

SCHEDULE 24

Form of Direct Agreement

DATED

THE SECRETARY OF STATE FOR DEFENCE

and

[KEY SUB-CONTRACTOR]

and

[CONTRACTOR]

DIRECT AGREEMENT

CONTENTS

Clause	Heading	Page
1	Definitions and Interpretation	2
2	Warranty	3
3	Step In Rights.....	3
4	Novation.....	5
5	Confidentiality	7
6	Assignment.....	7
7	Concurrence Of Contractor	7
8	Notices	8
9	Waiver.....	8
10	Counterparts.....	8
11	Severability	9
12	Third Party Rights	9
13	Governing Law	9
14	Revival of Rights	9

THIS DEED is made on

BETWEEN

- (1) **THE SECRETARY OF STATE FOR DEFENCE** at Ministry of Defence, Whitehall, London SW1A 2HB (the “**Authority**”) (which term shall include its permitted successors in title and assigns);
- (2) **[KEY SUB-CONTRACTOR]**, a company registered in England with number ●, whose registered office is at ● (the “**Key Sub-Contractor**”);
- (3) **[CONTRACTOR]**, a company registered in England with number ●, whose registered office is at ● (the “**Contractor**”).

WHEREAS

- (A) The Contractor has entered into a contract (the “**Project Agreement**”) with the Authority to provide certain marine support services in respect of the Defence Marine Services Next Generation project (“**the Project**”).
- (B) The Contractor has consequently entered into a contract (the “**Key Sub-Contract**”) with the Key Sub-Contractor in relation to the provision by the Key Sub-Contractor to Contractor of certain marine support services, as more accurately described in the Key Sub-Contract.
- (C) It is a requirement of the Project Agreement that the Key Sub-Contractor provides a direct agreement in this form in favour of the Authority.
- (D) Accordingly, the Contractor and the Key Sub-Contractor have agreed to execute this Deed in favour of the Authority.

NOW IT IS AGREED as follows:

1 **Definitions and Interpretation**

1.1 In this Deed, including the recitals, unless the context shall otherwise require:

“**Key Sub-Contract Termination Notice**” shall have the meaning set out in Clause 3.4 of this Deed;

“**PA Step-In Notice**” shall have the meaning set out in Clause 3.8 of this Deed;

“**Proposed Novation Notice**” shall have the meaning set out in Clause 4.1 of this Deed;

“**Proposed Substitute**” shall have the meaning set out in Clause 4.2 of this Deed;

“**Step-In Notice**” shall have the meaning set out in Clause 3.4 of this Deed;

“**Step-In Period**” means the period starting on the date of a Step-In Notice or PA Step-In Notice (as the case may be) and ending on the relevant Step-Out Date.

“**Step-Out Date**” shall have the meaning set out in Clause 3.15 of this Deed;

“**Suspension Period**” shall have the meaning set out in Clause 3.4 of this Deed;

1.2 Wording importing:

- (a) one gender only shall be construed as importing any other gender; and
- (b) the singular shall be construed as importing the plural and vice versa; and
- (c) references to persons shall include corporations.

- 1.3 The Clause, sub-clause and (where provided) paragraph headings and captions in the body of this Deed, do not form part of this Deed and shall not be taken into account in its construction or interpretation.
- 1.4 In this Deed, unless the context otherwise requires or save as expressly defined or provided in this Deed, where words and expressions appear in capitalised terms, such words and expressions shall have the same meaning as given to such words and expressions under the Key Sub-Contract and shall be deemed to be incorporated into this Deed.

