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Defence
Infrastructure
Organisation



MINISTRY OF DEFENCE

DATED 18-07-2023 | 14:50 ^{BST}
2023

CONTRACT AGREEMENT

between

THE SECRETARY OF STATE FOR DEFENCE

and

Lagan Aviation & Infrastructure

in relation to:

RAF WITTERING AOS REFURBISHMENT PROJECT

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FORM OF AGREEMENT

18-07-2023 | 14:50 BST

THIS AGREEMENT is made on the day of 2023

BETWEEN:

(1) THE SECRETARY OF STATE FOR DEFENCE of the United Kingdom of Great Britain and Northern Ireland, Ministry of Defence, Whitehall, London, SW1A 2HB (hereinafter called the "Client", which expression includes his successors in title and assigns);

and

(2) LAGAN AVIATION & INFRASTRUCTURE, a company incorporated in Northern Ireland (Company Number NI627818) whose registered office is at 21-23 Sydenham Road, Belfast, N. Ireland (hereinafter called the "Contractor").

WHEREAS:

(A) The Client wishes to have the following works provided in connection with the RAF WITTERING AOS REFURBISHMENT PROJECT namely (i) the Works as described in the Scope.

(B) Pursuant to an Award Confirmation Notice issued to the Contractor by the Ministry of Defence (MOD), the Contractor has been appointed as an Alliance Member to the Airfield Operating Surfaces Programmatic Approach, Framework Alliance Contract (AOS-PA FAC) agreement dated 25 October 2022.

(C) In accordance with Schedule 5 governed by the terms of the Airfield Operating Surfaces Programmatic Approach, Framework Alliance Contract (AOS-PA FAC) agreement and the Public Contracts Regulations 2015 (as amended from time to time) ("Regulations"). Referring to Schedule 4 of the AOS-PA FAC agreement, the Client has, in respect of the works, (i) issued this Request for Proposal (RFP) from the Alliance Member and (ii) following a satisfactory assessment of the Proposal the Contractor will be invited to enter into a Project Contract with the Client to perform the works in the terms hereinafter appearing.

NOW IT IS HEREBY AGREED, in consideration of the sum of one pound (£1.00) paid by the Client to the Contractor of which the Contractor acknowledges receipt, as follows:

Words and expressions used in the contract have the meanings respectively assigned to them in this Agreement and the conditions of contract hereinafter referred to. Save in respect of any words and/or expressions which are expressly defined in this contract, any words and/or expressions used in this contract which are defined in the Airfield Operating Surfaces Programmatic Approach, Framework Alliance Contract (AOS-PA FAC) agreement have the meanings respectively attributed to them in the AOS-PA FAC agreement.

The Contractor Provides the Works in accordance with the conditions of contract and the Parties perform and fulfil their respective duties and obligations in accordance with the contract, which contract is constituted by the following documents:

- 1.1 this Agreement;
- 1.2 the Conditions of Contract appearing in Annex 1 hereto (and all references to "conditions of contract" shall be construed accordingly);
- 1.3 the Contract Data Part One (Data provided by the Client) appearing in Annex 1 hereto;
- 1.4 the Contract Data Part Two (Data provided by the Contractor) and the Pricing Document appearing in Annex 1 hereto;
- 1.5 the Insurance Table appearing in Annex 2 hereto;
- 1.6 the programme appearing in Annex 3 hereto;

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- 1.7 the **Prescribed Forms** (of documents) appearing in Annex 4 hereto;
- 1.8 the **Scope** appearing in Annex 5 hereto;
- 1.9 the **Site Information** appearing in Annex 6 hereto; and
- 1.10 the **Activity Schedule** appearing in Annex 7 hereto

(and all references to “the contract” and “this contract” shall be construed accordingly).

- 2. In consideration of the payments to be made by the *Client* to the *Contractor* as hereinafter mentioned, the *Contractor* hereby covenants with the *Client* to carry out and complete the *works* in conformity in all respects with the provisions of the contract.
- 3. In consideration of the *Contractor* performing the *works* in accordance with the contract, the *Client* hereby covenants to pay to the *Contractor* the amounts payable in accordance with the contract at the times and in the manner prescribed by the contract.
- 4. The *Contractor* hereby represents and warrants for the benefit of the *Client* that:
 - 4.1 the *Contractor* has obtained sufficient information about the *Client*, the Base, the Site, the Working Areas (including the accesses thereto) and the intended *works* and that it has made all appropriate and necessary enquiries to enable it to fulfil its obligations arising out of this contract;
 - 4.2 the *Contractor* has all the resources, including financial, technical and human resources, as are required to fulfil its obligations arising out of this contract in accordance with this contract;
 - 4.3 the *Contractor* is a company validly existing and is authorised to conduct its business under the laws of England and Scotland;
 - 4.4 the *Contractor* has the power and authority (including, where its procedures so require, the consent of its holding company or other group company) to enter into this contract, and to perform its obligations hereunder;
 - 4.5 the *Contractor* shall immediately notify the *Client* if the *Contractor* and/or the Guarantor is or becomes Insolvent or suffers a Financial Distress Event and/or if any claim, litigation, adjudication, arbitration or administrative proceeding is in progress or pending or threatened against the *Contractor* or any of its assets or any third party which has given the *Client* a guarantee, bond or indemnity in respect of the *Contractor's* obligations and liabilities under this contract which will or might have a materially adverse effect on the ability of the *Contractor* or any Guarantor or surety to perform its obligations under this contract or any related guarantee, bond or indemnity (as appropriate);
 - 4.6 the *Contractor* has and will maintain the necessary skills, knowledge, training, experience and organisational capability to perform all of the *Contractor's* obligations under this contract;
 - 4.7 the *Contractor* shall immediately notify the *Client* if there is any Change of Ownership in respect of it or the Guarantor or any material breach of subcontract by any Subcontractor or if any Subcontractor is or becomes Insolvent;
 - 4.8 the *Contractor* shall immediately notify the *Client* of any Material Breach of this contract that it becomes aware of;
 - 4.9 the *Contractor* shall immediately notify the *Client* of any downgrading of the *Contractor's* credit rating (as attributed to it by Dun & Bradstreet (D&B), Moody's, Standard & Poor's (S&P) or Fitch Ratings) or that of any third party which has given the *Client* a guarantee, bond or indemnity in respect of the *Contractor's* obligations and liabilities under this contract from that credit rating existing at the date of this contract (provided that notification by the *Contractor* of such information shall not prejudice any rights of the *Client* or the *Contractor* under this contract); and

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- 4.10 this contract is validly executed on behalf of the *Contractor* by duly appointed and authorised officers or representatives of the *Contractor* and is binding upon it.
5. The Parties respectively acknowledge and agree that:
- 5.1 this contract constitutes a *Project Contract* for the purposes of the Framework Alliance Contract;
- 5.2 nothing in this contract constitutes or gives rise to a *Variation* under the Framework Alliance Contract; and
- 5.3 the terms of the Framework Alliance Contract supplement and complement the terms of this contract, provided that, in the event of any conflict or discrepancy existing between any terms of this contract and any terms of the Framework Alliance Contract, the conflicting or discrepant terms of this contract will prevail over the conflicting or discrepant terms of the Framework Alliance Contract.
6. The contract may be executed by the Parties in two or more counterparts, each of which, when executed, shall together constitute a duplicate original, but all the counterparts shall together constitute the one agreement.

IN WITNESS whereof this contract is executed by the Parties as a deed and delivered on the date stated at the beginning of this contract.

Executed by THE SECRETARY OF STATE FOR DEFENCE)	
acting by)	
KAREN CARTER)	<div>DocuSigned by: <i>Karen Christine Anne Carter</i> 5442EBE0F808428.....</div>
one of his authorised signatories)	(Authorised Signatory)
in the presence of:)	
JORDAN WALLIS)	<div>DocuSigned by: <i>Jordan Wallis</i> 1C58C856F4D2451.....</div>
DIO Commercial Officer)	(Witness)
Murrays Lane, HM Naval Base, Portsmouth)	
Executed by LAGAN AVIATION & INFRASTRUCTURE)	
acting by)	<div>DocuSigned by: <i>Steven Turner</i> 728908DB25E243F.....</div>
Steve Turner)	(Director)
and)	
David McAlernon)	<div>DocuSigned by: <i>David McAlernon</i> 57BA627E7DF246D.....</div>
two of its Directors)	(Director)
)	
)	

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ANNEX 1: CONDITIONS OF CONTRACT

This Annex 1 contains the *conditions of contract* referred to in and forming part of this contract.



Engineering and Construction Contract

OPTION C: TARGET CONTRACT WITH ACTIVITY SCHEDULE

This contract should be used for the appointment of a contractor for engineering and construction work, including any level of design responsibility

An NEC document

June 2017

(With Amendments October 2020)

The Government Construction Board, Cabinet Office UK

The Government Construction Board (formerly Construction Clients' Board) recommends that public sector organisations use the NEC contracts and in particular the NEC4 contracts where appropriate, when procuring construction. Standardising use of this comprehensive suite of contracts should help to deliver efficiencies across the public sector and promote behaviours in line with the principles of the Government Construction Strategy.

The Development Bureau, HKSAR Government

The Development Bureau recommends the progressive transition from NEC3 to NEC4 in public works projects in Hong Kong. With suitable amendments to adapt to the Hong Kong local environment, NEC4 is expected to further enhance collaborative partnering, unlock innovations and achieve better cost management and value for money in public works projects.

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NEC is a division of Thomas Telford Ltd, which is a wholly owned subsidiary of the Institution of Civil Engineers (ICE), the owner and developer of the NEC.

The NEC is a suite of standard contracts, each of which has these characteristics:

- Its use stimulates good management of the relationship between the two parties to the contract and, hence, of the work included in the contract.
- It can be used in a wide variety of commercial situations, for a wide variety of types of work and in any location.
- It is a clear and simple document – using language and a structure which are straightforward and easily understood.

NEC4 Engineering and Construction Contract is one of the NEC suite and is consistent with all other NEC4 documents. Also available are User Guides, Flow Charts and Options A, B, D, E and F.

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Foreword

Continuous improvement in project delivery is required to build confidence in the UK construction sector so that we can attract more investment. The Infrastructure and Projects Authority (IPA) is the government's centre of expertise for infrastructure and major projects. We sit at the heart of government, reporting to the Cabinet Office and HM Treasury.

The application of the right contract is central to the success of the overall project delivery system. The NEC suite of contracts has been in existence for over the 20 years and has linked the projects, people and processes together to create the correct environment for successful delivery.

This new and updated NEC4 contract embraces the digital changes that are happening in the construction industry, especially around BIM, which I believe will be central to creating a step change in performance. Whilst looking forward it also builds on the fundamentals required for an effective contract.

The use of NEC4 on public sector projects will help to deliver the Government Construction Strategy as we seek to improve central government's capability as a construction client to deliver further savings in the order of £1.7bn across the Government estate. The IPA looks forward to collaborating with industry to make the delivery of projects more efficient and effective.

Tony Meggs, Chief Executive, Infrastructure and Projects Authority



Infrastructure
and Projects
Authority

Reporting to Cabinet Office
and HM Treasury

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Preface

NEC was first published as a new and innovative way of managing construction contracts in 1993 – some 24 years ago. It was designed to facilitate and encourage good management of risks and uncertainties, using clear and simple language.

The NEC approach to managing contracts was endorsed in “Constructing the team – The Latham Report”, which was a government/industry review of procurement and contractual arrangements in the UK construction industry. This led to a second edition in 1995 incorporating the further recommendations of that review. This contract was used increasingly in the UK and overseas, and a major revision was made with the third edition in 2005.

NEC has played a part in helping the industry do things differently and better. It has done so by introducing effective project management procedures into the contract itself. These require pro-active management of risk and change, and the day-to-day use of an up-to-date programme. The range of pricing options has given Clients flexibility in the allocation of risk and the ability to share risk and manage it, collaboratively.

The NEC suite has evolved over three decades, embedding consultation responses and user feedback, and reflecting industry development, including new procurement approaches and management techniques such as alliances, management of information (BIM) and supply chain engagement. This feedback and the new procurement approaches formed the driver for the development of the next generation contracts and the launch of NEC4.

There were three key objectives in drafting NEC4:

- provide greater stimulus to good management
- support new approaches to procurement which improve contract management and
- inspire increased use of NEC in new markets and sectors.

It was to be evolution, not revolution.

Some features of NEC4 include:

- a new design build and operate contract to allow flexibility between construction and operational requirements in timing and extent
- a new multi-party alliance contract based upon an integrated risk and reward model
- new forms of subcontract to improve integration of the supply chain.

Further enhancements include:

- finalising cost elements during the contract
- incorporating a party-led dispute avoidance process into the adjudication process
- increasing standardisation between contracts and
- providing enhanced guidance to give greater practical advice to users.

NEC has always been known for its innovative approach to contract management, and this revision continues that approach. No other contract suite has had such a transformative effect on the built environment industry as NEC. It has put the collaborative sharing of risk and reward at the heart of modern procurement. It is also unique in providing a complete, back-to-back procurement solution for all works, services and supplies in any sector and any country.

NEC4 continues to set the benchmark for best practice procurement worldwide.

Peter Higgins BSc (Hons), CEng, FICE
Chair of NEC4 Contract Board

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Acknowledgements

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This fourth edition of the NEC suite was produced by the Institution of Civil Engineers through its NEC4 Contract Board.

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Schedule of Options

RESOLVING AND AVOIDING DISPUTES

One of the following procedures for resolving and avoiding disputes must be selected to complete the chosen main Option.

- Option W1 Used when Adjudication is the method of dispute resolution and the United Kingdom Housing Grants, Construction and Regeneration Act 1996 does not apply
- Option W2 Used when Adjudication is the method of dispute resolution and the United Kingdom Housing Grants, Construction and Regeneration Act 1996 applies
- Option W3 Used when a Dispute Avoidance Board is the method of dispute resolution and the United Kingdom Housing Grants, Construction and Regeneration Act 1996 does not apply

SECONDARY OPTIONS

The following secondary Options should be considered. It is not necessary to use any of them. Any combination other than those stated may be used.

- Option X1 Price adjustment for inflation
- Option X2 Changes in the law
- Option X4 Ultimate holding company guarantee
- Option X5 Sectional Completion
- Option X6 Bonus for early Completion
- Option X7 Delay damages
- Option X8 Undertakings to the *Client* or Others
- Option X9 Transfer of rights
- Option X10 Information modelling
- Option X11 Termination by the *Client*
- Option X12 Multiparty collaboration (not used with Option X20)
- Option X13 Performance bond
- Option X14 Advanced payment to the *Contractor*
- Option X15 The *Contractor's* design
- Option X16 Retention
- Option X17 Low performance damages
- Option X18 Limitation of liability
- Option X20 Key Performance Indicators (not used with Option X12)
- Option X21 Whole Life Cost
- Option X22 Early *Contractor* involvement

The following Options dealing with national legislation should be included if required.

- Option Y(UK)1 Project Bank Account
- Option Y(UK)2 The Housing Grants, Construction and Regeneration Act 1996
- Option Y(UK)3 The Contracts (Rights of Third Parties) Act 1999

- Option Z *Additional conditions of contract*
- Note Options X3 and X19 are not used

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Core Clauses

1. GENERAL

Actions 10

- 10.1 The Parties, the *Project Manager* and the *Supervisor* shall act as stated in this contract.
- 10.2 The Parties, the *Project Manager* and the *Supervisor* act in a spirit of mutual trust and co-operation.

Identified and defined terms 11

- 11.1 In these *conditions of contract*, terms identified in the Contract Data are in italics and defined terms have capital initials.
- 11.2 (1) The Accepted Programme is the programme identified in the Contract Data or is the latest programme accepted by the *Project Manager*. The latest programme accepted by the *Project Manager* supersedes previous Accepted Programmes.
- (2) Completion is when the *Contractor* has
- done all the work which this contract states is to be done and supplied to the *Client* all of the Documents required by this contract to be supplied by the Completion Date (including all work necessary for the *Client* to use the *works* and for Others to do their own work)
 - corrected notified Defects which would have prevented the *Client* from fully using the *works* without impediment or Others from doing their work and
 - the *Contractor* has cleared away and removed from the Site all rubbish, plant, equipment and surplus materials accumulated by reason of the *works* and shall make good any damage arising from such removal.
- If the work which the *Contractor* is to do by the Completion Date is not stated in this contract, Completion is when the *Contractor* has done all the work necessary for the *Client* to use the *works* and for Others to do their work.
- (3) The Completion Date is the *completion date* unless later changed in accordance with the contract.
- (4) The Contract Date is the date when the contract came into existence (and all design and other work undertaken by or on behalf of the *Contractor* or for which the *Contractor* assumes responsibility under this contract carried out prior to the Contract Date is and shall be governed by the provisions of this contract notwithstanding the Contract Date).
- (5) A Defect is
- a part of the *works* which is not in accordance with this contract, including the Scope or
 - a part of the *works* designed by the *Contractor* which is not in accordance with the Applicable Law or the *Contractor's* design which the *Project Manager* has accepted.
- (6) The Defects Certificate is either a list of Defects that the *Contractor* finds before the *defects date* or which the *Supervisor* finds before the *defects date* and notifies to the *Contractor* in accordance with this contract which the *Contractor* has not corrected or, if there are no such Defects, a statement by the *Supervisor* that there are none.
- (7) The Early Warning Register is a register of matters which are
- listed in the Contract Data for inclusion and
 - notified by the *Project Manager* or the *Contractor* as early warning matters.
- It includes a description of the matter and the way in which the effects of the matter are to be avoided or reduced.
- (8) Equipment is items provided and used by the *Contractor* to Provide the Works and which the Scope does not require the *Contractor* to include in the *works*.
- (9) The Fee is the amount calculated by applying the *fee percentage* to the amount of Defined Cost.
- (10) A Key Date is the date by which work is to meet the Condition stated. The Key Date

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is the *key date* stated in the Contract Data and the Condition is the *condition* stated in the Contract Data unless later changed in accordance with the contract.

(11) Others are people or organisations who are not the *Client*, the *Project Manager*, the *Supervisor*, the *Adjudicator* or a member of the Dispute Avoidance Board, the *Contractor* or any employee, Subcontractor or supplier of the *Contractor*.

(12) The Parties are the *Client* (which expression includes its successors in title to the whole or substantially the whole of its undertaking and its permitted assigns, novatees or other transferees under this contract) and the *Contractor*.

(13) Plant and Materials are items intended to be included in the *works*.

(14) To Provide the Works means regularly and diligently to do the work necessary to complete the *works* in accordance with the contract and all incidental work, services and actions which the contract requires.

(15) Scope is information which

- specifies and describes the *works* or
- states any constraints on how the *Contractor* Provides the Works

and is either

- in the documents which the Contract Data states it is in or
- in an instruction given in accordance with the contract.

(16) The Site is the area within the *boundaries of the site* (subject to the constraints on or conditions for access, egress from, or possession to/of the Site as detailed in the contract) and the volumes above and below it which are affected by work included in the contract and such other places as may be designated in the contract as forming part of the Site.

(17) Site Information is information which

- describes the Site and its surroundings and
- is in the documents which the Contract Data states it is in.

(18) A Subcontractor is a person or organisation who has a contract with the *Contractor* to

- construct or install part of the *works*,
- design all or part of the *works*, except the design of Plant and Materials carried out by the supplier or
- provide a service in the Working Areas which is necessary to Provide the Works, except for the
 - hire of Equipment or
 - supply of people paid for by the *Contractor* according to the time they work.

(20) The Working Areas are the Site and those parts of the *working areas* which are

- necessary for Providing the Works and
- used only for work in the contract

unless later changed in accordance with the contract.

(21) The Activity Schedule is the *activity schedule* unless later changed in accordance with these *conditions of contract*.

(24) Defined Cost is the cost of the components in the Schedule of Cost Components less Disallowed Cost.

(26) Disallowed Cost is cost which

- is not justified by the *Contractor's* accounts and records,
- should not have been paid to a Subcontractor or supplier in accordance with its contract,
- is reimbursed by the Fee or otherwise in overhead percentages or charges,
- is stated in this contract to be Disallowed Cost,
- was incurred because the *Contractor* did not comply with his obligations under the contract or

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- was incurred only because the *Contractor* did not
 - follow an acceptance or procurement procedure stated in the Scope,
 - give an early warning which the contract required it to give or
 - give notification to the *Project Manager* of the preparation for and conduct of an adjudication or proceedings of a tribunal between the *Contractor* and a Subcontractor or supplier

and the cost of

- correcting Defects before or after Completion,
- correcting Defects caused by the *Contractor* not complying with a constraint on how it is to Provide the Works stated in the Scope or elsewhere in this contract,
- financing the execution of the *works*,
- Plant and Materials not used to Provide the Works (after allowing for reasonable wastage) unless resulting from a change to the Scope,
- resources (including labour and/or Equipment) not used to Provide the Works or not taken away from the Working Areas when the *Project Manager* requested,
- preparation for and conduct of any adjudication or arbitration under the Dispute Resolution Protocol,
- any penalties or liabilities suffered or incurred by the *Client* as a consequence of breach of this contract by the *Contractor* and recovered from the *Contractor*,
- fines incurred by the *Contractor*,
- the hire of any equipment hired by the *Contractor* or any Subcontractor in excess of the cost of purchasing the relevant equipment outright save where approved by the *Project Manager* in advance,
- staff and labour training costs,
- redundancy payments, discretionary bonuses and/or incentive payments to staff,
- the *Contractor* taking steps to recover delayed progress so as to achieve Completion of the *works* or part of the *works* in accordance with this contract and/or
- any amount not recovered from an insurer (including without limitation any deductible or excess) which is borne by the *Contractor*.

