject matter hereof and all and any representations and warranties previously given and/or made other than those expressly set forth herein (other than any misrepresentation or breach of warranty which constitutes fraud).
- 13.10 **Governing Law.** This Agreement is made pursuant to and shall be governed by and construed in accordance with the laws of England and subject to the provisions of **clause 13.5** the parties hereby submit to the jurisdiction of the English courts.

13.11 Third Party Rights. Nothing in this Agreement shall confer any right on any third party to enforce any of the terms of this Agreement.

13.12 Schedules and Appendices. Each and every one of the schedules and appendices which is referred to in this Agreement and attached to this Agreement shall form part of this Agreement.

AS WITNESS TO THE HANDS OF THE PARTIES HERETO

EITHER

.....
signed by or on behalf of the Employer

In the presence of:-

.....
Signed by or on behalf of the Contractors

In the presence of:-

OR

Executed as a Deed by the Employer

.....
By affixing hereto its common seal in the presence of:-

Or acting by a Director and its Secretary/2 Directors whose signatures are here subscribed

.....[Name]

..... [Signature]
Director

.....[Name]

..... [Signature]
Secretary/Director

Executed as a Deed by the Contractor

.....
By affixing hereto its common seal in the presence of:-

Or acting by a Director and its Secretary/2 Directors whose signatures are here subscribed

.....[Name]

..... [Signature]
Director

.....[Name]

..... [Signature]
Secretary/Director

SCHEDULES

SCHEDULE 1 – Definitions

"Agreement" means this agreement including the terms, conditions and any schedules and appendices attached to it.

"Adjudicator" means an adjudicator to be appointed in accordance with **clause 13.5**.

"Adjusted Completion Date" means the Completion Date [for each **Section**] as may be adjusted in accordance with **clause 4.2**.

"Agreement" shall mean this agreement and the attached schedules and appendices.

"Agreed Stage Payment" means the payments as set out in Schedule 2.

"Commencement Date" means [•]

"Completion Date" means [•] **OR** the date stated for [each **Section**] below:

Section number	Completion Date
1	[•]
2	[•] etc

"Contract Sum" means £[•] ([•] pounds) exclusive of VAT.

"Employer's Agent" means [•] of [•] or such other person as the Employer shall nominate to act in their place.

"First Monthly Application Date" means [•]

"LAD Rate" means the sum of [£[•] per [day/week] or part thereof.

"Principal Designer" means [•]

"Principal Contractor" means [•]

"Property" means [•]

"Requisite Consents" means [•] **"Retention Percentage"** means [five] percent.

"Scheme" means the scheme contained within the Scheme for Construction Contracts (England and Wales) Regulations 1998 (as amended)

[**"Section"** means one of the **Sections** into which the Works have been divided from phased completion as identified below:

Section 1: [•]; and

Section 2: [•].]

"Specification" means the documents set out in Appendix 1 including (as they are from time to time made in accordance with the provisions of this Agreement) any plans or variations from alterations and additions to and revisions.

"Variation" means an alteration or modification of the design, quality or quantity of the Works instructed by either the Employer or the Employer's Agent to the Contractor pursuant to clause 8.

"Works" means [•]

SCHEDULE 2 – Payment Information

[Alternative to monthly applications – if the Employer knows of Stage Payments to be made]

APPENDICES

APPENDIX 1 – The Specification

[Insert documents comprising the specification and any requirements of the Employer. This can also include any 'Contractor's Proposals'.]

APPENDIX 2 – Project Plan