2 Warranty

- 2.1 The Key Sub-Contractor warrants and undertakes to the Authority that it has complied and shall continue to comply with the terms of, and has fulfilled and shall continue to fulfil its duties and obligations as set out in, the Key Sub-Contract, provided always that:
- (a) the Key Sub-Contractor shall owe no greater duties to the Authority than it owes to Contractor in respect of the Project under the Key Sub-Contract;
 - (b) the Key Sub-Contractor shall be entitled in any proceedings brought by the Authority for a breach under this Deed to rely on any limitation in the Key Sub-Contract and/or to raise as a defence to those proceedings equivalent rights in defence as it would have against the Contractor under the Key Sub-Contract (excluding any contributory negligence defence, counterclaim or set-off that the Key Sub-Contractor may have against the Contractor under the Key Sub-Contract);
 - (c) any written agreement or arrangement between the Key Sub-Contractor and the Contractor in respect of the Key Sub-Contractor's duties to the Contractor that is not approved by the Authority pursuant to Clause 2.1(d) shall only bind the Authority to the extent that such agreement or waiver does not operate to limit or reduce the duties and liabilities owed to the Authority by the Key Sub-Contractor under this Deed; and
 - (d) the Key Sub-Contractor and Contractor warrant that, save as expressly provided within the Key Sub-Contract, for example, in terms of clause X (Change) of the Key Sub-Contract, they will not amend the terms and conditions of the Key Sub-Contract without prior written approval of the Authority (such consent not to be unreasonably withheld or delayed).

3 Step In Rights

- 3.1 The Authority acknowledges that it has no authority to issue any direction or instruction to the Key Sub-Contractor in relation to the performance of the Key Sub-Contractor's duties and obligations under the Key Sub-Contract (except this shall not apply to any notice issued by the Authority in respect of any breach of this Deed) unless and until the Authority has given notice under Clauses 3.4 or 3.8.
- 3.2 Subject to the provisions of Clause 3.5, which shall apply solely with effect from the commencement and during the course of any Suspension Period, the Authority has no liability to the Key Sub-Contractor in respect of sums due under the Key Sub-Contract unless and until the Authority has given notice under Clauses 3.4 or 3.8.
- 3.3 The Key Sub-Contractor and Contractor acknowledge and agree that in the circumstances set out in Clauses 3.4 or 3.8 the Authority shall be entitled to enforce against the Key Sub-Contractor to the exclusion of the

Contractor the terms of the Key Sub-Contract during the Step-In Period as if the Authority had been named as the employer under the Key Sub-Contract in place of the Contractor.