(27) The Price for Work Done to Date is the total Defined Cost which the *Project Manager* forecasts will have been paid by the *Contractor* before the next assessment date plus the Fee.

(28) The Prices are the lump sum prices for each of the activities on the Activity Schedule unless later changed in accordance with the contract.

(29) Adverse Physical Conditions are physical conditions:

- which are within the Site;
- which are not weather conditions;
- which existed at the Site prior to the Contract Date;
- which a skilled and experienced contractor using Good Industry Practice could not reasonably have foreseen, have allowed for and/or have taken steps to avoid, circumvent or substantially mitigate the effects of;
- which, following their discovery after Contract Date, are found to be such that their adverse effect(s) on the performance of the *works* could not be avoided or circumvented by a skilled and experienced contractor using Good Industry Practice without it incurring delay and/or expense;
- which could not reasonably have been discovered using Good Industry Practice (whether through the carrying out of surveys, inspections, investigations, testing or otherwise) and either avoided, circumvented or appropriately taken account of by the *Contractor* prior to finalising the *Contractor's* design for the part of the *works* thereby affected;
- which adversely affect the carrying out of the *works* (or any part thereof); and
- which comprise any uncharted service media, unexploded ordnance (UXO), man-made hydrocarbons, asbestos, radioactive materials or other man-made Contamination and/or sub-surface artificial obstructions (which, in each case, have

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not been introduced into the Site by the *Contractor* or any of the *Contractor's* Personnel).

(30) Background IPR is any and all Intellectual Property Rights, other than Foreground IPR, which existed prior to the *Contractor* commencing the *works* and which are used or employed by or on behalf of the *Contractor* in connection with the performance of any of the *works*.

(31) The Base (or Station) is the military site known as and forming RAF Wittering (as more particularly described in the Scope and the Site Information).

(32) The Head of Establishment at RAF Wittering is Nicola Dean.

(33) The CDM Regulations are the Construction (Design and Management) Regulations 2015 together with any related guidance or requirements issued from time to time by the Health and Safety Executive (and the expressions "principal contractor", "principal designer", "designer" and "contractor" shall have the meanings respectively ascribed to them in the CDM Regulations).

(34) Change of Ownership is any legal and/or beneficial change of ownership of the *Contractor's* or any Guarantor's share capital.

(35) Consent is any permission, consent, approval, certificate, permit, licence, order, statutory agreement or authorisation required by any Applicable Law and all necessary consents and agreements from any third parties needed to carry out the *works* in accordance with this contract.

(36) Contract Data is the collective term for the Contract Data Part One, the Contract Data Part Two and the Pricing Document appearing in this Annex 1 to the contract.

(37) *Contractor's* Personnel is any and all officers, directors, employees, shareholders and/or members of the *Contractor* and any persons employed or engaged by the *Contractor* or any Subcontractor, supplier or agent (of any tier) who is wholly or partly engaged in the planning, design, manufacture, construction, supply, delivery, supervision and/or management of any of the *works* and/or any Plant and Materials (but excluding the *Client*, the *Project Manager*, the *Supervisor* and their respective directors, employees, agents and representatives).

(38) Contamination is any substance or organism which alone or in combination with others may cause harm or damage to the environment, human health and safety, flora or fauna and/or pollution of controlled water (as more particularly referred to in section 78(A) of the Environmental Protection Act 1990) and includes:

- any actual or threatened emissions, seepages, discharges, escapes, releases or leaks of pollutants, contaminants or toxic materials;
- any hazardous or toxic materials, pollutants, contaminants and substances; or
- any discarded, unwanted, broken, spoiled or surplus substance, material or articles (including any waste as defined in the Environmental Protection Act 1990).

(39) The Crown means the Government of the United Kingdom of Great Britain and Northern Ireland.

(40) Data Protection Legislation has the meaning given to it in the Framework Alliance Contract.

(41) DIO is the Defence Infrastructure Organisation, an organisation forming part of the Secretary of State for Defence as the *Client* and having responsibility for the Defence Estate and the estate services provided on it.

(42) Disclosed Data is any information in any written or other tangible form disclosed to one Party by or on behalf of the other Party under or in connection with this contract.

(43) Dispute Resolution Protocol is the provisions of the dispute resolution protocol set out in Option W2, as amended and supplemented by the additional conditions of contract appearing in this Annex 1 to the contract.

(44) Documents are any and all data, records, reports, documents, manuals, designs, drawings, plans, sketches, calculations, schedules, details, reports, specifications and other work, output or materials of any nature in any form or medium (excluding proprietary software) prepared or to be prepared by or on behalf of the *Contractor* in connection with this contract, the *works* and/or the Site.

(45) EIR is the Environmental Information (Scotland) Regulations 2004 and any subordinate legislation made under them, any amendment or re-enactment of any of them and any guidance and/or codes of practice issued by the Scottish Information

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Commissioner's Office in relation to such legislation from time to time.

(46) Environment is any and all living organisms (including man), ecosystems, property and the media of air (including air in buildings, natural or man-made structures, below or above ground), water (including drains and sewers), land (including under any water as described above and whether above or below the surface) and for the avoidance of doubt includes the same both onshore and offshore.

(47) Environmental Law is any rule of common law, statute, code of practice, circular, guidance note, by-law or regulation having the force of Law or any consent, license, permit, order notice, recording, registration or judgment whose breach can give rise, whether immediately or not, to criminal, civil or administrative damages, sanctions or penalties for the failure to meet obligations relating to the presence, release, spillage, treatment, handling, deposit, escape or other mode of existence of any substance, the carrying out of any activity, or the existence of any condition or any phenomenon which has or could have a detrimental impact on the Environment and which in any such case has as its primary purpose or effect the protection of the Environment generally or in any particular locality.

(48) Equality Act is the Equality Act 2010.

(49) Financial Distress Event is the occurrence, in respect of the *Contractor* or any Guarantor, of any of the events or circumstances described in paragraph 3.1 of Schedule 8 (*Financial Distress*) of the Framework Alliance Contract (but only if such event or circumstance does not, of itself, constitute an event of Insolvency).

(50) Financial Distress Works Continuity Plan has the meaning given to it in Schedule 8 (*Financial Distress*) of the Framework Alliance Contract.

(51) FOIA is the Freedom of Information Act 2000 and/or the Freedom of Information (Scotland) Act 2002 (as applicable) and any subordinate legislation made under each such Act as the same may be revised and replaced from time to time together with any guidance and/ or codes of practice issued by the Information Commissioner or the Scottish Information Commissioner (as defined under the FOIA) or relevant UK Government department or Scottish Government department in relation to such legislation.

(52) Foreground IPR is any and all Intellectual Property Rights that arise, are created, are obtained and/or are developed by the *Contractor* or by any *Contractor's* Personnel on behalf of the *Contractor* in the course of performing or in connection with any of the *works* (including all Intellectual Property Rights in or applicable to the Documents).

(53) Framework Alliance Contract has the meaning given to it in Recital (B) of this contract.

(54) Fraud Prevention Manual is the fraud prevention manual referred to or included within the Scope.

(55) Good Industry Practice are the standards, practices, methods and procedures conforming to Applicable Law and that degree of skill, diligence and operating practice which would reasonably be expected from a skilled and experienced person engaged in the same type of undertaking as (and under the same or similar circumstances to) the *works*.

(56) Group Company is, where a Party is a company, any member of the relevant Party's "group" as that expression is defined in section 479(4)(b) of the Companies Act 2006 (and Group Entity shall be construed accordingly).

(57) Guarantor is [REDACTED], a company incorporated in [REDACTED] (company number [REDACTED]) and having its registered office at [REDACTED] (or such other person(s) as the *Client* may approve in writing from time to time).

(58) Holding Company and Subsidiary each have the meanings respectively ascribed to them in section 1159 of the Companies Act 2006.

(59) A Party (or any Guarantor or Subcontractor) is Insolvent if it:

- (i) has had a winding-up order made against it;
- (ii) has had a provisional liquidator appointed to it;
- (iii) has passed a resolution for winding-up (other than in order to amalgamate or reconstruct);
- (iv) has had an administration order made against it or had an administrator appointed over it;
- (v) has had a receiver, receiver and manager, or administrative receiver appointed over

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the whole or a substantial part of its undertaking or assets;

- (vi) commences negotiations with all or any class of its creditors with a view to rescheduling its debts or entering into any form of compromise of its debts (including but not limited to a company voluntary arrangement under the Insolvency Act 1986);
- (vii) has suspended or threatened to suspend payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or being a company or limited partnership is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;
- (viii) takes any step or action (or has any such step or action commenced against it by any party) which could lead to any of the events specified at paragraphs (i) to (vii) above; and/or
- (ix) has had any equivalent, analogous or similar event to any of those described in paragraphs (i) to (viii) above occur in relation to it in any jurisdiction

(and Insolvency shall be construed accordingly).

(60) The Insurance Table is the table identified as such in (and annexed to) Annex 2 to the contract.

(61) Intellectual Property Rights are any and all patents, rights to inventions, registered designs, trademarks, domain names, copyright, design rights, database rights, moral rights, rights in get-up, goodwill, rights to sue for passing off, utility models, rights to use and protect the confidentiality of confidential information (including know-how) and all other intellectual or industrial property rights of any similar or equivalent nature or forms of protection (whether registered or unregistered and whether or not such rights are capable of registration) including those subsisting in inventions, designs, drawings, computer programs, business names, goodwill, trade dress and including all applications (or rights to apply) for and renewals or extensions of such rights and any rights existing or arising in law or equity in relation to the same which may exist before, on or after the Contract Date in any part of the world.

(62) Key Subcontractor is any Subcontractor appointed or to be appointed by the *Contractor* who carries out any design and/or who is responsible for any significant package of the *works* including, but not limited to, the key subcontractors listed or described in the Contract Data Part Two appearing in this Annex 1 to the contract.

(63) Law or Laws is/are all legislation, statutes, ordinances and other laws of the United Kingdom or any part thereof.

(64) The Main Runway is the principal runway (07-25) at the Base (as more particularly described in the Scope and the Site Information).

(65) Material Breach is any material breach of the *Contractor's* obligations under this contract and, without prejudice to the foregoing generality, includes where the *Contractor* or any of the *Contractor's* Personnel breaches any security requirement, confidentiality requirement, anti-corruption requirement and/or health or safety requirement set out or referred to in this contract and/or any event that is expressly stated under this contract to constitute a Material Breach.

(66) OGDs are UK Government departments or Scottish Government departments, other than the *Client*, (and OGD means any of them).

(67) Persistent Breach is any repeated breach of the *Contractor's* obligations following the issue to the *Contractor* of a notice from the *Client* or the *Project Manager*, as appropriate, informing the *Contractor* of its breach and of the *Client's* intention to terminate the contract in the event of such breach being repeated by the *Contractor* or any of the *Contractor's* Personnel.

(68) A Prohibited Act is any of the following, namely:

- offering, promising, or giving to, or accepting or soliciting from the *Client* or any of its employees, agents, consultants and/or other contractors or any OGD, any gift, or financial advantage of any kind as an inducement or reward:
 - for doing or not doing (or for having done or not having done) any act in relation to the obtaining or execution of this contract or any other contract with the *Client* or any OGD; or
 - for showing or not showing favour or disfavour to any person in relation to this contract or any other contract with the *Client* or any OGD; or
- entering into this contract or any other contract with the *Client* or any OGD in connection with which commission has been paid or has been agreed to be paid by

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the *Contractor* or on its behalf, or to its knowledge, unless, before this contract or any other contract is made, particulars of any such commission and of the terms and conditions of any such agreement for the payment thereof have been disclosed in writing to (and consented to by) the *Client*; or

- abusing any entrusted power for private gain.

(69) Prohibited Materials are any materials, substances, products, processes, techniques or any combination of the same which:

- (i) do not comply with the contract (including the Scope);
- (ii) are prohibited, controlled, hazardous, toxic or dangerous in respect of the intended use in terms of any Applicable Law;
- (iii) contravene Good Industry Practice or any British Standard or EU equivalent or British Code of Practice or Eurocode;
- (iv) are identified as deleterious, unsatisfactory or unsuitable in the relevant circumstances in the Guidance "Good Practice in Selection of Construction Materials" sponsored by the British Property Federation and British Council of Offices and the BRE Digest as amended or replaced from time to time;
- (v) are generally known within the construction or engineering industry to be deleterious or hazardous to the durability of the *works* and/or Site or to health and safety in the particular circumstances in which they are used;
- (vi) are prohibited in terms of any Consent, warrant, licence, approval or other permission applicable to the *works* and/or the Site; and/or
- (vii) contain any products or other ozone-depleting substances referred to in the Montreal Protocol on Substances that deplete the Ozone Layer, as amended and updated from time to time.

(70) *Project Manager* is the person identified as the project manager in the Contract Data Part One appearing in this Annex 1 to the contract or any replacement thereof as the *Client* may notify to the *Contractor* from time to time.

(71) *Project Contract* has the meaning given to it in the Framework Alliance Contract.

(72) Reference Information is any background information which is or has been provided or made available to the *Contractor* (at any time prior to the date of this contract) by or on behalf of the *Client* prior to the Contract Date, which information does not form part of this contract and is subject to clause 29A (*Reference Information*).

(73) Required Insurances has the meaning given to it in clause 84.1.

(74) The Runway Intersection is the area of Runway comprising the intersection between the Main Runway and the Taxiway (as more particularly described in the Scope).

(75) The Runways are the Main Runway and the Secondary Runway (and Runway means either of them).

(76) Security Documents are the security policies and procedures which are referred to in the Scope and elsewhere in this contract.

(77) Senior Representatives are senior members of the *Client's* and the *Contractor's* respective organisations who are to represent their organisation for the purposes of dispute resolution. The *Client's* Senior Representatives are named in the Contract Data Part One appearing in this Annex 1 to the contract. The *Contractor's* Senior Representatives are named in Contract Data Part Two.

(78) Statutory Requirements are the requirements placed on the *Client* or the *Contractor* or affecting or governing the performance of the *works* by Applicable Law and/or any relevant codes of practice issued by any government agency or body including in relation to health, safety and environmental matters (and, for the purposes of this contract, Applicable Law means any applicable statute, Act, order or other Law, regulation or by-law or any rule, code or direction having the force of law or any regulatory licence, consent, permit, authorisation or other approval including any conditions attached thereto of the United Kingdom or any part thereof or of the European Union or of any public body, authority or regulatory body which has appropriate jurisdiction).

(79) Third Party Agreements are any agreement(s) entered into between the *Client* or the *Contractor* and any Others from time to time which is/are identified in the Scope or notified as such to the *Contractor* pursuant to clause 60.1(20) including, without limitation, any leases, wayleaves, servitudes and/or other property agreements entered

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into or to be entered into between the *Client* and any third party proprietor(s) of any land adjoining or neighbouring the Base or any other third parties (and Third Party Agreement shall be construed accordingly).

(80) Transparency Information is the content of this contract, including from time to time any agreed changes to the contract and details of any payments made or to be made by the *Client* under this contract.

(81) UK Nationals are British Citizens as defined in section 1 of the British Nationality Act 1981 who are born in the UK and are not a foreign national or dual national or a naturalised British Citizen.

(82) Unsuitable Third Party is any person:

- whose activities, in the opinion of the *Client*, pose or could pose a threat to national security or public safety or are incompatible with any operations or activities carried out by the *Client* for the purposes contemplated by this contract or any other of the *Client's* legal duties or other functions; or
- who is, in the opinion of the *Client*, inappropriate or unacceptable because the *Client* has received specific information from the Crown, the Crown Office and Procurator Fiscal Service, the Serious Fraud Office, the Police, the Crown Prosecution Service or any other governmental body about the suitability of the relevant person to have any involvement with, proximity to, awareness of and/or act in any capacity in relation to the *works* and/or the Base; or
- who lacks security clearance or whose level of security clearance is insufficient for them to have knowledge of or receive information about any particular aspect of or matter associated with the *works* because such knowledge or information requires a higher level of security clearance than they currently possess; or
- who is subject to any Financial Distress Event.

(83) Vesting Certificate means a vesting certificate in the form set out in Annex 4G to the contract (or in such other form as the *Client* may reasonably require).

(84) week means a period of seven (7) consecutive calendar days.

(87) Working Day is any day which is not a Saturday, Sunday, Christmas Day, Good Friday, a day which under the Banking and Financial Dealings Act 1971 is a bank holiday in England or a day which the Client has advised is a holiday at the Base.

Interpretation and the law	12	
	12.1	In this contract, except where the context shows otherwise or where otherwise expressly stated: <ul style="list-style-type: none">• a general expression shall not be limited by any more specific expression preceding or following it (and, for the avoidance of doubt, any phrase or list which is introduced by the words “including”, “includes”, “include”, “in particular” or any similar expression shall be construed as illustrative only and shall not be construed as limiting the generality of any preceding or following words);• reference(s) to any Applicable Law mean(s) such Applicable Law as amended or re-enacted from time to time;• headings of clauses and sub-clauses are for convenience only and do not affect the interpretation of this contract;• words stated in the singular also mean in the plural and the other way around; and• reference(s) to any Annex or Annexes is/are to one or more of the numbered annexes attached to and forming part of this contract.
	12.2	The contract is governed by the <i>law of the contract</i> . Other legal jurisdictions may apply for the purpose of giving effect to this clause 12.2 and for the enforcement of any judgment, order or award given under English jurisdiction, and, notwithstanding the provisions of this clause 12.2, the <i>Contractor</i> shall at all times comply with and observe the Laws of England & Wales where and to the extent that the same apply to the performance of any of its duties or obligations under this contract.
	12.3	No change to the contract, unless provided for by these <i>conditions of contract</i> , has effect unless it has been agreed, confirmed in writing and signed by the Parties.
	12.4	The contract is the entire agreement between the Parties.

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- 12.5 The *Client* and the *Contractor* shall act as stated in this contract and in a spirit of mutual trust and co-operation.
- 12.6 Each Party hereby (to the best of its knowledge, belief and awareness and after due, proper and careful enquiry) warrants to each other (a) that its entry into this contract does not and its performance thereof will not in any way violate or conflict with any Applicable Law, judgment, writ, injunction, decree or order applicable to it insofar as the foregoing is in force at the Contract Date; and (b) that this contract does not conflict with or result in a breach or termination of any provision of, or constitute a default under any mortgage, contract or other liability, charge or encumbrance upon any of its properties or other assets.
- 12.7 The liability of the *Contractor* under the contract extends to all *Contractor's* Personnel and others for whom it is responsible including their respective acts, omissions and negligence as if of the *Contractor* itself. The *Contractor* is responsible for its subconsultants and subcontractors (of any tier), suppliers and their respective employees or invitees and others carrying out the *works* or on the Site with the *Contractor's* approval. All Subcontractors (including any Subcontractors named in the contract or whose identity requires to be approved in advance by the *Project Manager* for specified elements of the *works*) are domestic to the *Contractor* who is fully responsible in all respects for all such Subcontractors as stated above, including in connection with any insolvency or analogous matters.
- 12.8 The issue of certificates, applications for payment, statements or notices and the payment of any sum pursuant to this contract is not conclusive evidence that the *works* (or any part thereof), including any design, specification, goods, materials and/or workmanship, are in accordance with the provisions of this contract.
- 12.9 Where any act is required to be done within a specified period after or from a specified date:
- the period begins immediately after that date; and
 - where the specified period would include a day that is not a Working Day, that day will be excluded.
- 12.10 The following are not deemed to have been accepted by the *Client* or the *Project Manager* unless they are expressly accepted in writing by the *Project Manager*:
- any acceptance of an acceleration quotation under clause 36 (*Acceleration*); or
 - any proposal for a change under clause 45 (*Accepting Defects*).
- 12.11 No act or omission of the *Client* (or the *Project Manager* or the *Supervisor*) shall by itself amount to a waiver of any right or remedy unless expressly stated to be so by the *Client* in writing. Without prejudice to the foregoing generality, failure by the *Client* (or the *Project Manager* or the *Supervisor*) at any time to enforce any provision of this contract or to require performance by the *Contractor* of any of the provisions of this contract (or any delay in enforcing or requiring performance) shall not be construed as a waiver of any such provision and shall not affect the validity of this contract or any part of it or create any estoppel or in any other way affect the right of the *Client* to enforce any provision of the contract in accordance with its terms.
- 12.12 No waiver by either Party in respect of any right or remedy shall operate as a waiver in respect of any other right or remedy.
- 12.13 If, for any reason, any provision of this contract is held to be invalid, illegal or unenforceable to any extent then:
- such provision shall (to the extent it is invalid, illegal or unenforceable) be given no effect and shall be deemed not to be included in this contract but without invalidating any of the remaining provisions of this contract; and
 - the Parties shall use all reasonable endeavours to replace the invalid, illegal or unenforceable provision by a valid, legal and enforceable substitute provision the effect of which is as close as possible to the intended effect of the invalid, illegal or unenforceable provision.
- 12.14 The provisions of this clause 12 shall survive any termination of this contract (or termination of the *Contractor's* engagement hereunder) for any reason whatsoever and shall remain fully enforceable as between the Parties notwithstanding such a termination.

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- 13.1 Each communication which the contract requires is communicated in a form which can be read, copied and recorded. Writing is in the *language of the contract*.
- 13.2 If the Scope or the Contract Data specifies the use of a communication system, a communication has effect when it is communicated through the communication system specified in the Scope or the Contract Data.
- If the Scope or the Contract Data does not specify a communication system, a communication has effect when it is received at the last address notified by the recipient for receiving communications or, if none is notified, at the address of the recipient stated in the Contract Data.
- 13.3 If the contract requires the *Project Manager*, the *Supervisor* or the *Contractor* to reply to a communication, unless otherwise stated in these *conditions of contract*, they reply within the *period for reply*.
- 13.4 The *Project Manager* replies to a communication submitted or resubmitted by the *Contractor* for acceptance. If the reply is not acceptance, the *Project Manager* states the reasons in sufficient detail to enable the *Contractor* to correct the matter. The *Contractor* resubmits the communication within the *period for reply* taking account of these reasons. A reason for withholding acceptance is that more information is needed in order to assess the *Contractor's* submission fully.
- 13.5 The *Project Manager* may extend the period for reply to a communication if the *Project Manager* and the *Contractor* agree to the extension before the reply is due. The *Project Manager* informs the *Contractor* of the extension which has been agreed.
- 13.6 The *Project Manager* issues certificates to the *Client* and the *Contractor*. The *Supervisor* issues certificates to the *Project Manager*, the *Client* and the *Contractor*.
- 13.7 A notification or certificate which the contract requires is communicated separately from other communications.
- 13.8 The *Project Manager* may withhold acceptance of a submission by the *Contractor*. Withholding acceptance for a reason stated in these *conditions of contract* is not a compensation event. A reason for withholding acceptance is that the submission does not comply or would result in any non-compliance with any of the requirements of the contract or Good Industry Practice.

The Project Manager and the Supervisor

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- 14.1 No communication (including instructions, the Defects Certificate and any other certificates), no acceptance of any communication from the *Contractor*, no inspection, test or acceptance of the *Contractor's* work or design by the *Client*, the *Project Manager* or the *Supervisor*, and no failure to withhold acceptance of, express disapproval of or otherwise comment on any submission, design or work carried out by the *Contractor* changes or diminishes the *Contractor's* liability under this contract (including the *Contractor's* responsibility to Provide the Works, its liability for Defects and for the design of the works).
- 14.2 The *Project Manager* and the *Supervisor*, after notifying the *Contractor*, may delegate any of their actions and may cancel any delegation. The notification contains the name of the delegate and details of the actions being delegated or any cancellation of delegation. A reference to an action of the *Project Manager* or the *Supervisor* in the contract includes an action by their delegate. The *Project Manager* and the *Supervisor* may take an action which they have delegated.
- 14.3 The *Project Manager* may give an instruction to the *Contractor* which changes the Scope or a Key Date. Without prejudice to the foregoing, the *Project Manager* is entitled at any time until the *defects date* to instruct a change to the Scope comprising additions, omissions, substitutions, alterations, changes in quality, form, character, kind, position, dimension, level or line and/or changes in any specified sequence method or timing of construction required by the contract. No change to the Scope instructed by the *Project Manager* shall in any way vitiate or invalidate this contract.
- 14.4 The *Client* may replace the *Project Manager* or the *Supervisor* after notifying the *Contractor* of the name of the replacement.
- 14.5 Notwithstanding any other provisions of this contract, all rights, actions, obligations or functions of the *Supervisor* under this contract may be exercised and/or performed by the *Project Manager*.

Early warning

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- 15.1 The *Contractor* and the *Project Manager* give an early warning by notifying the other as soon as either becomes aware of any matter which could

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- increase the total of the Prices,
- delay Completion,
- delay meeting a Key Date
- impair the performance of the *works* in use or
- constitute or cause a breach of any of the *Contractor's* obligations under this contract.

The *Project Manager* or the *Contractor* may give an early warning by notifying the other of any other matter which could increase the *Contractor's* total cost. The *Project Manager* enters early warning matters in the Early Warning Register. Early warning of a matter for which a compensation event has previously been notified is not required.

- 15.2 The *Project Manager* prepares a first Early Warning Register and issues it to the *Contractor* within one week of the *starting date*. The *Project Manager* instructs the *Contractor* to attend a first early warning meeting within two weeks of the *starting date*.

Later early warning meetings are held

if either the *Project Manager* or *Contractor* instructs the other to attend an early warning meeting, and, in any case,

- at no longer interval than the interval stated in the Contract Data until Completion of the whole of the *works*.

The *Project Manager* or *Contractor* may instruct other people to attend an early warning meeting if the other agrees.

A Subcontractor attends an early warning meeting if its attendance would assist in deciding the actions to be taken.

- 15.3 At an early warning meeting, those who attend co-operate in

- making and considering proposals for how the effects of each matter in the Early Warning Register can be avoided or reduced,
- seeking solutions that will bring advantage to all those who will be affected,
- deciding on the actions which will be taken and who, in accordance with the contract, will take them,
- deciding which matters can be removed from the Early Warning Register and
- reviewing actions recorded in the Early Warning Register and deciding if different actions need to be taken and who, in accordance with the contract, will take them.

- 15.4 The *Project Manager* revises the Early Warning Register to record the decisions made at each early warning meeting and issues the revised Early Warning Register to the *Contractor* within one week of the early warning meeting. If a decision needs a change to the Scope, the *Project Manager* instructs the change at the same time as the revised Early Warning Register is issued. If any change in the Scope is the result of a risk for which the *Contractor* is responsible then, notwithstanding any other term of this contract, that change in the Scope does not give rise to a compensation event and does not result in any increase to the Prices or any adjustment of the Completion Date or any Key Date. Failure by the *Project Manager* to issue a revised Early Warning Register or to give an instruction to change the Scope, entitles the *Contractor* to provide to the *Project Manager* a written record of the decision or decisions made at the risk reduction meeting.

Contractor's proposals

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16.1

The *Contractor* is encouraged to suggest amendments to the requirements for the *works* stated in the Scope which, if instructed as a change to the Scope pursuant to clause 14.3 by the *Project Manager*, would result in a financial, technical or other benefit to the *Client* or the completed *works*. The benefit may arise in the form of

- improved health and safety,
- a reduction in the cost of carrying out the *works*,
- a reduction in the life cycle or whole life costs associated with the *works* (including but not limited to a reduction in operation and maintenance costs over the lifetime of the completed *works*),
- the achievement of Completion of the *works* or any part thereof at a date earlier than the Completion Date,

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- any other financial benefit to the *Client*, and/or
 - any other technical or operational benefit to the *Client*, including but not limited to benefits resulting from standardisation or enhanced performance or environmental benefits achieved in relation to the Base's operational capabilities or the execution of work by Others or the enhanced fulfilment of the *Client's* statutory duties.
- 16.2 The *Contractor* shall provide to the *Project Manager* (who shall forward the same to the *Client* for its review) details of any suggested amendments to the Scope as referred to in clause 16.1 together with:
- a quotation and its calculation of the benefit it believes the *Client* will obtain, expressed in financial and/or technical terms and calculated in accordance with the provisions of the contract, and
 - the *Contractor's* proposal (if any) in respect of any sharing of the cost or other benefits between the *Client* and the *Contractor* in the event that its proposed amendments to the Scope are implemented.
- 16.3 The *Contractor* may submit a proposal for adding an area to the Working Areas to the *Project Manager* for acceptance. A reason for not accepting is that the proposed area is
- not necessary for Providing the Works or
 - used for work not in the contract.
- 16.4 Decisions taken and/or agreements reached at any early warning meeting do not change the risk allocation under this contract, unless and to the extent expressly stated in a written instruction issued to the *Contractor* by the *Project Manager*.

Requirements
for instructions

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- 17.1 If there is any ambiguity or inconsistency in or between the documents which are part of this contract, the priority of the documents is in accordance with the following sequence (in descending order of priority):
- the form of Agreement between the Parties;
 - the *conditions of contract* and the Contract Data;
 - the Scope; and
 - the other Annexes which form part of the contract.
- The *Project Manager* or the *Contractor* promptly notifies the other as soon as either becomes aware of any such ambiguity or inconsistency. The *Project Manager* gives an instruction resolving the ambiguity or inconsistency. Notwithstanding any other provision of this contract, any such ambiguity, inconsistency and/or instruction is not a compensation event, and does not result in any increase in the Prices or any adjustment of the Completion Date or any Key Date.
- 17.2 The *Contractor* notifies the *Project Manager* as soon as it considers that the Scope requires it to do anything which is illegal or impossible, or if completed in accordance with this contract the *works* will not be in accordance with the Statutory Requirements. If the *Project Manager* agrees, he gives an instruction to change the Scope appropriately. Subject to clause 17.3, any such illegality, impossibility, possible non-compliance with the Statutory Requirements and/or instruction is not a compensation event and does not result in any increase in the Prices or any adjustment of the Completion Date or any Key Date.
- 17.3 (1) Notwithstanding any other provision of this contract, the *Contractor* is responsible for ensuring that the carrying out of the *works* and the *works*, as completed, comply with (and the *Contractor* shall give all notices required in relation to) all Consents, Statutory Requirements, Applicable Laws and decisions of any relevant authority thereunder (whether the same are in force before the Contract Date or occur or are made before the Contract Date) which relate to or concern the carrying out of the *works*, the completed *works*, the Site or the right to develop the Site.
- (2) The *Contractor* is not entitled to any increase in the Prices or any adjustment of the Completion Date or any Key Date and there shall not be any compensation event as a result of the *Contractor* complying (or failing to comply) with its obligations under clause 17.3(1) including in the event that the *Project Manager* gives an instruction to change the Scope to address any non-compliance (whether possible or actual) of the *works* or the Site with any Consents, Statutory Requirements or decisions of any relevant authority referred to in clause 17.3(1).
- (3) Any ambiguity or inconsistency in or between the documents which form part of the contract and any subsequent statement or instruction by the *Project Manager* in that

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regard shall be dealt with as a compensation event, and entitle the *Contractor* to any increase in the Prices and/or any adjustment of the Completion Date or any Key Date.

(4) in respect of a Consent (i) that is required in order for the works to be lawfully carried out and completed and (ii) which has not been obtained by the Contract Date, where compliance with the terms of any such Consent (Once it has been issued, sometime after the Contract Date) will necessitate any change to be made to the design and/or construction of the works, then it will be treated as a change to the Scope instructed by the Project Manager under clause 14.3 (and will be assessed as if it was a compensation event of the type referred to in clause 60.1(1) of the Contract.

(5) The *Contractor* shall be entitled to an increase in the Prices and/or any adjustment of the Completion Date or any Key Date in respect of a Consent obtained after the Contract Date in accordance with Clause 17.3(4).

[Not used]	18	
Prevention	19	
	19.1	<p>If an event occurs which</p> <ul style="list-style-type: none"> • stops the <i>Contractor</i> completing the whole of the <i>works</i> or • stops the <i>Contractor</i> completing the whole of the <i>works</i> by the date for planned Completion shown on the Accepted Programme, <p>and which</p> <ul style="list-style-type: none"> • neither Party could prevent and • an experienced contractor would have judged at the Contract Date to have such a small chance of occurring that it would have been unreasonable to have allowed for it, <p>the <i>Project Manager</i> gives an instruction to the <i>Contractor</i> stating how the event is to be dealt with.</p>

2. THE CONTRACTOR'S MAIN RESPONSIBILITIES

Providing the Works	20	
	20.1	<p>The <i>Contractor</i> Provides the Works in compliance with:</p> <ul style="list-style-type: none"> • this contract (including the Scope); • all Applicable Laws, Statutory Requirements, Third Party Agreements and Consents; • the CDM Regulations (and the <i>Contractor</i> complies with all obligations imposed upon it under such Regulations) and best practice guidelines in respect of health and safety as are applicable to the activities comprising the <i>works</i>; • relevant British or European Standards or Codes of Practice; • approvals from Others known to the <i>Contractor</i> (as identified in the Scope); and • Good Industry Practice and in a good and workmanlike manner and using only good quality and sound materials of satisfactory quality and consistent with the intended use of the <i>works</i>;

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and, without prejudice to any other obligation of the *Contractor* contained anywhere in the documents comprising the contract (including the Scope), the *Contractor* undertakes that:

- (i) the *works* and each part thereof (including the Plant and Materials) will, when complete, comply with all and any performance specifications and/or other requirements included in or referred to in the Scope (including any changes to the Scope);
- (ii) the completed *works* will be capable of being operated and maintained for the purposes referred to in the Scope in accordance with Good Industry Practice;
- (iii) the *Contractor* has not specified nor authorised, caused or allowed to be used or used and does not specify nor authorise, cause or allow to be used or use in the *works* or any part thereof any Prohibited Materials; and
- (iv) the *Contractor* immediately notifies the *Project Manager* if it suspects or becomes aware of the existence or any proposed or actual use within or in connection with the *works* of any of the Prohibited Materials.

The *Contractor* ensures the proper integration, co-ordination and compatibility of the various elements of the *works* (including Plant and Materials) with (a) one another, (b) the existing buildings, structures, utilities, service media, plant and equipment at the Site and (c) the work of Others at the Base (where specified in the Scope or instructed by the *Project Manager* pursuant to clause 20.9).

In the performance of the *works*, the *Contractor* observes and complies with the provisions of the Third Party Agreements. The *Contractor* does not and shall not do or omit to do or permit to be done by any of the *Contractor's* Personnel anything which causes the *Client* to be in breach of any of its obligations under any Third Party Agreement and/or any Consent which is disclosed to the *Contractor* under or in accordance with the contract.

- 20.2 The *Contractor* is not be entitled to rely upon any Reference Information provided to it by or on behalf of the *Client* and the *Contractor* has satisfied or will satisfy itself as to the accuracy and adequacy of such information. The *Contractor* is deemed (i) to have verified all Reference Information provided to it by or on behalf of the *Client*, whether contained in the Scope or otherwise including any planning or development-related information affecting the *works* or the Site, and (ii) to have obtained any supplementary information required by it. The *Client* makes no representation as to the accuracy, completeness and/or adequacy of any such information provided to the *Contractor* and the *Client* has no liability in respect of any such information.
- 20.3 The *Contractor* advises the *Project Manager* on the practical implications of the design of the *works* and on subcontracting arrangements.
- 20.4 The *Contractor* prepares forecasts of the total Defined Cost for the whole of the *works* and of the forecast Price for Work Done to Date on each remaining assessment date in consultation with the *Project Manager* and submits them to the *Project Manager*. Forecasts are prepared at the intervals stated in the Contract Data from the *starting date* until Completion of the whole of the *works*. An explanation of the changes made since the previous forecast is submitted with each forecast.
- 20.5 In respect of the *works*, the *Contractor* performs and will perform all of the functions and duties of the principal designer, principal contractor, contractor and designer (as such terms are respectively defined in the CDM Regulations) and complies and will comply in full with its obligations under the CDM Regulations. Without prejudice to the foregoing, the *Contractor* ensures and will ensure that no act, omission, breach or default by or on behalf of the *Contractor* or those for whom it is responsible causes or contributes to any breach of the CDM Regulations by the *Client*.
- 20.6 The *Contractor* has, as at the Contract Date, and shall continue to have, the skills, knowledge, experience and organisational capability to fulfil the functions and duties referred to in clause 20.5 for the *works*.
- 20.7 Before it appoints any Subcontractor to carry out or manage any subcontracted work, the *Contractor* satisfies itself that such a Subcontractor has the skills, knowledge, experience and organisational capability and has allocated adequate resources in terms of the CDM Regulations to do such subcontracted work.
- 20.8 The *Contractor* provides such documents and other information as the *Client* reasonably requires in order to discharge the duties of the client (as such term is defined in the CDM Regulations) under and in accordance with the CDM Regulations.
- 20.9 The *Contractor*:
 - obeys the *Project Manager's* instructions in respect of co-ordination of all work at the Site and the Base;

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- in carrying out the *works* has regard to any other work that is being carried out at the Base by Others, does not cause any damage or destruction to such work and uses its reasonable endeavours to ensure that it does not cause any interference or disruption to such work;
- confirms that to the extent the same are defined in the Scope it is deemed to have made all reasonable allowance in the planning, pricing and programming of the *works* including for phasing, co-ordinating, interfacing and any restrictions in connection with, amongst other things, vehicles movements, access or otherwise and for anticipating any access or other issues arising out of or in relation to the *works* and for generally liaising with the other contractors in order to ensure that the *works* on the Site are being carried out efficiently and in accordance with the contract and so as to avoid any claims or disputes arising against the *Client* from the *Contractor* or any other such contractors or third parties;
- liaises, co-operates, co-ordinates with and timeously provides information to, and requests information from, Others and/or to the *Project Manager* to assist such Others and/or the *Project Manager* to properly and timeously complete their work or obligations; and
- accepts that the *Project Manager* may require the *Contractor* to work in close proximity to Others (including Military personnel) and that continuity of working is not guaranteed.

20.10 Where the Scope requires commissioning to be carried out by the *Contractor*, the *Contractor* carries out such commissioning in accordance with the requirements in the Scope. Where such commissioning is required to be carried out after Completion the *Contractor* liaises with the *Project Manager* to agree a commissioning programme and to obtain access to the Site. The *Contractor* carries out such commissioning in accordance with such programme, with the terms of the contract including the Security Documents and in accordance with any other restrictions on access that are notified to the *Contractor* by the *Project Manager*. The *Project Manager* confirms once the commissioning has been completed.

20.11 Before the *Contractor* commences Providing the Works on Site, it shall register the Site with the Considerate Constructor Scheme (the CCS) and shall thereafter comply with the requirements of the CCS including observing the related Code of Considerate Practice (or equivalent requirements) insofar as the same does not conflict with any other requirements specified in this contract.

**The
Contractor's
design**

21

21.1 The *Contractor* designs the *works* and is fully responsible (a) for such design, including any design contained in the Scope, any design contained in any changes or variations to the Scope or the *works* and any design carried out by any Subcontractors or other *Contractor's* Personnel in connection with the *works* (whether or not such third parties were employed or engaged by the *Contractor* or the *Client* before or after the Contract Date), and (b) for the selection and standards of all workmanship, goods and materials for the *works* and the satisfaction of any performance specification or other requirement included or referred to in the Scope save that, for the avoidance of doubt, nothing in this contract imposes on the *Contractor* any express or implied fitness for purpose obligation in relation to the design of any part of the works.

21.2 The *Contractor* submits the particulars of its design as the Scope requires to the *Project Manager* for acceptance. A reason for not accepting the *Contractor's* design is that it does not comply with either the Scope or the Applicable Law.

The *Contractor* does not proceed with the relevant work until the *Project Manager* has accepted its design.

21.3 The *Contractor* may submit its design for acceptance in parts if the design of each part can be assessed fully.

**Additional
design
requirements**

21A

21A.1 Not Used

21A.2 The *Contractor* warrants that the design of the *works* (including the design of the temporary works and any specification or selection carried out in relation thereto or assumed responsibility under the contract) is, has been and will be carried out with all the reasonable skill and care to be expected of a skilled, properly resourced and qualified professional designer of the relevant discipline(s) experienced in carrying out design or selection activities for work of a similar scale, complexity and subject matter to those

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comprised in the *works* at sites of a similar nature, complexity, size, use and geography as the Site.

- 21A.3 For the avoidance of doubt, any references in the contract to design which the *Contractor* has prepared or shall prepare or otherwise issue for the *works* includes a reference to any design which the *Contractor* has caused or causes to be prepared or issued by others and any design relating to or for the *works* prepared for or by the *Client* prior to the Contract Date.