- 3.4 The Key Sub-Contractor agrees that if it gives notice to the Contractor that it is exercising any right to terminate or suspend the Key Sub-Contract or terminate its rights and obligations thereunder or to treat the same as having been repudiated by Contractor as a result of Contractor's breach of the Key Sub-Contract (a "**Key Sub-Contract Termination Notice**") the Key Sub-Contractor shall at the same time serve a copy of such notice on the Authority. Notwithstanding the service of a Key Sub-Contract Termination Notice, the Key Sub-Contract shall not terminate until the expiry of a further 90 Business Days (the "**Suspension Period**"). During the Suspension Period and subject to Clause 3.8 the Authority may give notice in writing ("**Step-In Notice**") to the Key Sub-Contractor requiring the Key Sub-Contractor to accept the instructions of the Authority to the exclusion of the Contractor in respect of the carrying out and completion of the Services upon the terms of the Key Sub-Contract whereupon the Key Sub-Contract Termination Notice issued by the Key Sub-Contractor shall be suspended and, subject to the Authority's compliance with its obligations under Clause 3.5, revoked upon the satisfaction of such.
- 3.5 On condition that the Key Sub-Contractor continues to comply with its obligations under the Key Sub-Contract the Authority shall pay to the Key Sub-Contractor all monies falling due to it in return for the provision of Services to the Authority with effect from the commencement of the Suspension Period until the expiry of the Suspension Period or the Step-Out Date, whichever shall first occur.
- 3.6 Upon the issue of any Step-In Notice (or PA Step-In Notice) by the Authority the Key Sub-Contract shall continue in full force and effect as if no right of termination on the part of Key Sub-Contractor had arisen and the Key Sub-Contractor shall be liable to the Authority in lieu of its liability to the Contractor and the Authority shall be liable to the Key Sub-Contractor in lieu of the Contractor's liability to the Key Sub-Contractor during the Step-In Period.
- 3.7 A Key Sub-Contract Termination Notice served pursuant to the Key Sub-Contract shall only be effective to terminate the Key Sub-Contract or the Key Sub-Contractor's rights and obligations thereunder on the expiry of the Suspension Period and the Key Sub-Contractor agrees and undertakes that it shall not take any other or future step to suspend or terminate the Key Sub-Contract until the expiry of the Suspension Period.
- 3.8 The Key Sub-Contractor agrees that in the event of the occurrence of any circumstance giving rise to a right of termination or step-in for the Authority under the Project Agreement, following the expiry of any applicable rectification programme, the Key Sub-Contractor will if so required by notice in writing given by the Authority (a "**PA Step-In Notice**") and, subject to Clause 3.5 and Clause 3.11, accept the instructions of the Authority or its appointee to the exclusion of Contractor in respect of the carrying out of the Services under the terms of the Key Sub-Contract. The Contractor acknowledges that the Key Sub-Contractor shall be entitled to rely on a notice given by the Authority under this Clause 3.8 as conclusive evidence for the purposes of this Deed of the occurrence of a Contractor Default (as such term is defined under the Project Agreement).
- 3.9 Within ten (10) Business Days of the date of service of:
- (a) a Key Sub-Contract Termination Notice; or
 - (b) a PA Step-In Notice,
- the Key Sub-Contractor shall provide to the Authority details of which the Key Sub-Contractor has knowledge (or of which it ought reasonably to be aware) of all sums which are properly due and payable to the Key Sub-Contractor under the Key Sub-Contract as at the date of such notice and all other obligations of the Contractor under the Key Sub-Contract which remain unperformed as of the date of such notice.
- 3.10 The Key Sub-Contractor shall inform the Authority as soon as reasonably practicable of any changes to or

additions to the sums and obligations set out in Clause 3.9.

- 3.11 The giving of any Step-In Notice or PA Step-In Notice by the Authority shall oblige the Authority to accept liability for the performance of the Contractor's obligations under the Key Sub-Contract including payment of any monies outstanding at the date of such notice (and any amounts notified to the Authority under Clause 3.5 shall be payable to the Key Sub-Contractor within twenty (20) Business Days of notification) as if the Authority had been named as employer thereunder in place of Contractor (except to the extent that any such amounts, obligations or liabilities may be disputed in good faith by the Authority or the Authority's appointee in accordance with the dispute resolution procedure set out in Clause X of the Key Sub-Contract in which event, the Authority shall only pay such amounts, perform such obligations and incur such liabilities found to be due as a result of such procedures), provided that the acceptance of liability under this Clause 3.11 by the Authority shall not prejudice any rights of the Authority under this Deed as against the Contractor and/or the Key Sub-Contractor.
- 3.12 Compliance by the Key Sub-Contractor with the provisions of Clause 3.4 shall not be treated as a waiver of any breach of the Key Sub-Contract on the part of the Contractor giving rise to the rights specified therein or otherwise prevent the Key Sub-Contractor from exercising its rights after the expiration of the Step-In Notice or the PA Step-In Notice unless such rights have ceased pursuant to the provisions of this Deed.
- 3.13 The Key Sub-Contractor shall be entitled to suspend the performance of its obligations under the Key Sub-Contract after the Step-In Notice or the PA Step-In Notice if and to the extent that any amount referred to in Clause 3.11 has not been paid in accordance with Clause 3.11.
- 3.14 If the Authority has not complied with its obligations under Clause 3.11, the right of the Key Sub-Contractor to terminate the Key Sub-Contract pursuant to the Key Sub-Contract Termination Notice shall resume unless otherwise agreed between the Key Sub-Contractor and the Authority in writing and the provisions of Clause 3.4 or Clause 3.7 (as the case may be) shall cease to apply; and
- 3.15 The Authority may give the Key Sub-Contractor twenty (20) Business Days prior written notice of the date on which the Authority will step out of the Key Sub-Contract (the "**Step-Out Date**"). On and from the Step-Out Date:
- (a) the Key Sub-Contractor will be released from all obligations and liabilities to the Authority under the Key Sub-Contract other than those obligations and liabilities relating to circumstances arising during the Step-In Period; and
 - (b) the Authority will be released from all obligations and liabilities under the Key Sub-Contract other than those obligations and liabilities relating to circumstances arising during the Step-In Period.

4 Novation

- 4.1 At any time after the issue of any Step-In Notice or PA Step-In Notice by the Authority, subject always to the provisions of Clause 3.12 and the compliance by the Authority with the obligations set out in Clause 3.11, the Authority may on written notice to the Key Sub-Contractor and the Contractor ("**Proposed Novation Notice**"), require Contractor's rights and liabilities under the Key Sub-Contract to be novated and transferred either to itself or to a company or other legal entity identified in the Proposed Novation Notice and approved by the Key Sub-Contractor in accordance with the provisions of this Clause 4.1 specifying a date not later than thirty (30) Business Days after the date of the Proposed Novation Notice on which such novation is to become effective.
- 4.2 The Authority shall (as soon as practicable after service of the Proposed Novation Notice) supply the Key Sub-Contractor with such information as the Key Sub-Contractor reasonably requires to enable it to decide whether to grant approval to the novation or transfer set out in a Proposed Novation Notice, including without limitation in relation to the company or other legal entity (other than the Authority) mentioned in the Proposed Novation Notice ("**Proposed Substitute**");

- (a) its name and registered address;
- (b) the names of its shareholders and the share capital held by each of them or if the Proposed Substitute is a public limited company the names of any shareholders holding three percent (3%) or more of the share capital and the share capital held by each of them;
- (c) the names of its directors and secretary; and
- (d) the resources which are available or to be made available to the Proposed Substitute to enable it to fulfil the obligations of Contractor under the Key Sub-Contract,

but so that no such information shall be given (and the provisions of Clause 4.3 shall not apply) where the Proposed Substitute is the Authority or an appointee of the Authority whose obligations under the Key Sub-Contract are guaranteed by the Authority.

4.3 The Proposed Substitute shall require the approval of the Key Sub-Contractor, such approval not to be unreasonably withheld or delayed, it being acknowledged that the withholding or delay of such approval shall not be unreasonable where the Proposed Substitute:

- (a) does not have the legal capacity, power and authorisation to become a party to and perform the obligations of the Contractor under the Key Sub-Contract, including if necessary its ability to obtain or maintain in force all necessary authorisations and consents;
- (b) does not have access to the appropriate experience and technical competence, or does not have technical resources available to it, sufficient to enable it to perform the obligations of the Contractor under the Key Sub-Contract; or
- (c) does not have sufficient finance available to it to enable it to perform the obligations of the Contractor under the Key Sub-Contract.

4.4 The Key Sub-Contractor shall notify the Authority in writing within ten (10) Business Days of the later of receipt of a Proposed Novation Notice and receipt of all information required under Clause 4.2 whether or not it has decided to grant such approval to the Proposed Substitute and, if not, the reasons therefore. Any failure so to notify the Authority within the said ten (10) Business Days shall constitute a deemed approval by the Key Sub-Contractor.

4.5 If the Key Sub-Contractor exercises its right to withhold approval to a transfer or novation set out in a Proposed Novation Notice, this shall not prejudice the ability of the Authority to give one or more subsequent Proposed Novation Notices pursuant to Clause 4.1 containing changed particulars relating to the same Proposed Substitute or particulars relating to another Proposed Substitute which the Authority has good cause to believe would satisfy the Key Sub-Contractor's reasonable requirements in relation to the matters in Clause 4.4 provided that only one Proposed Novation Notice may be outstanding at any one time.