Using the Contractor's design	22	
	22.1	The <i>Contractor</i> gives and shall give full disclosure to the <i>Client</i> of all Background IPR owned or licensed by it which is relevant to the <i>works</i> , provided that all such Background IPR is and shall remain the exclusive property of the <i>Contractor</i> (or, where applicable, the third party from whom the <i>Contractor's</i> right to use the Background IPR is derived).
	22.2	The Parties agree that all Foreground IPR shall vest in and be owned absolutely by the <i>Client</i> and, to the extent that the <i>Contractor</i> subcontracts the design of any of the <i>works</i> , the <i>Contractor</i> ensures that any and all Foreground IPR arising from such subcontracted work is and shall be assigned to the <i>Client</i> absolutely (and the <i>Contractor</i> shall give notice to the <i>Client</i> of any actual, threatened or suspected infringement of any Background IPR or Foreground IPR, as the case may be, immediately upon the <i>Contractor</i> first becoming aware of the same).
	22.3	Subject and without prejudice to clause 22.2, the <i>Client</i> grants to the <i>Contractor</i> an irrevocable, royalty-free, non-exclusive licence (such licence to remain in full force and effect until the completion of the <i>Contractor's</i> obligations or the termination of this contract or any dispute under this contract) to copy and use the Documents to which the Foreground IPR relates and to reproduce the designs and content of them for any purpose relating to the <i>works</i> .
	22.4	The <i>Contractor</i> is not liable for any use by the <i>Client</i> of any of the Documents for any purpose other than that for which they were prepared.
	22.5	Other than with the prior written approval of the <i>Client</i> , the <i>Contractor</i> does not and shall not grant nor purport to grant to any third party the right to use or reproduce any of the Documents.
	22.6	The <i>Contractor</i> warrants that the Documents (except to the extent that Subcontractors are used by it) are the <i>Contractor's</i> own original work and that, in any event, their use and reproduction in connection with the <i>works</i> will not infringe the Intellectual Property Rights of any third party. The <i>Contractor</i> further warrants that wherever Subcontractors are used to design any of the <i>works</i> , their work will be original and will be subject to clause 22.2.
	22.7	The <i>Contractor</i> agrees (on reasonable request at any time and following reasonable prior notice) to give the <i>Client</i> and/or those authorised by the <i>Client</i> access to the Documents and to provide copies (including copy negatives and CAD disks) of such of the Documents as the <i>Client</i> may request and, to the extent that any of the Documents are or will be generated by, stored in or maintained on any IT system, the <i>Contractor</i> undertakes to procure for the benefit of the <i>Client</i> , at no charge or at the lowest reasonable fee, the grant of a licence or sub-licence for any relevant software to enable the <i>Client</i> and/or its representatives to access, view, download and otherwise use such data.
	22.8	Without prejudice to any particular requirements set out elsewhere in the contract, the <i>Contractor</i> ensures and shall ensure the back up and secure storage in safe custody (in accordance with Good Industry Practice) of all the Documents. Without prejudice to this obligation, the <i>Contractor</i> shall submit to the <i>Project Manager</i> for approval the <i>Contractor's</i> proposals for the back-up and storage in safe custody of the Documents and the <i>Client</i> shall be entitled to object if the same is not in accordance with Good Industry Practice or the requirements of the contract. The <i>Contractor</i> shall comply, and shall cause all the <i>Contractor's</i> Personnel to comply, with all procedures to which the <i>Project Manager</i> has given his approval. The <i>Contractor</i> may vary its procedures for such back-up and storage subject to submitting its proposals for change to the <i>Project Manager</i> , who shall be entitled to object on the basis set out above.
	22.9	Each of the Parties agrees to execute and deliver all such further deeds and instruments and do and perform all such further acts and things as shall be or may be necessary or expedient for the purposes of giving full effect to the provisions of this clause 22. Without prejudice to the foregoing generality, the <i>Contractor</i> undertakes to promptly execute, deliver and implement the terms of all deeds, instruments, notices and/or documents (in such form as the <i>Client</i> may reasonably require) that may be necessary for validly transferring or vesting any interest in the Foreground IPR, the Documents, the <i>works</i> and/or Plant and Materials to or in the <i>Client</i> or any person nominated by the <i>Client</i> or for facilitating such transfer or vesting.

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- 22.10 The *Contractor* is responsible for the payment of all fees, royalties and other charges, if any, that may be payable under the terms of any licence or permission in respect of:
- any design provided by or on behalf of the *Contractor* in connection with this contract;
 - the construction, assembly, manufacture, supply and/or delivery to the Site of Plant and Materials; and
 - any work done or method of working employed in the execution of the *works*.
- 22.11 If any design provided by or on behalf of the *Contractor*, any Plant and Materials manufactured or supplied by or on behalf of the *Contractor* and/or any work done or method of working employed by the *Contractor* or any of the *Contractor's* Personnel in the execution of any of the *works* (or any of them) infringes any Intellectual Property Rights of any third party, then the *Contractor* indemnifies and will indemnify and hold harmless the *Client* from and against any and all claims, actions, proceedings, costs, losses and damages resulting from such infringement.

Design of Equipment	23	<p>23.1 The <i>Contractor</i> submits particulars of the design of an item of Equipment to the <i>Project Manager</i> for acceptance if the <i>Project Manager</i> instructs the <i>Contractor</i> to. A reason for not accepting is that the design of the item will not allow the <i>Contractor</i> to Provide the Works in accordance with</p> <ul style="list-style-type: none"> • the Scope, • the <i>Contractor's</i> design which the <i>Project Manager</i> has accepted or • the Applicable Law.
People	24	<p>24.1 The <i>Contractor</i> either provides each <i>key person</i> named to do the job stated in the Contract Data or provides a replacement person who has been accepted by the <i>Project Manager</i>.</p> <ul style="list-style-type: none"> • The <i>Contractor</i> submits the name, relevant qualifications and experience of a proposed replacement person to the <i>Project Manager</i> for acceptance. A reason for not accepting the person is that their relevant qualifications and experience are not as good as those of the person who is to be replaced. <p>24.2 The <i>Project Manager</i> may, having stated the reasons, instruct the <i>Contractor</i> to remove a person. The <i>Contractor</i> then arranges that, after one day, the person has no further connection with the work included in the contract.</p> <p>24.3 The <i>Project Manager</i> is entitled, after due warning in writing, to require the <i>Contractor</i> to remove from the <i>works</i> or their design any Subcontractor who misconducts himself or is incompetent or negligent in the performance of his duties or fails to conform with any particular provisions with regard to security or health and safety which may be set out in the contract or persists in any conduct which is prejudicial to security, safety or health and such Subcontractor shall not be again employed upon the <i>works</i> without the permission of the <i>Project Manager</i>.</p> <p>24.4 The <i>Contractor</i> ensures that its key persons identified in the Contract Data Part Two devote such time and resource to the <i>works</i> and this contract as is appropriate and commensurate with performance of the <i>Contractor's</i> obligations hereunder. The <i>Contractor</i> shall not omit or change any of the key persons or reduce their time commitment to the <i>works</i> or this contract without the <i>Project Manager's</i> prior written consent.</p>
Working with the <i>Client</i> and Others	25	<p>25.1 The <i>Contractor</i> co-operates with Others, including in obtaining and providing information which they need in connection with the <i>works</i>. The <i>Contractor</i> co-operates with Others and shares the Working Areas with Others as stated in the Scope. The <i>Contractor</i> permits the carrying out of work being carried out by Others concurrent with the execution of the <i>works</i>.</p> <p>25.2 The <i>Client</i> and the <i>Contractor</i> provide services and other things as stated in the Scope. Any cost incurred by the <i>Client</i> as a result of the <i>Contractor</i> not providing the services and other things which it is to provide is assessed by the <i>Project Manager</i> and paid by the <i>Contractor</i>.</p> <p>25.3 (1) If the <i>Project Manager</i> decides that the <i>works</i> (or any part thereof) do not meet the Condition stated for a Key Date by the date stated in the contract, then the <i>Contractor</i> pays delay damages (as liquidated damages) to the <i>Client</i> at the rate or amount</p>

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stated in the Contract Data on the following basis:

- (i) in the event that a one-off sum for delay damages is stated in the entries for Option X7 in the Contract Data for a failure to meet the relevant Condition by the associated Key Date, then the Contractor pays that sum to the Client; or
- (ii) in the event that a weekly or daily rate for delay damages is stated in the entries for Option X7 in the Contract Data for a failure to meet the relevant Condition by the associated Key Date, then the Contractor pays that weekly or daily rate (as the case may be) to the Client for each day or week (as the case may be) from the Key Date until the date when the Condition is met.

The Client may:

- subject to option Y(UK)2, deduct and retain the amount of any delay damages becoming due under the provisions of this clause 25.3 from any sums due or which become due to the Contractor; or
- demand the Contractor pay such amount to the Client, in which event the delay damages are payable to the Client within forty-five days.

In the event any delay damages are not paid to the Client within fourteen days following a demand by the Client (or offset against any other amounts payable to the Contractor at the Client's election), then such delay damages shall accrue interest at the rate specified in clause 51.4, and the Client is entitled to reimbursement by the Contractor for any reasonable and necessary collection costs, including reasonable legal fees, directly related to collecting such delay damages.

The Contractor and the Client respectively acknowledge and agree that the rate(s) of delay damages stated in the entries for Option X7 in the Contract Data represent(s) a genuine and reasonable pre-estimate of the costs and losses of the Client consequent upon the Contractor's failure to meet the relevant Condition by the associated Key Date and:

- the Contractor is not entitled to dispute or challenge the Client's entitlement to claim, deduct and/or be paid delay damages, whether on the ground that the same are unreasonable, excessive or a penalty,
 - the Contractor irrevocably waives any right that it may possess under Applicable Law to dispute or challenge on any such basis the Client's entitlement to claim, deduct and/or be paid delay damages as aforesaid, and
 - the payment, allowance or deduction of delay damages under this contract shall neither relieve the Contractor of its obligation to Provide the Works nor from any of its other obligations or liabilities under this contract.
- (2) If the Key Date is changed to a later date after delay damages have been paid, the Client repays the overpayment of delay damages with interest. Interest is assessed from the date of payment to the date of repayment and the date of repayment is an assessment date.
- (3) The Parties agree and acknowledge that a Key Date may be a date that is after the Completion Date or after the date of Completion.
- (4) If, at any time, any provisions of this contract requiring the payment of delay damages are found to be void, invalid or otherwise unenforceable (for any reason), the Client will be entitled to claim general damages in lieu of such delay damages, provided that the Client's entitlement to general damages will not exceed the aggregate amount of delay damages that the Client would have been entitled to claim in respect of the relevant breach or failure of performance by the Contractor had the said delay damages provisions not been void, invalid or unenforceable.

Subcontracting & assignment	26	
	26.1	<p>(1) The Contractor does not, without the prior written consent of the Client, assign or charge the benefit of and its rights and benefits under this contract. Any purported assignment of this contract by the Contractor to any third party without the prior written consent of the Client thereto constitutes a Material Breach on the part of the Contractor.</p> <p>(2) The Client may, at any time and without requiring the Contractor's consent (but subject to giving notice thereof to the Contractor), assign (absolutely or in security), novate or transfer the whole of its rights, benefits, interest or obligations under this contract to any third party. Where the Client wishes to novate this contract, the novation agreement to be entered into between the Parties and any third party novatee shall (a) be substantially in the form of the draft novation agreement appearing in Annex 4F to the contract (or in such</p>

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other form as the *Client* may reasonably require) and shall be completed and (b) be duly executed as a deed by the *Contractor* and promptly delivered to the *Client* (provided that the *Client* shall reimburse the *Contractor* in respect of the legal fees reasonably and properly incurred by the *Contractor* in connection with the entering into and delivery of such novation agreement).

- 26.2
- (1) If the *Contractor* subcontracts any part of the *works*, it remains responsible for Providing the Works as if it had not subcontracted. The provisions of this contract apply in all respects as if a Subcontractor's employees and equipment were the *Contractor's* own employees and equipment.
 - (2) The *Contractor* does not subcontract the whole of the *works* without the prior written consent of the *Client* (which consent may be granted or withheld entirely at the *Client's* discretion and may be granted subject to conditions).
 - (3) Save where otherwise expressly provided in this contract, the *Contractor* shall not without the prior written consent of the *Project Manager* (which consent shall not be unreasonably withheld or delayed) subcontract any part of the *works* or their design. The *Client* shall have no obligation to pay the *Contractor* with respect to work carried out under a subcontract for which the prior approval of the *Project Manager* has not been obtained. All subcontracts entered into by the *Contractor* in connection with the *works* shall be negotiated in accordance with a procedure previously agreed with the *Project Manager* and shall be in accordance with this clause 26.
 - (4) Subject to clause 26.3, in the event that the *Contractor* proposes to subcontract any part of the *works* or their design, the *Contractor* submits the name of the proposed Subcontractor and the terms of the proposed form of subcontract appointment to the *Project Manager* for approval. Without prejudice to clause 26.2(3), the *Project Manager* may withhold his approval to the *Contractor's* proposal to subcontract any part of the *works* or their design:
 - if the Subcontractor's appointment will not allow the *Contractor* to Provide the Works or otherwise enable the *Contractor* to perform its obligations under this contract (including any obligation to vest ownership of Foreground IPR in the *Client* and/or to assign or novate the benefit of the subcontract to the *Client* on termination of this contract); or
 - if the Subcontractor's appointment is on terms that do not create a full flow-down and step down of the *Contractor's* obligations and liabilities in relation to the relevant subcontracted work (provided always that the Subcontractor shall only be expected to take on liabilities proportionate to the subcontracted work and/or services it is providing); or
 - if the *Contractor* cannot provide reasonable evidence to the *Project Manager* that the proposed Subcontractor possesses the level of experience and knowledge necessary to perform the relevant subcontracted element of the *works* in an appropriate manner; or
 - if, in the opinion of the *Project Manager*, the Subcontractor's appointment is otherwise not consistent with the terms of this contract (which includes if the retention percentage and retention-free amount under the Subcontract are not at the same levels as under this contract); or
 - if the subcontract has not been procured through a procedure required by the Scope or otherwise by competitive tender or similar process designed to secure best value for the *Client*; or
 - if the subcontract's payment terms are unnecessarily and significantly inconsistent with those of this contract as regards the period of time between (i) the date of submission by the Subcontractor of each application for payment and the due date for payment of the sum due to the Subcontractor and/or (ii) the due date for payment of each sum due to the Subcontractor and the final date for payment thereof; or
 - if the proposed Subcontractor is a Group Company of the *Contractor* and the *Contractor* fails to demonstrate to the *Client's* reasonable satisfaction that the commercial agreement for the proposed subcontract is in line with prevailing market conditions for agreements reached with subcontractors for work of the same type on an open market, arm's-length basis.
 - (5) In the event that the *Client* makes a prior written request to the *Contractor*, each subcontract or appointment entered into by the *Contractor* shall expressly identify the *Client* as a third party entitled to enforce all rights and remedies equivalent to those available to the *Contractor* in accordance with the provisions of the Contracts (Rights of Third Parties) Act 1999 and shall also expressly confirm that such third party rights

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of the *Client* shall take priority over those rights of any other third party granted rights under such subcontract or appointment.

- (6) Save where the *Client* has made a request pursuant to clause 26.2(5), in respect of each subcontract the *Contractor* shall (within 10 Working Days of the date of the *Contractor's* receipt of the later of (i) the *Client's* written request for such collateral warranty and (ii) if applicable, the *Client's* written notice of approval of the form of such collateral warranty) provide to the *Client* a collateral warranty in favour of the *Client* (duly executed as a deed by the relevant Subcontractor) in the prescribed form appearing in Annex 4D to the contract (subject to any changes to such prescribed form requested by the relevant Subcontractor and approved by the *Client* (such approval not to be unreasonably withheld or delayed)) under which the relevant Subcontractor warrants to the *Client* the full and proper performance of such subcontract.
- (7) The *Contractor* does not appoint a proposed Subcontractor until the *Project Manager* has approved such Subcontractor and the proposed terms of its subcontract or appointment. Following the engagement of each Subcontractor, the *Contractor* provides a copy of the executed subcontract or appointment to the *Project Manager* within 10 Working Days of the date of the relevant subcontract or appointment. The *Client* has no obligation to pay the *Contractor* in respect to work carried out under a subcontract or appointment for which the prior approval of the *Project Manager* has not been obtained in accordance with this contract.

26.3 The *Contractor* procures and shall procure that all subcontracts for Subcontractors are validly executed (as a deed) prior to the commencement of any works on Site by the Subcontractor (or, in the case of Subcontractors carrying out design services only, prior to any payment being made to such Subcontractors) and delivers to the *Project Manager* a certified true copy of each such subcontract within 10 Working Days of its execution.

26.4 The *Contractor* procures any items of Plant and Materials or other elements of the works from a person specified by this contract where this contract states that the *Contractor* shall only procure such items of Plant and Materials or other elements of the works from such specified person. The *Contractor* shall directly appoint such specified person on the basis of the terms and conditions specified in this contract subject to amendment for any project specific requirements as allowed in any relevant clause of the Scope.

Where the *Contractor* procures such items of Plant and Materials or other elements of the works from such specified person then the provisions of clause 26.2(1) apply and such specified person shall be deemed to be a domestic Subcontractor and the *Contractor* shall be fully liable for their performance as if it had not subcontracted such subcontract work.

Other responsibilities	27	
	27.1	The <i>Contractor</i> obtains approval of its design from Others where necessary.
	27.2	The <i>Contractor</i> provides access to work being done and to Plant and Materials being stored for the contract for <ul style="list-style-type: none"> the <i>Project Manager</i>, the <i>Supervisor</i> and Others as named by the <i>Project Manager</i>.
	27.3	The <i>Contractor</i> obeys an instruction which is in accordance with the contract and is given by the <i>Project Manager</i> or the <i>Supervisor</i> .
	27.4	The <i>Contractor</i> acts in accordance with the health and safety requirements stated in the Scope.
	27.5	The <i>Contractor</i> is responsible for preparing, at its own cost, all documentation necessary to support any and all applications for Consents which may be required in relation to the <i>Contractor's</i> proposals for the works (as set out in the Scope provided by the <i>Contractor</i>). All applications for Consents must be submitted through the <i>Client</i> . The <i>Contractor</i> will not be entitled to any increase in the Prices or any adjustment of the Completion Date or any Key Date by reason of any delay in obtaining any Consents.
Audit	28	
	28.1	In addition to any other rights of audit or inspection under this contract, the <i>Client</i> and its agents may, at any time and without notice, audit the books and records being maintained by the <i>Contractor</i> whilst undertaking this contract, including those books and records relating to any costs and expenses incurred by the <i>Contractor</i> in connection with the works and/or charged to the <i>Client</i> under this contract and including those books and records being maintained by the <i>Contractor</i> , its Subcontractors and suppliers.

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UK/EU/NATO Nationals	29	
	29.1	Save where expressly otherwise requested by the <i>Contractor</i> and approved in writing by the <i>Client</i> , all personnel employed by the <i>Contractor</i> or its Subcontractors (including their respective suppliers or sub-subcontractors of whatever tier) in connection with the <i>works</i> (or any part thereof) shall be UK Nationals and/or citizens of any European Union or NATO country who (as the <i>Contractor</i> shall procure) have been appropriately vetted by the United Kingdom Security Vetting unit and have satisfied the UK Government's Baseline Personnel Security Standard (BPSS) or, in respect of any roles requiring a higher level of security clearance, have passed a Security Check level of vetting (as more particularly described in the Scope).
Reference Information	29A	
	29A.1	The <i>Contractor</i> acknowledges and confirms that: <ul style="list-style-type: none"> it is not entitled to rely upon any of the Reference Information; the <i>Client</i> makes no representation or warranty as to the sufficiency, accuracy or completeness of any Reference Information; the <i>Contractor</i> shall use or rely upon the Reference Information entirely at its own risk; and the <i>Client</i> has no liability arising out of or in relation to the Reference Information, or from any representation or statement contained therein.
	29A.2	The <i>Client</i> gives no warranty to the <i>Contractor</i> that the use or implementation of any Disclosed Data, Reference Information, comments, statements, certificates or instructions furnished or given by or on behalf of the <i>Client</i> shall not be such as will cause the <i>Contractor</i> to infringe any third party's Intellectual Property Rights in the performance of the <i>Contractor's</i> obligations under this contract, in respect of which the <i>Contractor</i> shall be obliged to satisfy itself.
	29A.3	Notwithstanding any other provisions of this contract and for the avoidance of doubt, the award of this contract by the <i>Client</i> and the placement of any <i>works</i> or other contract task under it does not constitute an authorisation by the Crown under Sections 55 and 56 of the Patents Act 1977 or Section 12 of the Registered Designs Act 1949. The <i>Contractor</i> acknowledges that any such authorisation by the <i>Client</i> under its statutory powers must (in order to be valid) be expressly provided in writing by the <i>Client</i> , with reference to the acts authorised and the specific intellectual property involved.
Financial Distress	29B	
	29B.1	In the event that the <i>Contractor</i> and/or Guarantor suffers a Financial Distress Event at any time during the <i>works</i> , the <i>Contractor</i> shall, in relation to such Financial Distress Event, comply with its obligations under Schedule 8 (<i>Financial Distress</i>) of the Framework Alliance Contract.
Data Protection	29C	
	29C.1	Subject and without prejudice to clause 29D, the <i>Contractor</i> will duly observe all its obligations under the Data Protection Legislation which arise in connection with this contract. In particular, the <i>Contractor</i> will, in its processing of personal data in connection with the <i>works</i> or this contract, comply with its obligations under clause 13.4 and <i>Legal Requirement 4 (GDPR)</i> in Part 1 of Schedule 6 (<i>Legal Requirements and Special Terms</i>) of the Framework Alliance Contract.
	29C.2	The <i>Contractor</i> warrants that it will comply with its obligations under the Data Protection Legislation and will fully indemnify and keep indemnified the <i>Client</i> (including the <i>Client's</i> representatives, servants and/or agents) against all costs, losses and damages associated with any third party claims made in respect of information subject to any of the Data Protection Legislation which claims would not have arisen but for some act, omission or negligence on the part of the <i>Contractor</i> , the <i>Contractor's</i> Personnel or any other person under the <i>Contractor's</i> control.
Security Measures	29D	
	29D.1	It is a material condition of this contract that the <i>Contractor</i> complies with and shall at all times comply with the requirements of the Security Documents, the provisions of the Scope in relation to security matters and the instructions of the Base Commander. Instructions issued to the <i>Contractor</i> by the Base Commander in relation to matters of

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operational security at the Base shall be deemed to be instructions of the *Project Manager* under the contract (and the *Contractor* shall comply with and procure that the *Contractor's* Personnel comply with such instructions). On receipt of instructions from the Base Commander that affect the *works*, the *Contractor* shall forthwith notify the *Project Manager* of the terms of such instruction.