4.6 Following the approval of the Proposed Substitute by the Key Sub-Contractor:

- (a) the Proposed Substitute shall be construed in every way to be a party to the Key Sub-Contract in place of the Contractor and thereafter shall be treated as if it was and had always been named as a party to the Key Sub-Contract in place of the Contractor;
- (b) the Proposed Substitute, the Contractor and the Key Sub-Contractor shall enter into a novation agreement and any other requisite agreements, in form and substance required by the Authority (acting reasonably) pursuant to which the Proposed Substitute shall be granted all of the rights and assume all of the obligations and liabilities of Contractor under the Key Sub-Contract as if the Proposed Substitute had been named thereunder from the date of the Key Sub-Contract in place of the

Contractor;

- (c) the Key Sub-Contractor shall owe its obligations under the Key Sub-Contract (whether arising before, on or after such date) to the Proposed Substitute and the receipt or acknowledgement of the Proposed Substitute shall be a good discharge; and
- (d) the Authority and Key Sub-Contractor shall use all reasonable endeavours to agree any amendments to the Key Sub-Contract necessary to reflect the fact that the Project Agreement may have terminated and/or been varied at the time the novation agreement referred to in this Clause 4.6 is entered into.

- 4.7 On any novation and transfer under Clause 4.6, the Authority (where the novation or transfer is to a Proposed Substitute other than the Authority) shall be released from any obligations to the Key Sub-Contractor arising under or in connection with the Key Sub-Contract before or after the date of transfer and any grounds for termination of the Key Sub-Contract by the Key Sub-Contractor at the date of the novation shall be deemed to have no effect.
- 4.8 The release of the Authority under Clause 4.7 above, from any obligations to the Key Sub-Contractor, shall not prejudice any rights of the Authority under this Deed as against Contractor and/or Key Sub-Contractor.

5 Confidentiality

- 5.1 The Key Sub-Contractor shall be bound to comply with the obligations on the part of Contractor contained in clause X of the Key Sub-Contract in relation to all information and matters obtained from any other party under or in connection with the Project.
- 5.2 The Key Sub-Contractor agrees that the Authority shall be entitled to disclose the terms of this Deed to the Ministry of Defence and/or HM Treasury and that the Authority shall be free to use and disclose such information on such terms and in such manner as the Ministry of Defence and/or HM Treasury see fit.

6 Assignment

- 6.1 This Deed shall be binding on and shall ensure to the benefit of the parties and their respective successors and permitted assigns. In the case of the Authority, its successors shall include any person to which the Secretary of State, in exercising his statutory powers to transfer property, rights and liabilities of the Authority upon the Authority ceasing to exist, transfers the rights and obligations of the Authority under this Deed.
- 6.2 No party shall assign or transfer any part of its respective rights or obligations under this Deed without the prior written consent of the others (such consent not to be unreasonably withheld or delayed), provided that:
- (a) the Authority shall be entitled, without the consent of any other party, to transfer all its rights and obligations hereunder, to any person to whom it assigns or otherwise transfers the benefit of the Project Agreement in accordance with Clause 62 (Assignment and Novation) of the Project Agreement;
 - (b) nothing in this sub-Clause shall restrict the rights of the Secretary of State for Defence to effect a statutory transfer; and
 - (c) the Key Sub-Contractor shall assign or transfer this Deed to any party to whom it assigns the Key Sub-Contract in accordance with Clause X (Assignment) of the Key Sub-Contract.

7 Concurrence Of Contractor

The Contractor is a party to this Deed for the purpose of giving consent to the content hereof.

8 **Notices**

8.1 Any notices sent under this Contract must be in writing.

8.2 The following table sets out the method by which notices may be served under this Contract and the respective deemed time and proof of service:

Manner of Delivery	Deemed time of service	Proof of service
Email	9.00am on the first Business Day after sending.	Dispatched as a pdf attachment to an e-mail to the correct e-mail address without any error message.
Personal delivery	On delivery, provided delivery is between 9.00am and 5.00pm on a Business Day. Otherwise, delivery will occur at 9.00am on the next Business Day.	Properly addressed and delivered as evidenced by signature of a delivery receipt.
Prepaid, Royal Mail Signed For TM 1 st Class or other prepaid, next working day service providing proof of delivery.	At the time recorded by the delivery service, provided that delivery is between 9.00am and 5.00pm on a Business Day. Otherwise, delivery will occur at 9.00am on the same Business Day (if delivery before 9.00am) or on the next Business Day (if after 5.00pm).	Properly addressed prepaid and delivered as evidenced by signature of a delivery receipt

8.3 Notices shall be sent to the addresses set out below or at such other address as the relevant Party may give notice to the other Party for the purpose of service of notices under this Contract:

	Contractor	Authority
Contact		
Address		
Email		

9 **Waiver**

Failure by any party at any time to enforce any provision of this Deed or to require performance by the other parties of any provision of this Deed shall not be construed as a waiver of such provision and shall not affect the validity of this Deed or any part of it or the right of the relevant party to enforce any provision in accordance with its terms.

10 **Counterparts**

This Deed may be executed in one or more counterparts. Any single counterpart or a set of counterparts

executed, in either case, by all the parties shall constitute a full and original instrument for all purposes.

11 Severability

If any condition, Clause or provision of this Deed is held to be illegal or unenforceable, the validity or enforceability of the remainder of this Deed shall not be affected thereby.

12 Third Party Rights

Save where expressly provided, nothing in this Deed will create rights pursuant to the Contract (Rights of Third Parties) Act 1999 in favour of anyone other than the parties to this Deed.

13 Governing Law

This Deed shall be governed by the laws of England and Wales, and the parties hereby irrevocably submit to the exclusive jurisdiction of the Courts of England and Wales.

14 Revival of Rights

14.1 In addition to the rights set out in Clause 3.12, the rights of the Key Sub-Contractor to terminate the Key Sub-Contract pursuant to the Key Sub-Contract Termination Notice shall become effective, the provisions of Clause 3.4 shall cease to apply and Key Sub-Contractor shall be entitled to pursue any and all claims (to the extent such claims arise from the act or omission of Contractor) and exercise any and all rights and remedies against Contractor if:

- (a) the Authority fails to pay to the Key Sub-Contractor the sums due to the Key Sub-Contractor pursuant to Clause 3.11 within the period specified in Clause 3.11;
- (b) no Step-In Notice is served before expiry of the Suspension Period;
- (c) a Step-In Notice or a PA Step-In Notice is withdrawn; or
- (d) a Proposed Novation Notice is served by the Authority but no novation is effected by the Novation Effective Date.

IN WITNESS WHEREOF this Deed has been executed as a deed on the date first written above.

EXECUTED (but not delivered until the date of this deed) as a **DEED** by the affixing of the **CORPORATE SEAL** of
**THE SECRETARY OF STATE FOR DEFENCE
OF THE UNITED KINGDOM OF GREAT BRITAIN
AND NORTHERN IRELAND**

for and on behalf of **THE CROWN** and
in the exercise of all and any powers attaching
to his office as Secretary of State

Authorised Signatory

Signatory Full Name

EXECUTED as a **DEED** on behalf of
KEY SUB-CONTRACTOR
a company incorporated in
by

being a person who, in accordance
with the laws of that territory, are
acting under the authority of the company

Authorised Signatory

EXECUTED as a **DEED** on behalf of
CONTRACTOR
a company incorporated in
by

being a person who, in accordance
with the laws of that territory, are
acting under the authority of the company

Authorised Signatory