- 29D.2 The *Contractor* at all times protects and shall protect all information (including, without limitation, design data, Disclosed Data and Reference Information) relating to those aspects designated as OFFICIAL-SENSITIVE in the Security Aspects Letter issued to it (if any), in accordance with the official security conditions referred to or contained in this contract and/or annexed or referred to in the Security Aspects Letter. The *Contractor* shall include the requirements and obligations set out in this clause 29D.2 in each subcontract placed by it in connection with or for the purposes of this contract which requires disclosure of OFFICIAL-SENSITIVE information to the relevant Subcontractor or under which any information relating to any aspects designated as OFFICIAL-SENSITIVE in the Security Aspects Letter is or shall be created by the relevant Subcontractor. The *Contractor* shall also include in each such subcontract a requirement for the relevant Subcontractor to pass down the requirements of this clause 29D.2 to its sub-subcontractors and through all levels of the supply chain to the lowest level where any OFFICIAL-SENSITIVE information is handled.
- 29D.3 Where the *Contractor* considers that any instruction to it from the Base Commander is a compensation event, the *Contractor* notifies the *Project Manager* thereof in accordance with clauses 61.1 and 61.3.
- 29D.4 A decision of the *Client* on the question of whether the *Contractor* has complied or is complying with its obligations under clauses 29D.1 and/or 29D.2 shall be final and conclusive for the purposes of this contract.
- 29D.5 The *Client* is entitled to terminate this contract immediately if (a) the *Contractor* is in breach of clause 29D.1 and/or clause 29D.2 at any time and/or (b) the *Contractor* is in breach of any secrecy or security obligation imposed by this contract, any Applicable Law or any of its other contract(s) with the *Client* or any OGD, which breach or breaches is/are deemed to constitute Material Breach(es) on the part of the *Contractor* for the purposes of this contract.

**Disclosure of
Disclosed Data** 29E

- 29E.1 Subject to clauses 29D, 29E.4, and 29E.5, the *Contractor*:
- (1) treats in confidence all Disclosed Data it receives from the *Client* or any of the *Client's* employees, agents, consultants and other *Contractors*;
 - (2) does not disclose any of that Disclosed Data to any third party without the prior written consent of the *Client*, which consent shall not be unreasonably withheld, except that the *Contractor* may disclose Disclosed Data in confidence, without prior consent, to such persons (including its insurers, lawyers and professional advisers) and to such extent as may be necessary for the performance of this contract;
 - (3) does not use any of that Disclosed Data otherwise than for the purpose of this contract; and
 - (4) does not copy any of that Disclosed Data except to the extent necessary for the purpose of fulfilling its obligations under this contract.
- 29E.2 The *Contractor* ensures that all Disclosed Data disclosed to the *Contractor* by or on behalf of the *Client* under or in connection with this contract:
- (1) is disclosed to the *Contractor's* Personnel only to the extent necessary for the performance of this contract; and
 - (2) is treated in confidence by them and not disclosed except with prior written consent or used otherwise than for the purpose of performing the *works* or having work performed under this contract or any related subcontract.
- 29E.3 The *Contractor* ensures that the *Contractor's* Personnel are aware of the *Contractor's* arrangements for discharging the obligations at clauses 29E.1 and 29E.2 before they receive Disclosed Data and shall take such steps as may be reasonably practical to enforce such arrangements.
- 29E.4 The provisions of this clause 29E do not apply to any Disclosed Data to the extent that the *Contractor* demonstrates:
- (1) that the Disclosed Data was or has become published or publicly available for use otherwise than in breach of any provision of this contract or any other agreement

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between the Parties;

- (2) that the Disclosed Data was already known to the *Contractor* (without restrictions on disclosure or use) prior to the *Contractor* receiving the Disclosed Data under or in connection with this contract;
- (3) that the Disclosed Data was received without restriction on further disclosure from a third party who lawfully acquired it and who is itself under no obligation restricting its disclosure; or
- (4) from its records that the same Disclosed Data was derived independently of that received under or in connection with this contract;

provided that the relationship to any other Disclosed Data is not revealed.

- 29E.5 The *Contractor* is not in breach of this clause 29E where it can demonstrate that any disclosure of Disclosed Data was made solely and to the extent necessary to comply with any Applicable Law, Statutory Requirement and/or any judicial or parliamentary obligation. Where such a disclosure is made, the Party making the disclosure shall ensure that the recipient of the Disclosed Data is made aware of and asked to respect its confidentiality. Such disclosure shall in no way diminish the obligations of the Parties under this clause 29E.
- 29E.6 Nothing in this clause 29E affects the Parties' obligations of confidentiality where information is disclosed orally in confidence.
- 29E.7 The *Contractor* takes every precaution to ensure that information about this contract and/or arising from or connected with this contract, is divulged only to the minimum number of employees and then only to the extent essential to each person's action in carrying out this contract. The *Contractor* will not in any circumstances allow access by any employees to general information not relating to the *works* (or any relevant part thereof) with which such employee is personally concerned. No information regarding the *works* being provided or facilities to photograph or film at the Base or any part thereof will be given or permitted by the *Contractor* except with the express prior written permission of the *Client* (which permission may be granted subject to such conditions as the *Client* deems appropriate).
- 29E.8 The *Contractor* (a) does not pass or communicate any information concerning this contract, the *works*, the Site or the Base to any representatives of the press, radio, television and/or other communications media, unless specifically granted permission to do so in writing by the *Client* (which permission may be granted subject to such conditions as the *Client* deems appropriate) and (b) ensures that it does not, through its action or inaction, harm the *Client's* reputation.
- 29E.9 The obligations of the *Contractor* under the foregoing provisions of clause 29D and this clause 29E are in addition to (and are without prejudice to) the *Contractor's* obligations under *Legal Requirement 3 (Official Secrets Act and Finance Act)* in Part 1 of Schedule 6 (*Legal Requirements and Special Terms*) of the Framework Alliance Contract.

Transparency 29F

- 29F.1 Notwithstanding any other term of this contract (including clause 29E (*Disclosure of Disclosed Data*)), the *Contractor* understands that the *Client* may publish the Transparency Information to the general public. The *Contractor* assists and co-operates with the *Client* to enable the *Client* to publish the Transparency Information.
- 29F.2 Before publishing the Transparency Information to the general public in accordance with clause 29F.1, the *Client* shall redact any information that would be exempt from disclosure if it was the subject of a request for information under the FOIA or the EIR, including any information that the *Contractor* has notified to the *Client* (and the Parties have agreed) is commercially sensitive information.
- 29F.3 The *Client* may consult with the *Contractor* before redacting any information from the Transparency Information in accordance with the provisions of clause 29F.2. The *Contractor* acknowledges and accepts that its representations on redactions during consultation may not be determinative and that the decision whether to redact information is a matter in which the *Client* shall exercise its own discretion, subject always to the provisions of the FOIA or the EIR (as applicable).

Publicity 29G

- 29G.1 The *Contractor* may publicise the *works* and/or this contract only with the *Client's* prior written approval (which approval may be given or withheld at the *Client's* sole discretion and may be granted subject to such conditions as the *Client* deems appropriate).

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- 29G.2 The *Contractor* ensures that the *Contractor's* Personnel do not publicise (including on any form of social media) the *works* and/or this contract other than in accordance with clause 29G.1.

Retention and Supply of Records and Data	29H
	<p>29H.1 Subject and without prejudice to clause 22.2, the <i>Contractor</i> permits all Documents to be examined and if necessary copied, by or on behalf of the <i>Client</i> or will provide copies to the <i>Client</i> at the <i>Client's</i> reasonable cost.</p> <p>29H.2 Unless the Scope specifies otherwise, copies of the Documents will be retained by the <i>Contractor</i> for a period of at least twelve (12) years after the Completion Date of the <i>works</i>.</p> <p>29H.3 Copies of the Documents will be maintained by the <i>Contractor</i> in such media and formats as the <i>Client</i> may agree and such copies shall be "Control Copies". Control Copies will not be altered by the <i>Contractor</i> in any way which changes the build standard except as authorised in writing by the <i>Client</i>. Control Copies will be deemed to be the property of the <i>Client</i>, and the <i>Client</i> may take possession of any or all Control Copies notwithstanding that the <i>Contractor</i> is Insolvent or any transfer of its assets to any third party.</p>
Prohibited Acts	29I
	<p>29I.1 The <i>Contractor</i> does not do and warrants that, in entering into this contract, it has not done any Prohibited Act.</p> <p>29I.2 If the <i>Contractor</i> or any of the <i>Contractor's</i> Personnel do any Prohibited Act or commit any offence under Applicable Law, including any offence under the Bribery Act 2010, with or without the knowledge or authority of the <i>Contractor</i> in relation to this contract or any of its other contracts with the <i>Client</i> or any OGD, this shall constitute a Material Breach of this contract by the <i>Contractor</i> and the <i>Client</i> shall be entitled:</p> <ol style="list-style-type: none"> (1) to terminate this contract and recover from the <i>Contractor</i> the amount of any loss resulting from such termination; (2) to recover from the <i>Contractor</i> the amount or value of any such gift, consideration or commission; and (3) to recover from the <i>Contractor</i> (on an indemnity basis) any other loss sustained in consequence of any breach of this clause 29I, where this contract has not been terminated. <p>29I.3 In exercising its rights or remedies under this clause 29I, the <i>Client</i> shall:</p> <ol style="list-style-type: none"> (1) act in a reasonable and proportionate manner having regard to such matters as the gravity of, and the identity of the person performing, the Prohibited Act; (2) give all due consideration, where appropriate, to action other than termination of this contract, including (without being limited to); <ul style="list-style-type: none"> • requiring the <i>Contractor</i> to procure the termination of a Subcontract where the Prohibited Act is that of a Subcontractor or anyone acting on its or their behalf; or • requiring the <i>Contractor</i> to procure the dismissal of an employee (whether its own or that of a Subcontractor or anyone acting on its behalf) where the Prohibited Act is that of such employee. <p>29I.4 Recovery action taken against the <i>Client</i> or any of its employees, agents, consultants and other contractors or any OGD shall be without prejudice to any recovery action taken against the <i>Contractor</i> pursuant to this clause 29I.</p>

Fraud	29J
	<p>29J.1 In addition to the requirements of clause 29I (<i>Prohibited Acts</i>) and this clause 29J, the <i>Contractor</i> shall comply with the requirements of the Fraud Prevention Manual.</p> <p>29J.2 The <i>Contractor</i> warrants that (a) in entering this contract the <i>Contractor</i> has not committed any fraud and (b) the <i>Contractor</i> shall maintain a robust fraud prevention and ethics policy which concurs with the <i>Client's</i> zero tolerance regime with regard to fraud and theft and in accordance with the tender submission and all discussions relating to this contract.</p> <p>29J.3 The <i>Contractor</i> procures and shall procure that its Subcontractors are under equivalent contractual obligations as are set out in this clause 29J and shall take all necessary steps</p>

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to prevent fraud or the risk of fraud arising and shall disclose the relevant provisions within the Subcontracts upon request by the *Client*.

- 29J.4 The *Contractor* warrants that it has read, and that the *Contractor's* Personnel shall comply with the detailed anti-fraud measures and recommendations set out within the Fraud Prevention Manual in the Scope and upon entering into this contract shall circulate copies of the said manual and policies to each and every member of the *Contractor's* Personnel at any time engaged in relation to the *works* or any part thereof.
- 29J.5 Without prejudice to the provisions of clause 29D (Security Measures) and clause 29E (Disclosure of Disclosed Data), the *Contractor* shall immediately report to the *Client* any circumstances giving rise to fraud within its own organisation, that of its Subcontractor or the *Client* or otherwise in relation to this contract and shall provide all such relevant information which may assist the *Client* in dealing with such report efficiently and effectively.
- 29J.6 The *Contractor* shall immediately report to the *Client* any act or omission, whether fraudulent, inadvertent or accidental which has resulted or could result in the *Client* being charged for work and/or services which have not been carried out.
- 29J.7 The *Client* shall be entitled to terminate this contract immediately in accordance with Section 9 (*Termination*) of the *conditions of contract* in the event that the *Contractor*, any of the *Contractor's* Personnel or any other person for whom it is responsible commits any act of fraud or theft.
- 29J.8 The *Contractor* fully co-operates and shall fully co-operate and comply with any investigations and enquiries initiated by the *Client*, the Defence Fraud Unit, the National Audit Office, the Police, or any other organisation identified by the *Client* and/or any organisation acting on behalf of them.
- 29J.9 The *Client* is entitled to set-off, deduct, abate or recover as a debt against the *Contractor* all monies and losses howsoever arising in connection with or sustained as a consequence of fraud by the *Contractor* or any of the *Contractor's* Personnel, including all associated investigation costs.
- 29J.10 Any fraud-related actions under this clause 29J may be brought by the *Client* or such other appropriate body by civil or criminal proceedings. Such proceedings shall be brought in the English courts unless the Parties otherwise agree in writing.

Conflicts of Interest	29K
	<p>29K.1 The <i>Contractor</i> shall take appropriate steps to ensure that neither the <i>Contractor</i> nor the <i>Contractor's</i> Personnel are placed in a position where, in the reasonable opinion of the <i>Client</i>:</p> <ol style="list-style-type: none"> (1) there is or may be an actual conflict or potential conflict, between the pecuniary or personal interests of the <i>Contractor</i> and the duties owed to the <i>Client</i> under the provisions of this contract; or (2) the behaviour of the <i>Contractor</i> or the <i>Contractor's</i> Personnel is not in the <i>Client's</i> best interests or might adversely affect the <i>Client's</i> reputation.
	<p>29K.2 The <i>Contractor</i> shall as soon as reasonably practicable disclose to the <i>Client</i> full particulars of any behaviour or relationship which might give rise to an actual or potential conflict or otherwise breach clause 29K.1.</p>
	<p>29K.3 The <i>Client</i> may terminate this contract and/or take such other steps it deems necessary where, in the reasonable opinion of the <i>Client</i>, there is or may be (a) any actual conflict or potential conflict between the financial or personal interests of the <i>Contractor</i> or any of the <i>Contractor's</i> Personnel and the duties owed by the <i>Contractor</i> to the <i>Client</i> under the provisions of this contract or (b) any other breach of clause 29K.1. The actions of the <i>Client</i> pursuant to this clause 29K do not and will not prejudice or affect any right of action or remedy which has accrued or will accrue to the <i>Client</i>.</p>
Equality	29L
	<p>29L.1 The <i>Contractor</i> (and, as the <i>Contractor</i> will procure, the <i>Contractor's</i> Personnel) does not and will not unlawfully discriminate within the meaning and scope of the provisions of the Equality Act.</p>
	<p>29L.2 Where, in connection with this contract, the <i>Contractor</i> is required to carry out work on the <i>Client's</i> premises or alongside the <i>Client's</i> employees on any other premises in a manner which any third party might reasonably assume to be a role which is being undertaken by an employee of the <i>Client</i>, the <i>Contractor</i> shall comply with the reasonable directions of the <i>Client</i> in order to enable the <i>Client</i> to fulfil its duties under section 149(1) of the Equality</p>

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Act. Those directions shall include but not be limited to the directions set out in this clause 29L.

- 29L.3 Without prejudice to the *Contractor's* responsibility for its Subcontractors the *Contractor* shall take all reasonable steps to procure the observance of the provisions of this clause 29L and clause 29N by the *Contractor's* Personnel engaged in relation to this contract.
- 29L.4 If the *Contractor* becomes aware of any prosecution or proceedings, brought under the Equality Act, against the *Contractor* or the *Contractor's* Personnel engaged in performance of this contract or any of its other contracts with the *Client* or any OGD, the *Contractor* shall immediately notify the *Client* at the address specified in the Contract Data. The *Contractor* shall not be required to so notify in breach of any duty of confidentiality between the *Contractor* and any of its employees.
- 29L.5 Notification by the *Contractor* of any information shall not prejudice any rights of the *Client* or the *Contractor* under this contract or otherwise at law.
- 29L.6 The *Contractor* agrees to reflect the provisions of this clause 29L in each Subcontract that it enters into to satisfy the requirements of the contract and to require its Subcontractors to reflect this condition in their sub-subcontracts that they enter into to satisfy the requirements of this clause 29L.

Change of Control	29M
29M.1	The <i>Contractor</i> shall, as soon as practicable, and in any event by not less than 30 Working Days' prior written notice of any proposed or anticipated Change of Ownership, provide the <i>Client</i> with notice of such anticipated Change of Ownership. The <i>Contractor</i> shall, at the request of the <i>Client</i> at any time, confirm to the <i>Client</i> the details of the legal and beneficial ownership of its and the Guarantor's shares and whether any arrangements for a Change in Ownership have been entered into.
29M.2	In the event of a Change of Ownership of any shares of any Guarantor which is listed on a Regulated Investment Exchange, as defined in section 285(1)(a) of the Financial Services and Markets Act 2000, the provisions of clause 29M.1 shall not apply.
29M.3	Where the Change of Ownership in relation to the <i>Contractor</i> or any Guarantor is to an Unsuitable Third Party or where the <i>Contractor</i> is otherwise in breach of any provisions of this clause 29M, such Change of Ownership or breach will be deemed to be a Material Breach and the <i>Client</i> may terminate this contract in accordance with Section 9 (<i>Termination</i>) of the <i>conditions of contract</i> at any time by giving at least 10 Working Days' notice thereof, and this contract shall terminate on the date falling 10 Working Days after the date on which the <i>Contractor</i> receives such notice.
29M.4	Where the Change of Ownership of a Subcontractor is to any Unsuitable Third Party, the <i>Client</i> may instruct the <i>Contractor</i> to terminate the employment of that Subcontractor (in which event the <i>Contractor</i> shall proceed to terminate its employment forthwith and any failure of the <i>Contractor</i> to do so shall be deemed to constitute a Material Breach of this contract by the <i>Contractor</i>).

Anti-Slavery	29N
29N.1	<p>The <i>Contractor</i> will not engage in any practice that amounts to:</p> <ul style="list-style-type: none"> • slavery or servitude (each as construed in accordance with Article 4 of the Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950, as amended); • forced or compulsory labour (as defined by the International Labour Organisation's Forced Labour Convention 1930 (No. 29) and Protocol); • human trafficking; or • arranging or facilitating the travel of another person with a view to that person being exploited.
29N.2	<p>The <i>Contractor</i> will, and will procure that its officers, employees, agents, Subcontractors and other <i>Contractor's</i> Personnel and any other persons who perform services for or on behalf of it in connection with this contract will:</p> <ul style="list-style-type: none"> • comply with all Applicable Laws relating to slavery, servitude, forced or compulsory labour or human trafficking (for the purposes of this clause 29L, the Anti-Slavery Laws); • not do or omit to do any act or thing which constitutes or may constitute an offence under any of the Anti-Slavery Laws; • not knowingly employ or engage in any practices which constitutes or may constitute

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an offence under any of the Anti-Slavery Laws and not knowingly appoint or contract with any person who has been convicted of or prosecuted in any jurisdiction in relation to an offence or alleged offence under any of the Anti-Slavery Laws;

- not commit any act or omission which causes or could cause the *Client* to breach, or commit an offence under, any of the Anti-Slavery Laws;
- comply with the *Client's* anti-slavery policy and/or code of conduct as notified to the *Contractor* and updated from time to time; and
- promptly notify the *Client* of any breach of this clause 29N.

29N.3 The Parties agree that any breach by the *Contractor* of any of its obligations under clause 29N.1 or clause 29N.2 constitutes a Material Breach of this contract by the *Contractor* entitling the *Client* to terminate this contract immediately. Such right of termination is without prejudice to any other rights and remedies the *Client* may have at law, equity or under this contract for the *Contractor's* breach.

Cyber security 29O

29O.1 In this clause 29O, the following words and expressions shall have the meanings given to them, except where the context requires a different meaning:

"Contractor Premises" means any premises from which work is provided in connection with this contract or from which the *Contractor* or any relevant Subcontractor manages, organises or otherwise directs the provision or the use of the *works* and/or any sites from which the *Contractor* or any relevant Subcontractor generates, processes, stores or transmits MOD Identifiable Information in relation to this contract;

"Cyber Risk Level" means the level of Cyber Risk relating to this contract (or any subcontract) assessed in accordance with the Cyber Security Model;

"Cyber Security Implementation Plan" means the plan referred to in clause 29O.3 including but not limited to any risk-balance case and mitigation measures required by the *Client*;

"Cyber Security Incident" means an event, act or omission which gives rise or may give rise to:

- unauthorised access to an information system or electronic communications network;
- disruption or change of the operation (including but not limited to takeover of control) of an information system or electronic communications network;
- destruction, damage, deletion or the change of MOD Identifiable Information residing in an information system or electronic communications network;
- removal or limiting the possibility to use MOD Identifiable Information residing in an information system or electronic communications network; or
- the appropriation, publication, dissemination or any other use of non-public MOD Identifiable Information by persons unauthorised to do so.

"Cyber Security Instructions" means DEFSTAN 05-138, together with any relevant ISN and specific security instructions relating to this contract issued by the *Client* to the *Contractor*;

"Cyber Security Model" and **"CSM"** mean the process by which the *Client* ensures that MOD Identifiable Information is adequately protected from Cyber Incident and includes the CSM Risk Assessment Process, DEFSTAN 05-138 and the CSM Supplier Assurance Questionnaire;

"CSM Risk Assessment Process" means the risk assessment process which forms part of the Cyber Security Model and is used to measure the Cyber Risk Level for this contract and any subcontract;

"CSM Supplier Assurance Questionnaire" means the supplier assessment questionnaire which forms part of the Cyber Security Model and is to be used by the *Contractor* to demonstrate compliance with this clause 29O;

"Data" means any 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;

"DEFSTAN 05-138" means the Defence Standard 05-138 (as amended or replaced from time to time);

"Electronic Information" means all information generated, processed, transferred or otherwise dealt with under or in connection with the Contract, including but not limited to

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Data, recorded or preserved on any information system or electronic communications network;

“**ISN**” means Industry Security Notices issued by the *Client* to the *Contractor*, whether directly or by issue on the [gov.uk](https://www.gov.uk/government/publications/industry-security-notices-isns) website at: <https://www.gov.uk/government/publications/industry-security-notices-isns>;

“**JSyCC WARP**” means the Joint Security Co-ordination Centre MOD Defence Industry Warning, Advice and Reporting Point or any successor body notified by way of ISN;

“**MOD Identifiable Information**” means any and all Electronic Information which is attributed to or could identify an existing or proposed defence capability, defence activities or personnel and which the *Client* requires to be protected against loss, misuse, corruption, alteration and unauthorised disclosure;

“**NSA/DSA**” means, as appropriate, the National or Designated Security Authority of the *Contractor* that is responsible for the oversight of the security requirements to be applied by the *Contractor* and for ensuring compliance with applicable national security regulations;

“**Supplier Cyber Protection Service**” means the CSM Risk Assessment Process and CSM Supplier Assurance Questionnaire.

29O.2 The *Client* shall:

- determine the Cyber Risk Level appropriate to this contract and, where the *Contractor* has not already been notified of the Cyber Risk level prior to the date of this contract, shall provide notification of the relevant Cyber Risk level and the appropriate Cyber Security Instructions to the *Contractor* as soon as is reasonably practicable; and
- notify the *Contractor* as soon as reasonably practicable where the *Client* reassesses the Cyber Risk Level relating to this contract.

29O.3 The *Contractor* (and, as the *Contractor* shall procure, each of the *Contractor's* Personnel):

- (1) complies with DEFSTAN 05-138;
- (2) completes the CSM Risk Assessment Process in accordance with the *Client's* instructions, ensuring that any change in the Cyber Risk Level is notified to any affected Subcontractor, and complete a further CSM Risk Assessment or CSM Supplier Assurance Questionnaire where a change is proposed to the *Contractor's* supply chain which has or may have an impact on the Cyber Risk Level of this contract or on receipt of any reasonable request by the *Client*;
- (3) completes the CSM Supplier Assurance Questionnaire no less than once in each year of this contract commencing on the first anniversary of completion of the CSM Supplier Assurance Questionnaire;
- (4) (having regard to the state of technological development) implements and maintains all appropriate technical and organisational security measures to discharge its obligations under this clause 29O in accordance with Good Industry Practice, provided always that, where there is a conflict between the *Contractor's* obligations under clause 29O.3(1) above and this clause 29O.3(4), the *Contractor* notifies the *Client* in accordance with the notification provisions in DEFSTAN 05-138 as soon as it becomes aware of the conflict and the *Client* determines which standard or measure takes precedence;
- (5) complies with all Cyber Security Instructions notified to it by the *Client* as soon as reasonably practicable;
- (6) notifies the JSyCC WARP in accordance with ISN 2014/02 as amended or updated from time to time and the *Contractor's* NSA/DSA, and in the case of a Subcontractor also notify the *Contractor*, immediately in writing as soon as they know or believe that a Cyber Security Incident has or may have taken place providing full details of the circumstances of the incident and any mitigation measures already taken or intended to be taken;
- (7) in co-ordination with its NSA/DSA, investigates any Cyber Security Incidents fully and promptly and co-operate with the *Client* and its agents and representatives and its NSA/DSA to take all steps to mitigate the impact of the Cyber Security Incident and minimise the likelihood of any further similar Cyber Security Incidents. For the avoidance of doubt, this shall include complying with any reasonable technical or organisational security measures deemed appropriate by the *Contractor's* NSA/DSA in the circumstances and taking into account the Cyber Risk Level; and
- (8) consents to the *Client* recording and using information obtained in relation to the Contract for the purposes of the Cyber Security Model whether on the Supplier Cyber Protection Service or elsewhere. For the avoidance of doubt, such information

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includes the cyber security accreditation of the *Contractor* and/or Subcontractor, as appropriate; and

- (9) includes provisions equivalent to clause 29O.7 in all subcontracts imposing provisions equivalent to this clause 29O.3 (the "**equivalent provisions**") and, where a Subcontractor breaches terms implementing this clause 29O in a subcontract, the *Contractor* shall, and shall procure that its Subcontractors shall, in exercising their rights or remedies under the relevant subcontract:
- (i) notify the *Client* of any such breach and consult with the *Client* regarding any remedial or other measures which are proposed as a consequence of such breach, taking the *Client's* views into consideration; and
 - (ii) have regard to the equivalent provisions;

Provided always that, where the *Contractor* notifies the *Client* that it or one or more of its Subcontractors cannot comply with clauses 29O.3(1) to (9) above, the *Client* and the *Contractor* will seek to agree a Cyber Security Implementation Plan and where the *Client* agrees a Cyber Security Implementation Plan with the *Contractor*, the *Contractor* shall, and shall procure that its Subcontractors shall, comply with such Cyber Security Implementation Plan until implementation is agreed to have been achieved whereupon clauses 29O.3(1) to (9) above shall apply in full. In the event that a Cyber Security Implementation Plan is in dispute or cannot be agreed between the Parties, the provisions of clause W2 (*Resolving disputes*) shall apply to the resolution of the relevant dispute or disagreement.

29O.4 In relation to the *Contractor's* management of its Subcontractors' cyber security:

- (1) The *Client* agrees that the *Contractor* shall be entitled to rely upon the self-certification by a Subcontractor of its compliance with its obligations pursuant to clause 29O.3. In the event that a Subcontractor is found to be in breach of its obligations in clause 29O.3, and where the *Contractor* has relied upon the Subcontractor's self-certification, the *Contractor* shall not be held to be in breach of this clause 29O.
- (2) Where the *Contractor* becomes aware that a Subcontractor is not complying with its obligations, the *Contractor* shall notify the *Client* and provide full details of the Subcontractor's non-compliance as soon as reasonably practicable and shall consult with the *Client* as to the appropriate course of action which may include but not be limited to the agreement of a remedial plan or termination of the subcontract having regard to clause 29O.3(9).
- (3) Having regard to the *Client's* views, the *Contractor* shall take all reasonable measures to address any non-compliance of a Subcontractor in accordance with the reasonable timescales required by the *Client*. Where the *Contractor* fails to do so, this shall amount to a breach of this clause 29O and the provisions of clause 29O.7(2) or clause 29O.7(3), as appropriate, shall apply.
- (4) The *Contractor* shall, and shall procure that its Subcontractors shall, include provisions equivalent to this clause 29O.4 in all subcontracts which flow down the obligations set out in clause 29O.3.

29O.5 In relation to the *Contractor's* record keeping:

- (1) The *Contractor* shall keep and maintain, and shall ensure that any Subcontractor shall keep and maintain, until 6 years after termination or expiry of this contract, or as long a period as may be agreed between the Parties, full and accurate records including but not limited to:
 - (i) details of all MOD Identifiable Information relating to the *works* provided under this contract; and
 - (ii) copies of all documents required to demonstrate compliance with DEFSTAN 05 138 and this clause 29O, including but not limited to any information used to inform the CSM Risk Assessment Process and to carry out the CSM Supplier Assurance Questionnaire, together with any certificates issued to the *Contractor* and/or Subcontractor.
- (2) The *Contractor* shall, and shall ensure that any Subcontractor shall on request provide the *Client*, the *Client's* representatives and/or the *Contractor's* NSA/DSA such access to those records as may be required in connection with this contract

29O.6 In relation to auditing the *Contractor's* compliance with this clause 29O:

- (1) Except where an audit is imposed on the *Client* by a regulatory body or there is a Cyber Security Incident in which case the *Contractor* agrees, and shall procure that its Subcontractors agree, that the *Client* and its representatives, in coordination with the *Contractor's* NSA/DSA or the NSA/DSA on behalf of the *Client*, may conduct such

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audits as it considers in its absolute opinion necessary, the *Client*, its representatives and/or the *Contractor's* NSA/DSA may, not more than twice in any calendar year and for a period of 6 years following the termination or expiry of this contract, whichever is the later, conduct an audit for the following purposes:

- (i) to review and verify the integrity, confidentiality and security of any MOD Identifiable Information;
 - (ii) to review the *Contractor's* and/or any Subcontractor's compliance with its obligations under this clause 29O; and
 - (iii) to review any records created during the provision of the *works*, including but not limited to any documents, reports and minutes which refer or relate to the *works* for the purposes of clauses 29O.6(i) and (ii) above.
- (2) The *Client* shall use its reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the *Contractor* and/or Subcontractor or delay the provision of the *works* and supplier information received by the *Client* in connection with the audit shall be treated as confidential information.
- (3) The *Contractor* shall, and shall ensure that any Subcontractor shall on demand provide the *Client* and any relevant regulatory body, including the *Contractor's* NSA/DSA, (and/or their agents or representatives), together the "Auditors", with all reasonable co-operation and assistance in relation to each audit, including but not limited to:
- (i) all information requested by the *Client* within the permitted scope of the audit;
 - (ii) reasonable access to any *Contractor* Premises controlled by the *Contractor* or any Associated Company and any Subcontractor and to any equipment used (whether exclusively or non-exclusively) in the performance of the Contract and, where such *Contractor* Premises and/or equipment are outside the control of the *Contractor*, shall secure sufficient rights of access for the Auditors as shall be necessary to allow audits to take place; and
 - (iii) access to any relevant staff.
- (4) The *Client* endeavours to (but is not obliged to) provide at least 15 days' notice to the *Contractor* of its intention to conduct an audit.
- (5) The Parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this clause 29O, unless the audit identifies a material breach of the terms of this clause 29O by the *Contractor* and/or Subcontractor in which case the *Contractor* shall reimburse the *Client* for all the *Client's* reasonable costs incurred in the course of the audit.

29O.7 In relation to any breach by the *Contractor* of its obligations under this clause 29O:

- (1) In exercising its rights or remedies under this clause 29O, the *Client* shall:
- (i) act in a reasonable and proportionate manner having regard to such matters as the gravity of any breach or potential breach and the Cyber Risk Level of this contract; and
 - (ii) give all due consideration, where appropriate, to action other than termination of this contract, including but not limited to a remedial period if this is appropriate in all the circumstances.
- (2) Where the Cyber Risk Level of this contract is assessed to be a moderate or high, and the *Contractor* breaches the terms of this clause 29O, the *Client* shall be entitled:
- (i) to terminate this contract (whether in whole or in part) and to claim damages in accordance with DEFCON 514 as though such breach is a Material Breach; and
 - (ii) where this contract has not been terminated, to recover from the *Contractor* any other loss sustained in consequence of any breach of this clause 29O, subject to any provision which is agreed elsewhere in this contract.
- (3) Where the Cyber Risk Level of this contract is assessed to be very low or low, and the *Contractor* breaches the terms of this clause 29O, the *Client* shall be entitled:
- (i) to recover from the *Contractor* the amount of any loss sustained in consequence of any breach of this clause 29O, subject to any provision which is agreed elsewhere in this contract; and
 - (ii) where the *Contractor* does not comply with any reasonable instructions issued by the *Client* or the *Contractor's* NSA/DSA within the time period specified to

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remedy such breach or

prevent further breaches, the *Client* shall be entitled to terminate this contract (whether in whole or in part) and to claim damages in accordance with DEFCON 514 as though such breach is a Material Breach.

- (4) Where the *Contractor* commits an act of fraud, negligence or wilful misconduct in respect of its obligations under this clause 29O the *Client* shall be entitled to terminate this contract (whether in whole or in part) and to claim damages in accordance with DEFCON 514 as though such breach is a Material Breach.

29O.8 The following general provisions apply:

- (1) On termination or expiry of this contract the provisions of this clause 29O excepting clauses 29O.3(2) and 29O.3(3) above shall continue in force so long as the *Contractor* and/or and Subcontractor holds any MOD Identifiable Information relating to this contract.
- (2) Termination or expiry of this contract shall not affect any rights, remedies, obligations or liabilities of the Parties under this clause 29O that have accrued up to the date of termination or expiry, including but not limited to the right to claim damages in respect of any breach of this contract which existed at or before the date of termination or expiry.
- (3) The *Contractor* agrees that the *Client* has absolute discretion to determine changes to DEFSTAN 05-138 and/or the Cyber Risk Level. In the event that there is such a change to DEFSTAN 05-138 or the Cyber Risk Level, then either Party may seek an adjustment to the Contract Price for any associated increase or decrease in costs and the *Contractor* may request an extension of time for compliance with such revised or amended DEFSTAN 05-138 or Cyber Risk Level, provided always that the *Contractor* shall seek to mitigate the impact on time and cost to the extent which it is reasonably practicable to do so and further provided that such costs shall not be allowed unless they are considered to be appropriate, attributable to the Contract and reasonable in all the circumstances.
- (4) Subject to clause 29O.8(3) above, where the *Contractor* seeks such adjustment or extension, the *Client* will proceed in accordance with DEFCON 620 or any agreed alternative change control procedure to determine the request for adjustment or extension. The *Contractor* must deliver a proposal for a change to the *Client* within 8 weeks of the occurrence of the change in DEFSTAN 05-138 or Cyber Risk Level or such longer period as may be agreed by the Parties, identifying the impact of that change and accompanied by full details of the request for adjustment. For the avoidance of doubt, the *Client* shall not be required to withdraw any *Client* Notice of Change which may have been issued insofar as it relates to DEFSTAN 05-138 or the Cyber Risk Level whether or not the *Contractor's* proposal for a change is rejected. In the event that the *Contractor* does not agree with the *Client's* determination, then the provisions of DEFCON 530 or any agreed alternative dispute resolution procedure shall apply.
- (5) The *Contractor* shall not recover any costs and/or other losses under or in connection with this clause 29O where such costs and/or other losses are recoverable or have been recovered by the *Contractor* elsewhere in this contract or otherwise. For the avoidance of doubt, this shall include but not be limited to the cost of implementing any upgrades or changes to any information system or electronic communications network whether in response to a Cyber Security Incident or otherwise, where the *Contractor* is able to or has recovered such sums in any other provision of this contract or has recovered such costs and/or losses in other contracts between the *Contractor* and the *Client* or with Others.
- (6) The Parties respectively acknowledge and agree that the obligations of the *Contractor* under this clause 29O are additional to (and without prejudice to) the *Contractor's* obligations under *Special Term 7 (Cyber Essentials Scheme condition)* in Part 2 of Schedule 6 of the Framework Alliance Contract

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3. TIME

Starting, Completion and Key Dates	30	
	30.1	The <i>Contractor</i> does not start work on the Site until the first <i>access date</i> and does the work so that Completion is on or before the Completion Date.
	30.2	The <i>Project Manager</i> decides the date of Completion and certifies it within one week of the date.
	30.3	The <i>Contractor</i> does the work so that the Condition stated for each Key Date is met by the Key Date.
The programme	31	
	31.1	If a programme is not identified in the Contract Data, the <i>Contractor</i> submits a first programme to the <i>Project Manager</i> for acceptance within the period stated in the Contract Data.
	31.2	<p>The <i>Contractor</i> shows on each programme submitted for acceptance</p> <ul style="list-style-type: none"> the <i>starting date</i>, <i>access dates</i>, Key Dates and Completion Date, planned Completion, the order and timing of the operations which the <i>Contractor</i> plans to do in order to Provide the Works, the order and timing of the work of the <i>Client</i> and Others as last agreed with them by the <i>Contractor</i> or, if not so agreed, as stated in the Scope, the dates when the <i>Contractor</i> plans to meet each Condition stated for the Key Dates and to complete other work needed to allow the <i>Client</i> and Others to do their work, provisions for <ul style="list-style-type: none"> float, time risk allowances, health and safety requirements and the procedures set out in the contract, the dates when, in order to Provide the Works in accordance with the programme, the <i>Contractor</i> will need <ul style="list-style-type: none"> access to a part of the Site if later than its <i>access date</i>, acceptances, Plant and Materials and other things to be provided by the <i>Client</i> and Information from Others, for each operation, a statement of how the <i>Contractor</i> plans to do the work identifying the principal Equipment and other resources which will be used and other information which the Scope requires the <i>Contractor</i> to show on a programme submitted for acceptance. <p>A programme issued for acceptance is in the form stated in Scope.</p>
	31.3	<p>Within two weeks of the <i>Contractor</i> submitting a programme for acceptance, the <i>Project Manager</i> notifies the <i>Contractor</i> of the acceptance of the programme or the reasons for not accepting it. A reason for not accepting a programme is that</p> <ul style="list-style-type: none"> the <i>Contractor's</i> plans which it shows are not practicable, it does not show the information which the contract requires, it does not represent the <i>Contractor's</i> plans realistically or it does not comply with the Scope. <p>If the <i>Project Manager</i> does not notify acceptance or non-acceptance within the time allowed, the <i>Contractor</i> may notify the <i>Project Manager</i> of that failure. If the failure continues for a further two weeks after the <i>Contractor's</i> notification, it is treated as acceptance by the <i>Project Manager</i> of the programme.</p>

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Revising the programme	<p>32.1 The <i>Contractor</i> shows on each revised programme</p> <ul style="list-style-type: none"> the actual progress achieved on each operation and its effect upon the timing of the remaining work, how the <i>Contractor</i> plans to deal with any delays and to correct notified Defects and any other changes which the <i>Contractor</i> proposes to make to the Accepted Programme. <p>32.2 The <i>Contractor</i> submits a revised programme to the <i>Project Manager</i> for acceptance</p> <ul style="list-style-type: none"> within the <i>period for reply</i> after the <i>Project Manager</i> has instructed the <i>Contractor</i> to, when the <i>Contractor</i> chooses to and, in any case, <p>at no longer interval than the interval stated in the Contract Data from the <i>starting date</i> until Completion of the whole of the <i>works</i>.</p> <p>32.3 If the <i>Contractor</i> does not submit a revised programme within a time limit specified in clause 32.2, then, notwithstanding clauses 50 or 51, one quarter of the change in the Price for Work Done to Date for the <i>works</i> since the last assessment under clause 50.1 is retained in subsequent assessments of the amount due until the <i>Contractor</i> has submitted the revised programme to the <i>Project Manager</i> for acceptance, showing the information which the contract requires it to contain.</p>
Access to and use of the Site	<p>33</p> <p>33.1 Subject to clause 33.2 and save where the contract states that the <i>Contractor</i> is responsible for obtaining access, the <i>Client</i> allows access to each part of the Site to the <i>Contractor</i> which is necessary for the work included in the contract, provided that this access will not be exclusive to the <i>Contractor</i>. Access is allowed on or before the later of its <i>access date</i> and the date for access shown on the Accepted Programme.</p> <p>The <i>Contractor</i> acknowledges that other contractors engaged by the <i>Client</i> shall be carrying out work at the Base at the same time as the <i>works</i> and that the <i>Contractor's</i> possession of and access to the Site and/or any parts thereof is non-exclusive. The <i>Contractor</i> shall not at any time interfere with (a) any military activities at the Base or (b) the carrying out of work by any other contractors engaged by the <i>Client</i>, and the <i>Contractor</i> shall appropriately co-ordinate the <i>works</i> with the work of such other contractors.</p> <p>Access to, possession of and use of the Site (or any parts thereof) shall be subject to the restrictions, constraints and phasing provisions referred to in the contract (including those referred to in the Scope) and the <i>Contractor</i> shall take into account and comply with such restrictions, constraints and phasing (which shall not be compensation events) in the performance of its obligations under this contract.</p> <p>Following Completion of the whole of the <i>works</i>, the <i>Client</i> shall, following reasonable notice from the <i>Contractor</i>, provide the <i>Contractor</i> with reasonable access to the Site and shall reasonably co-operate with the <i>Contractor</i> to allow the <i>Contractor</i> to complete any remaining elements of the <i>works</i> (including the correction of Defects) and such access shall include, without limitation, suspending operations in any part of the Site where required for the purposes of safely carrying out any such final work.</p> <p>Any failure of the <i>Client</i> to comply with its obligations under this clause 33.1 following Completion of the whole of the <i>works</i> shall constitute a compensation event under clause 60.1(18) subject to the exceptions set out in that clause.</p> <p>33.2 Save where access dates are specified in the Contract Data, the <i>Contractor</i> notifies the <i>Client</i> of the dates on which it requires the <i>Client</i> to provide access under clause 33.1 in accordance with the procedures in the Scope.</p> <p>The <i>Project Manager</i> may cancel or alter the dates of access if the <i>Contractor</i> fails to comply with the relevant procedure where and to the extent that such cancellation or alteration is reasonably required as a result of such non-compliance by the <i>Contractor</i>.</p> <p>Save where otherwise specified in the Scope (or otherwise agreed in writing between the Parties), the <i>Contractor</i> gives the <i>Project Manager</i> at least 4 weeks' prior notice of the date from which it intends to take access to the Site and, prior to taking access as aforesaid, the <i>Contractor</i> submits to the <i>Project Manager</i> Risk and Contingency Plans and Method Statements in respect of the <i>works</i> in a form acceptable to the <i>Project Manager</i>.</p> <p>Any cancellation or alteration in such circumstances is not a compensation event and does not result in any increase to the Prices or any adjustment of the Completion Date or any Key Date.</p>

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- 33.3 Where the contract states that the *Contractor* is responsible for obtaining access the *Contractor* obtains access to each part of the Site which is necessary for the work included in the contract.
- 33.4 The *Contractor* acknowledges that its access to the Site may be shared with other contractors identified in the Scope or as may be notified to the *Contractor* by the *Client* from time to time.
- 33.5 The *Contractor* uses reasonable endeavours not to interfere with the work of other contractors at the Base and co-ordinates the *works* with the work of those other contractors.
- 33.6 No items of mechanical and electrical plant and/or equipment are delivered to the Site by or on behalf of the *Contractor* without the prior approval of the *Project Manager* thereto.
- 33.7 The *Contractor* bears all costs and charges for special, additional and/or temporary rights-of-way which it may require, including those for access to the Site (or any part or parts thereof).
- 33.8 The *Contractor* does not interfere unnecessarily or improperly with
- the convenience of the public, or
 - the access to and use and occupation of all roads and footpaths, irrespective of whether they are public or in the possession of the *Client* or of others.
- 33.9 The *Contractor* is deemed to be satisfied as to the suitability and availability of access routes to the Site and
- the *Client* does not guarantee the suitability or availability of particular access routes,
 - costs due to non-suitability or non-availability, for the use required by the *Contractor*, of access routes are borne by the *Contractor* and
 - the *Contractor*
 - is responsible for any maintenance which may be required for its use of access routes,
 - uses reasonable efforts to prevent any road or bridge from being damaged by the *Contractor's* traffic or by any *Contractor's* Personnel including the proper use of appropriate vehicles and routes,
 - rectifies any damage caused by the *Contractor* to the access routes and
 - provides all necessary signs or directions along access routes and obtains any Consent or permission which may be required from the relevant authorities for its use of routes, signs and directions.
- 33.10 The *Contractor* obtains, at its own risk and cost, any additional facilities or access that it requires in order to Provide the Works, which are not referred to in the Scope and/or which are outside the Site.

**Instructions to
stop or not to
start work**
34

- 34.1 The *Project Manager* may instruct the *Contractor* to stop or not start any work. The *Project Manager* subsequently gives an instruction to the *Contractor* to
- re-start or start the work or
 - remove the work from the Scope.
- 34.2 During the period of suspension, the *Contractor*
- protects, stores, preserves and secures the *works* and any Plant and Materials affected by the suspension, whether at the Site or elsewhere, against any deterioration, loss or damage, in compliance with any relevant measures set out or referred to in the Scope and in accordance with the *Contractor's* own reasonable requirements and
 - complies with the *Project Manager's* reasonable instructions relating to protecting, storing, preserving and securing the *works* and affected Plant and Materials.
- 34.3 Immediately on receipt of an instruction under clause 34.1, the *Contractor* makes all necessary arrangements to minimise its expenditure and cease carrying out the *works* or such part or parts of the *works* as have been suspended.

Take over
35

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- 35.1 The *Client* need not take over the *works* before the Completion Date if the Contract Data states it is not willing to do so. Otherwise the *Client* takes over the *works* not later than two weeks after Completion.
- 35.2 The *Client* may use any part of the *works* before Completion has been certified. The *Client* takes over the part of the *works* when it begins to use it except if the use is
- for a reason stated in the Scope or
 - to suit the *Contractor's* method of working.
- 35.3 The *Project Manager* certifies the date upon which the *Client* takes over any part of the *works* and its extent within one week of the date.
- 35.4 If the *Client* takes over part of the *works* before Completion, Completion is not achieved or certified by the *Project Manager* until all *works* are completed including the supply of the Documents and information which the Scope or the contract states is required by the Completion Date.

Acceleration**36**

- 36.1 The *Contractor* and the *Project Manager* may propose to the other an acceleration to achieve Completion before the Completion Date. If the *Project Manager* and *Contractor* are prepared to consider the proposed change, the *Project Manager* instructs the *Contractor* to provide a quotation. The instruction states changes to the Key Dates to be included in the quotation. The *Contractor* provides a quotation within three weeks of the instruction to do so. The *Project Manager* replies to the quotation within three weeks. The reply is
- a notification that the quotation is accepted or
 - a notification that the quotation is not accepted and that the Completion Dates and Key Dates are not changed.
- 36.2 A quotation for an acceleration comprises proposed changes to the Prices and a revised programme showing the earlier Completion Date and the changed Key Dates. The *Contractor* submits details of the assessment with each quotation.
- 36.3 When a quotation for an acceleration is accepted, the *Project Manager* changes the Prices, the Completion Date and the Key Dates accordingly and accepts the revised programme.

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4. QUALITY MANAGEMENT

Quality management system	40	
	40.1	The <i>Contractor</i> operates a quality management system which complies with the requirements stated in the Scope.
	40.2	Within the period stated in the Contract Data, the <i>Contractor</i> provides the <i>Project Manager</i> with a quality policy statement and a quality plan for acceptance. A reason for not accepting a quality policy statement or quality plan is that it does not allow the <i>Contractor</i> to Provide the Works. If any changes are made to the quality plan, the <i>Contractor</i> provides the <i>Project Manager</i> with the changed quality plan for acceptance.
	40.3	The <i>Project Manager</i> may instruct the <i>Contractor</i> to correct a failure to comply with the quality plan. This instruction is not a compensation event.
Tests and inspections	41	
	41.1	This clause only applies to tests and inspections required by the Scope or the Applicable Law.
	41.2	The <i>Contractor</i> and the <i>Client</i> provide materials, facilities and samples for tests and inspections as stated in the Scope.
	41.3	The <i>Contractor</i> and the <i>Supervisor</i> informs the other of each of their tests and inspections before the test or inspection starts and afterwards informs the other of the results. The <i>Contractor</i> informs the <i>Supervisor</i> in time for a test or inspection to be arranged and done before doing work which would obstruct the test or inspection. The <i>Supervisor</i> may watch any test done by the <i>Contractor</i> .
	41.4	If a test or inspection shows that any work has a Defect, the <i>Contractor</i> corrects the Defect and the test or inspection is repeated.
	41.5	The <i>Supervisor</i> does tests and inspections without causing unnecessary delay to the work or to a payment which is conditional upon a test or inspection being successful. A payment which is conditional upon a <i>Supervisor's</i> test or inspection being successful becomes due at the later of the <i>defects date</i> and the end of the last <i>defect correction period</i> if <ul style="list-style-type: none"> the <i>Supervisor</i> has not done the test or inspection and the delay to the test or inspection is not the <i>Contractor's</i> fault.
	41.6	The <i>Project Manager</i> assesses the cost incurred by the <i>Client</i> in repeating a test or inspection after a Defect is found. The <i>Contractor</i> pays the amount assessed.
Testing and inspection before delivery	41.7	When the <i>Project Manager</i> assesses the cost incurred by the <i>Client</i> in repeating a test or inspection after a Defect is found, the <i>Project Manager</i> does not include the <i>Contractor's</i> cost of carrying out the repeat test or inspection.
	42	
Searching for and notifying Defects	42.1	The <i>Contractor</i> does not bring to the Working Areas those Plant and Materials which the Scope states are to be tested or inspected before delivery until the <i>Supervisor</i> has notified the <i>Contractor</i> that they have passed the test or inspection.
	43	
	43.1	Until the <i>defects date</i> , the <i>Supervisor</i> may instruct the <i>Contractor</i> to search for a Defect. The <i>Supervisor</i> gives reasons for the search with the instruction. Searching may include <ul style="list-style-type: none"> uncovering, dismantling, re-covering and re-erecting work, providing facilities, materials and samples for tests and inspections done by the <i>Supervisor</i> and doing tests and inspections which the Scope does not require.
Correcting Defects	43.2	Until the <i>defects date</i> the <i>Supervisor</i> and the <i>Contractor</i> notifies the other as soon as they become aware of a Defect.
	44	
	44.1	The <i>Contractor</i> corrects a Defect whether or not the <i>Supervisor</i> has notified it.
	44.2	The <i>Contractor</i> corrects a notified Defect before the end of the <i>defect correction period</i> . The <i>defect correction period</i> begins at Completion for Defects notified before Completion and when the Defect is notified for other Defects.

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- 44.3 The *Supervisor* issues the Defects Certificate at the *defects date* if there are no notified Defects, or otherwise at the later of

- the end of the last *defect correction period* and
- the date when all notified Defects have been corrected.

The *Client's* rights in respect of a Defect which the *Supervisor* has not found or notified are not affected by the issue of the Defects Certificate.

- 44.4 The *Project Manager* arranges for the *Client* to give the *Contractor* access to those parts of the Site which the *Contractor* needs to correct a Defect which it is required to correct under this contract, after the *Client* has taken over any part of the *works*. In this case the *defect correction period* begins when the necessary access has been provided.

The *Contractor* complies with all reasonable constraints and conditions of the *Client* attached to the correction of Defects by the *Contractor* or its personnel at the Site.

The *defects date* shall be adjusted in respect of any period when the *works* (or any part thereof) cannot be used or where the use thereof is adversely affected due to any Defects and/or the correction of Defects.

Accepting Defects	45	
	45.1	The <i>Contractor</i> and the <i>Project Manager</i> may propose to the other that the Scope should be changed so that a Defect does not have to be corrected.
	45.2	If the <i>Contractor</i> and the <i>Project Manager</i> are prepared to consider the change, the <i>Contractor</i> submits a quotation for reduced Prices or an earlier Completion Date or both to the <i>Project Manager</i> for acceptance. If the quotation is accepted, the <i>Project Manager</i> changes the Scope, the Prices and the Completion Date accordingly and accepts the revised programme.
	45.3	No proposal or change referred to in this clause 45 shall be accepted or deemed accepted or entitle the <i>Contractor</i> to any change to the Prices, the Completion Date, the Key Dates and/or the Scope unless and until it has been expressly accepted and instructed in writing by the <i>Project Manager</i> and expressly referred to this clause 45 (<i>Accepting Defects</i>) and only to the extent so accepted which, in the event of any dispute as to the extent of acceptance thereof, the burden of proof shall rest on the <i>Contractor</i> and any discrepancy, ambiguity or conflict therein shall be resolved in the most favourable way to the <i>Client</i> .
Uncorrected Defects	46	
	46.1	If the <i>Contractor</i> is given access in order to correct a Defect (including any Defect listed in the Defects Certificate) but it has not corrected it within the applicable <i>defect correction period</i> , the <i>Project Manager</i> assesses the cost to the <i>Client</i> of having the Defect corrected by other people and the <i>Contractor</i> pays this amount to the <i>Client</i> or such cost is recoverable by the <i>Client</i> as a debt.
	46.2	If the <i>Contractor</i> is not given access in order to correct a notified Defect before the <i>defects date</i> , the <i>Project Manager</i> assesses the cost to the <i>Contractor</i> of correcting the Defect and the <i>Contractor</i> pays this amount. The Scope is treated as having been changed to accept the Defect.
	46.3	Neither the issue of the Defects Certificate, the assessment of the final amount due under clause 53 nor the termination of this contract for any reason (including for breach by the <i>Client</i>) shall relieve the <i>Contractor</i> of liability for latent or inherent Defects in the <i>works</i> (or any part thereof).
	46.4	Any assessment made by the <i>Project Manager</i> under clause 46.1 or clause 46.2 (as the case may be) is made without prejudice to the <i>Client's</i> other rights and remedies in respect of the relevant uncorrected Defect (as if the Scope had not been changed). The extent of any change to be made to the Scope pursuant to this clause 46 shall be subject to the same burden of proof, proviso and resolution of discrepancy, ambiguity or conflicts as is referred to in clause 45.3.

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5. PAYMENT

Assessing the
amount due

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- 50.1 The *Project Manager* assesses the amount due at each assessment date and the *Contractor* shall submit a related application for payment to the *Project Manager*, together with full breakdown, not later than the assessment date. The first assessment date is decided by the *Project Manager* to suit the procedures of the Parties and is not later than the *assessment interval* after the *starting date*. Later assessment dates occur at the end of each *assessment interval* until
- Completion of the whole of the *works* or
 - the *Project Manager* issues a termination certificate.
- 50.2 The *Contractor* submits an application for payment to the *Project Manager* before each assessment date setting out the amount the *Contractor* considers is due (with full breakdown) at the assessment date. The *Contractor's* application for payment includes details of how the amount has been assessed and is in the form stated in the Scope.
- In assessing the amount due, the *Project Manager* considers each application for payment submitted by the *Contractor* before the assessment date.
- 50.3 If the *Contractor* submits an application for payment before the assessment date, the amount assessed at the assessment date is
- the Price for Work Done to Date,
 - plus other amounts to be paid to the *Contractor*,
 - less amounts to be paid by or retained from the *Contractor*.
- Notwithstanding any other provision of this contract, the *Client* is entitled to withhold any payments that would otherwise be due to the *Contractor* under the contract until the *Contractor* submits to the *Project Manager*:
- insurance broker's certificates (in terms satisfactory to the *Client*) confirming that all of the Required Insurances to be effected and maintained by the *Contractor* under this contract are in force; and
 - the parent company guarantee referred to in Option X4 (duly executed as a deed by the Guarantor).
- 50.4 If the *Contractor* does not submit an application for payment before the assessment date, the amount due at the assessment date is the lesser of
- the amount the *Project Manager* assesses as due at the assessment date, assessed as though the *Contractor* had submitted an application before the assessment date, and
 - the amount due at the previous assessment date.
- 50.5 If no programme is identified in the Contract Data, one quarter of the Price for Work Done to Date is retained in assessments of the amount due until the *Contractor* has submitted a first programme to the *Project Manager* for acceptance showing the information which the contract requires.
- 50.6 The *Project Manager* corrects any incorrectly assessed amount due in a later payment certificate.
- 50.7 Payments of Defined Cost made by the *Contractor* in a currency other than the *currency of the contract* are included in the amount due as payments to be made to it in the same currency. Such payments are converted to the *currency of the contract* in order to calculate the Fee and any *Contractor's* share using the *exchange rates*.
- 50.9 The *Contractor* notifies the *Project Manager* when a part of Defined Cost has been finalised, and makes available for inspection the records necessary to demonstrate that it has been correctly assessed. The *Project Manager* reviews the records made available, and no later than thirteen weeks after the *Contractor's* notification
- accepts that part of Defined Cost as correct,
 - notifies the *Contractor* that further records are needed or
 - notifies the *Contractor* of errors in its assessment.

The *Contractor* provides any further records requested or advises the correction of the errors in its assessment within four weeks of the *Project Manager's* notification. The

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Project Manager reviews the records provided, and within four weeks

- accepts the cost as correct or
- notifies the *Contractor* of the correct assessment of that part of Defined Cost.

If the *Project Manager* does not notify a decision on that part of Defined Cost within the time stated, the *Contractor's* assessment is treated as correct.

50.10 Using its own cost allocation system, the *Contractor* allocates costs separately to:

- a code for items considered as Defined Cost under the contract,
- a code for items the *Contractor* considers should be Disallowed Cost under the contract, and
- a code for items not included in either Defined Cost or Disallowed Cost.

Payment	51	
	51.1	The <i>Project Manager</i> certifies a payment within fourteen (14) days of each assessment date. The <i>Project Manager's</i> certificate includes details of how the amount due has been assessed. The first payment is the amount due. Other payments are the change in the amount due since the previous assessment. A payment is made by the <i>Contractor</i> to the <i>Client</i> if the change reduces the amount due. Other payments are made by the <i>Client</i> to the <i>Contractor</i> . Payments are in the <i>currency of the contract</i> unless otherwise stated in the contract.
	51.2	Each certified payment is made within thirty (30) days of the assessment date or, if a different period is stated in the Contract Data, within the period stated. If a certified payment is late, or if a payment is late because the <i>Project Manager</i> has not issued a certificate which should be issued, interest is paid on the late payment. Interest is assessed from the date by which the late payment should have been made until the date when the late payment is made, and is included in the first assessment after the late payment is made.
	51.3	If an amount due is corrected in a later certificate <ul style="list-style-type: none"> • in relation to a mistake or a compensation event, or • following a decision of the <i>Adjudicator</i> or the <i>tribunal</i>, or a resolution pursuant to the Dispute Resolution Protocol, interest on the correcting amount is paid. Interest is assessed from the date when the incorrect amount was certified until the date when the changed amount is certified and is included in the assessment which includes the changed amount.
	51.4	Interest is calculated on a daily basis at the <i>interest rate</i> and is compounded annually.
	51.5	Any tax which the law requires a Party to pay to the other Party is added to any payment made under the contract.
	51.6	In addition to any other legal rights of the <i>Client</i> , whenever any sum of money is recoverable from or payable by the <i>Contractor</i> under this contract that sum may be deducted by the <i>Client</i> from any sum then due or which at any time thereafter becomes due to the <i>Contractor</i> under this contract.
Defined Cost	52	
	52.1	All the <i>Contractor's</i> costs which are not included in the Defined Cost are treated as included in the Fee. Defined Cost includes only amounts calculated using rates and percentages stated in the Contract Data and other amounts at open market or competitively tendered prices with deductions for all discounts, rebates and taxes which can be recovered.
	52.2	The <i>Contractor</i> keeps these records <ul style="list-style-type: none"> • accounts of payments of Defined Cost, • proof that the payments have been made, • communications about and assessments of compensation events for Subcontractors and other records as stated in the Scope.
	52.4	The <i>Contractor</i> allows the <i>Project Manager</i> to inspect at any time within working hours the accounts and records which it is required to keep.

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Final assessment	<p>53</p> <p>53.1 The <i>Contractor</i> submits its application for final payment to the <i>Project Manager</i> not later than four (4) weeks after the date of Completion of the whole of the <i>works</i>, setting out the final amount the <i>Contractor</i> considers is due (with full cost breakdown).</p> <p>The <i>Contractor's</i> application includes details of how the amount has been assessed and is either in the form stated in the Scope or in a form acceptable to the <i>Project Manager</i>.</p> <p>In assessing the final amount due, the <i>Project Manager</i> considers the application for payment submitted by the <i>Contractor</i>.</p> <p>53.2 The <i>Project Manager</i> makes an assessment of the final amount due and certifies a final payment, if any is due, not later than</p> <ul style="list-style-type: none"> • twelve (12) weeks after Completion of the whole of the <i>works</i>, or • thirteen (13) weeks after the <i>Project Manager</i> issues a termination certificate (the Final Assessment Date). <p>53.3 The <i>Project Manager</i> gives the <i>Contractor</i> details of how the amount due has been assessed. The final payment is made within thirty (30) days of the Final Assessment Date.</p> <p>53.4 If the <i>Contractor</i> executes further <i>works</i> after Completion of the whole of the <i>works</i> for which it is entitled to payment under the contract, it submits an application for further payment within four (4) weeks after completion of those further <i>works</i>.</p> <p>Its application sets out the further amount the <i>Contractor</i> considers is due (with full cost breakdown).</p> <p>The <i>Contractor's</i> application includes details of how the amount has been assessed and is in the form stated in the Scope.</p> <p>In assessing the further amount due, the <i>Project Manager</i> considers the application for payment submitted by the <i>Contractor</i>.</p> <p>53.5 The <i>Project Manager</i> makes an assessment of the further amount due and certifies a further payment, if any is due, no later than twelve (12) weeks after completion of the further <i>works</i>.</p> <p>53.6 The <i>Project Manager</i> gives the <i>Contractor</i> details of how the amount due has been assessed. The final payment is made within forty-six (46) days of the date that is twelve (12) weeks after completion of the further <i>works</i>.</p> <p>53.7 The assessment of the final amount due in accordance with clause 53.2 or (if applicable) clause 53.5 is conclusive evidence of the final amount due to the <i>Contractor</i> in respect of the <i>works</i>, save for:</p> <ul style="list-style-type: none"> • accrued costs payable to Subcontractors which have not submitted their final accounts to the <i>Contractor</i> as at the Final Assessment Date, in which case the <i>Client</i> may in its entire discretion assess an amount payable on account in respect of that accrued cost which will be subject to final assessment following submission of such final account(s), • Defined Cost relating to payments to Subcontractors which will remain subject to re-assessment by the <i>Project Manager</i>, and • the <i>Client's</i> entitlement to retain or set-off sums against any amounts due to the <i>Contractor</i> in accordance with the contract (including in respect of future Defects liability and/or other <i>Contractor</i> liabilities). <p>For the avoidance of doubt, following the assessment and payment of the final amount, the <i>Contractor</i> remains liable for the performance of all of its duties and obligations under the contract including, without limitation, the rectification of Defects in accordance with the terms of the contract.</p> <p>53.8 Payments under this clause 53 may be by the <i>Contractor</i> to the <i>Client</i> or by the <i>Client</i> to the <i>Contractor</i>. Payments are in the currency of the contract unless otherwise stated in the contract.</p>
Tax	<p>53A</p> <p>53A.1 Any tax which the law requires a Party to pay to the other Party is added to any payment made under the contract.</p> <p>53A.2 All sums payable by or to the <i>Client</i> or the <i>Contractor</i> are exclusive of Value Added Tax (VAT). Where VAT is chargeable on such sums, the payer pays, upon production of a valid VAT invoice by the payee, such VAT in addition to such sums.</p>

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- 53A.3 If the *Contractor* fails to carry out its obligations under the contract and the *Client* employs some other person to fulfil them, and a payment in respect of VAT is made or falls to be made to that other person, then the *Client* is entitled to recover from the *Contractor* any VAT (which it is not otherwise able to recover) additional to what it would have paid had the *Contractor* carried out its obligations under the contract.
- 53A.4 Where a Party is liable to reimburse or indemnify the other Party for costs incurred by that other Party, the amount to be paid does not include any VAT charged on such costs, save where the payee is unable to recover such VAT from HM Revenue & Customs as input tax.
- 53A.5 No later than the Contract Date the *Contractor* is to submit to the *Client* such evidence as is required by the current H.M. Revenue & Customs Construction Industry Scheme (the CIS) proving that the *Contractor* is registered with H.M. Revenue & Customs under the CIS to allow payments to be made with or without statutory deduction of tax by the *Client*.
- If the *Contractor* does not provide the information required by this clause 53A or during the currency of the contract the *Contractor* ceases to be registered with H.M. Revenue & Customs for the above purpose or the *Contractor* breaches any of the requirements of the CIS, this shall constitute a Material Breach of the contract by the *Contractor* and the *Client* will be entitled to terminate the contract without any liability to the *Contractor*.
- Each Party shall provide to the other all such information and assistance as may be reasonably requested by that other Party to enable it to determine whether and to what extent the VAT reverse charge will apply to any of the *works* supplied under this contract.

The Contractor's share	54	
	54.1	The <i>Project Manager</i> assesses the <i>Contractor's</i> share of the difference between the total of the Prices and the Price for Work Done to Date. The difference is divided into increments falling within each of the <i>share ranges</i> . The limits of a <i>share range</i> are the Price for Work Done to Date divided by the total of the Prices, expressed as a percentage. The <i>Contractor's</i> share equals the sum of the products of the increment within each <i>share range</i> and the corresponding <i>Contractor's share percentage</i> .
	54.2	If the Price for Work Done to Date is less than the total of the Prices, the <i>Contractor</i> is paid its share of the saving. If the Price for Work Done to Date is greater than the total of the Prices, the <i>Contractor</i> pays its share of the excess.
	54.3	The <i>Project Manager</i> makes a preliminary assessment of the <i>Contractor's</i> share at Completion of the whole of the <i>works</i> using forecasts of the final Price for Work Done to Date and the final total of the Prices. This share is included in the amount due following Completion of the whole of the <i>works</i> .
	54.4	The <i>Project Manager</i> makes a final assessment of the <i>Contractor's</i> share using the final Price for Work Done to Date and the final total of the Prices. This share is included in the final amount due.
The Activity Schedule	55	
	55.2	Information in the Activity Schedule is not Scope or Site Information.

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6. COMPENSATION EVENTS

Compensation
events

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60.1 The following events are compensation events.

(1) Subject to clauses 12.3, 15.4 and 17, the *Project Manager* gives an instruction changing the Scope except

- a change made in order to accept a Defect or
- a change to the Scope provided by the *Contractor* which is made
 - at the *Contractor's* request or
 - in order to comply with the Scope provided by the *Client*

(including for the avoidance of doubt any change to the design of the *works* for which the *Contractor* is responsible under this contract).

(2) Subject to clause 33 and save where the contract states that the *Contractor* is responsible for obtaining access, the *Client* does not allow access to each part of the Site by the later of its *access date* and the date for access shown on the Accepted Programme.

(3) The *Client* does not provide something which it is to provide by the date shown in the Accepted Programme.

(4) The *Project Manager* gives an instruction to stop or not to start any work or to change a Key Date.

(5) Subject to clauses 20.9 and 33.1, the *Client* or Others

- do not work within the times shown on the Accepted Programme,
- do not work within the conditions stated in the Scope or
- carry out work on the Site that is not stated in the Scope unless, the *Contractor* (acting reasonably) consents to the *Client* or Others carrying out work on the Site that is not stated in the Scope.

(6) The *Project Manager* or the *Supervisor* does not reply to a communication from the *Contractor* within the period required by the contract.

(7) The *Project Manager* gives an instruction for dealing with an object of value or of historical or other interest found within the Site.

(8) The *Project Manager* or the *Supervisor* changes a decision which either has previously communicated to the *Contractor*.

(9) The *Project Manager* withholds an acceptance (other than acceptance of a quotation for acceleration or for not correcting a Defect) for a reason not stated in the contract.

(10) The *Supervisor* instructs the *Contractor* to search for a Defect and no Defect is found unless the search is needed because the *Contractor* gave insufficient notice of doing work obstructing a required test or inspection or unless it was reasonable for the *Client* to instruct the *Contractor* to search, having regard to previous instances of non-complying work.

(11) A test or inspection done by the *Supervisor* causes unnecessary delay.

(12) The *Contractor* encounters Adverse Physical Conditions at the Site.

(13) A *weather measurement* is recorded

- within a calendar month,
- before the Completion Date for the whole of the *works* and
- at the place stated in the Contract Data

the value of which, by comparison with the *weather data*, is shown to occur on average less frequently than once in one hundred years.

Only the difference between the *weather measurement* and the weather which the *weather data* show to occur on average less frequently than once in one hundred years is taken into account in assessing a compensation event.

(14) An event which is a *Client's* liability stated in these *conditions of contract*.

(15) The *Project Manager* certifies take over of a part of the *works* before both

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Completion and the Completion Date.

(16) Save where the Parties otherwise agree, the *Client* does not provide materials, facilities and samples for tests and inspections as stated in the Scope.

(17) The *Project Manager* notifies the *Contractor* of a correction to an assumption which the *Project Manager* stated about a compensation event.

(18) Save for any event which is one of the other compensation events in this contract, any prevention or default (whether by act or omission) by the *Client* or any person for whom the *Client* is responsible under this contract.

(19) Subject to clauses 17 and 60.2 and excluding all effects of all weather conditions, an event which

- stops the *Contractor* completing the whole of the *works* or
- stops the *Contractor* completing the whole of the *works* by the date for planned Completion shown on the Accepted Programme,

and which

- neither Party could prevent,
- an experienced contractor would have judged at the Contract Date to have such a small chance of occurring that it would have been unreasonable to have allowed for it and
- is not one of the other compensation events stated in the contract.

(20) The *Project Manager* notifies the *Contractor* after the Contract Date of any agreement or part thereof which is to be treated as a Third Party Agreement for the purposes of this contract, which was not disclosed to the *Contractor* on or prior to the Contract Date.

(21) An event occurs which is one of the insured risks under the Construction "All Risks" Insurance referred to in the Insurance Table and such event causes loss or damage to any of the *works* prior to the Completion Date.

(22) The carrying out by a statutory undertaker (but excluding any statutory undertaker while it is acting in the capacity of a Subcontractor employed by the *Contractor* in connection with the *works* or any part thereof) of work at or near the Site in pursuance of its statutory obligations or its failure to carry out such work, which causes delay or disruption to the *works*.

(23) The UK Government and/or the Scottish Government enacting any Laws and/or exercising any statutory powers to mitigate or avoid the spread of the coronavirus disease 2019 (COVID-19) which the *Contractor* and the *Contractor's* Personnel must comply with and which prevent or adversely affect the performance of the *works* and/or shortages in or constraints upon the availability of any construction personnel, goods, Equipment, Plant, Materials and/or transportation caused by the COVID-19 pandemic which prevent or adversely affect the performance of the *works*.

In each case except to the extent that (i) such events are consequent upon, due to or occasioned by any negligence, omission, default, breach of contract or breach of statutory duty (whether by act or omission) on the part of the *Contractor* any or any of the *Contractor's* Personnel, (ii) this contract states that the event is not a compensation event and/or (iii) the *Contractor* is stated to be responsible for or has assumed the risk of or for or to have allowed for such events or matters under this contract.

60.2 Notwithstanding any other provision of the contract, save where and physical conditions or obstructions discovered at the Site constitute Adverse Physical Conditions, no unexpected physical conditions or obstructions (including weather conditions) and no failure on the part of the *Contractor* to discover or foresee any condition, risk, contingency or circumstance whether it was foreseeable or not constitutes a compensation event.

The *Contractor* is entitled to rely upon any survey, report or other document prepared by or on behalf of the *Client* regarding any matter as is referred to in this clause 60.2. The *Client* (a) makes no representation or warranty as to the accuracy or completeness of any such survey, report or document and (b) has no liability arising out of or in relation to any such survey, report or document or from any representation or statement, contained in such survey, report or other document.

60.3 If there is an ambiguity or inconsistency within the Site Information (including the information referred to in it), the *Contractor* is assumed to have taken into account the physical conditions more favourable to doing the work.

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- 60.4 Notwithstanding any other provision of this contract to the contrary, a compensation event under clause 60.1(5) which involves any delay by Others in carrying out their work or any failure by Others to carry out their work within the conditions stated in the Scope or any Others carrying out work that is not stated in the Scope (as the case may be) shall only entitle the *Contractor* to an extension to the Completion Date, a Key Date or such other adjustment to the Accepted Programme for the performance of his obligations under this contract as may be necessary to take account of such delay but the *Contractor* will not be entitled to any adjustment of the Prices (or the total of the Prices).

Notifying compensation events	61	
	61.1	For a compensation event which arises from the <i>Project Manager</i> or the <i>Supervisor</i> giving an instruction or notification, issuing a certificate or changing an earlier decision, the <i>Project Manager</i> notifies the <i>Contractor</i> of the compensation event at the time of that communication. Where the instruction is one issued by the Base Commander pursuant to clause 29D.1 (<i>Security Measures</i>) that is deemed to be an instruction of the <i>Project Manager</i> and, if the <i>Contractor</i> reasonably considers that the instruction constitutes a compensation event, it promptly notifies the <i>Project Manager</i> thereof under clause 61.3.
	61.2	The <i>Project Manager</i> issues at the time of notification of a compensation event an instruction to the <i>Contractor</i> to submit quotations unless: <ul style="list-style-type: none"> the event arises by reason of any omission, breach, failure or default on the part of the <i>Contractor</i> or any of the <i>Contractor's</i> Personnel, or the event has no effect upon Defined Cost, Completion or meeting the Completion Date or a Key Date.
	61.3	The <i>Contractor</i> notifies the <i>Project Manager</i> of an event which has happened or which is expected to happen as a compensation event if <ul style="list-style-type: none"> the <i>Contractor</i> believes that the event is a compensation event and the <i>Project Manager</i> has not notified the event to the <i>Contractor</i>. <p>If the <i>Contractor</i> does not notify the <i>Project Manager</i> of a compensation event within 8 weeks of first becoming aware of the event or the expected occurrence of the event, the Prices, the Completion Date or a Key Date are not changed or adjusted unless the event arises from the <i>Project Manager</i> or the <i>Supervisor</i> giving an instruction or notification, issuing a certificate or changing an earlier decision under this contract.</p>
	61.4	The <i>Project Manager</i> replies to the <i>Contractor's</i> notification of a compensation event within <ul style="list-style-type: none"> one week after the <i>Contractor's</i> notification or a longer period to which the <i>Contractor</i> has agreed. <p>If the event</p> <ul style="list-style-type: none"> arises by reason of any omission, breach, failure or default on the part of the <i>Contractor</i> or any of the <i>Contractor's</i> Personnel or any other person for whom the <i>Contractor</i> is responsible, has not happened and is not expected to happen, has not been notified within the timescales set out in these <i>conditions of contract</i>, has no effect upon Defined Cost, Completion or meeting a Key Date or is not one of the compensation events stated in the contract <p>the <i>Project Manager</i> notifies the <i>Contractor</i> that the Prices, the Completion Date and the Key Dates are not to be changed and states the reasons in the notification. Otherwise, the <i>Project Manager</i> notifies the <i>Contractor</i> that the event is a compensation event and includes in the notification an instruction to the <i>Contractor</i> to submit quotations.</p> <p>If the <i>Project Manager</i> fails to reply to the <i>Contractor's</i> notification of a compensation event within the time allowed, the <i>Contractor</i> may notify the <i>Project Manager</i> of that failure. If the <i>Project Manager</i> decides that an event notified by the <i>Contractor</i> has no effect upon Defined Cost, he may notify the <i>Contractor</i> of his decision that the Prices are not to be changed and instruct the <i>Contractor</i> to submit assessments only in respect of delay to the Completion Date and/or the Key Dates.</p>
	61.5	If the <i>Project Manager</i> decides that the <i>Contractor</i> did not give an early warning of the event which an experienced contractor could have given, the <i>Project Manager</i> states this in the instruction to the <i>Contractor</i> to submit quotations.
	61.6	If the effects of a compensation event are too uncertain to be forecast reasonably, the <i>Project Manager</i> states assumptions about the compensation event in the instruction to

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the *Contractor* to submit quotations. Assessment of the event is based on these assumptions. If any of them is later found to have been wrong, the *Project Manager* notifies a correction.

- 61.7 A compensation event is not notified by the *Project Manager* or the *Contractor* after the issue of the Defects Certificate.

Quotations for compensation events	62	<p>62.1 After discussing with the <i>Contractor</i> different ways of dealing with the compensation event which are practicable, the <i>Project Manager</i> may instruct the <i>Contractor</i> to submit alternative quotations. The <i>Contractor</i> submits the required quotations to the <i>Project Manager</i> and may submit quotations for other methods of dealing with the compensation event which it considers practicable.</p> <p>62.2 Quotations for a compensation event comprise proposed changes to the Prices and any delay to the Completion Date and Key Dates assessed by the <i>Contractor</i> in accordance with the contract. The <i>Contractor</i> submits details of the assessment with each quotation. If the programme for remaining work is altered by the compensation event, the <i>Contractor</i> includes the alterations to the Accepted Programme in the quotation.</p> <p>62.3 The <i>Contractor</i> submits quotations within three weeks of being instructed to do so by the <i>Project Manager</i>. The <i>Project Manager</i> replies within two weeks of the submission. The reply is</p> <ul style="list-style-type: none"> • a notification of acceptance of the quotation, • an instruction to submit a revised quotation or • a notification that a proposed instruction will not be given or a proposed changed decision will not be made, or • a notification that the <i>Project Manager</i> will be making the assessment. <p>62.4 The <i>Project Manager</i> instructs the <i>Contractor</i> to submit a revised quotation only after explaining the reasons for doing so to the <i>Contractor</i>. The <i>Contractor</i> submits the revised quotation within three weeks of being instructed to do so.</p> <p>62.5 The <i>Project Manager</i> extends the time allowed for</p> <ul style="list-style-type: none"> • the <i>Contractor</i> to submit quotations for a compensation event or • the <i>Project Manager</i> to reply to a quotation <p>if the <i>Project Manager</i> and the <i>Contractor</i> agree to the extension before the submission or reply is due. The <i>Project Manager</i> informs the <i>Contractor</i> of the extension which has been agreed.</p> <p>62.6 If the <i>Project Manager</i> does not reply to a quotation within the time allowed, the <i>Contractor</i> may notify the <i>Project Manager</i> of that failure. If the <i>Contractor</i> submitted more than one quotation for the compensation event, the notification states which quotation the <i>Contractor</i> proposes is to be used.</p>
Assessing compensation events	63	<p>63.1 The change to the Prices is assessed as the effect of the compensation event upon</p> <ul style="list-style-type: none"> • the actual Defined Cost of the work done by the dividing date, • the forecast Defined Cost of the work not done by the dividing date and • the resulting Fee. <p>For a compensation event that arises from the <i>Project Manager</i> or the <i>Supervisor</i> giving an instruction or notification, issuing a certificate or changing an earlier decision, the dividing date is the date of that communication.</p> <p>For other compensation events, the dividing date is the date of the notification of the compensation event.</p> <p>In relation to all claims made in respect of compensation events, the <i>Contractor</i> shall act in good faith and disclose matters to the <i>Client</i> in an open book and transparent basis, including in connection with claims in respect of any additional payments, delay, environmental, health and safety matters and/or (if and to the extent applicable) any non-compliance of the <i>works</i> with this contract. For the purposes of this clause 63, 'open book' means full and open disclosure on an elemental basis with such supporting particulars as are reasonably required by the <i>Client</i> or the <i>Project Manager</i>. The <i>Contractor</i> warrants and undertakes to the <i>Client</i> (such warranty being deemed repeated at the point of</p>

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submission) that all documentation, including evidence and payment applications, submitted to the *Client* are exhaustive and true in all respects and given in good faith.

- 63.2 Notwithstanding any other provision of this contract to the contrary, the *Project Manager* may, at his discretion, assess any change to the Prices based on the values of work, prices, sums and/or rates referred to in this contract or extrapolated therefrom.
- 63.3 If the effect of a compensation event is to reduce the total Defined Cost, the Prices are not reduced unless otherwise stated in these *conditions of contract* declaring that Prices are reduced for reduction in quantities and in respect of changes to the Scope that omit or reduce the scope of the *works*.
- 63.4 If the effect of a compensation event is to reduce the total Defined Cost and the event is
- a change to the Scope other than a change to the Scope provided by the *Client*, which the *Contractor* proposed and the *Project Manager* accepted or
 - a correction to an assumption stated by the *Project Manager* for assessing an earlier compensation event
- the Prices are reduced.
- 63.5 A delay to the Completion Date is assessed as the length of time that, due to the compensation event, planned Completion is later than planned Completion as shown on the Accepted Programme current at the dividing date.
- A delay to a Key Date is assessed as the length of time that, due to the compensation event, the planned date when the Condition stated for a Key Date will be met is later than the date shown on the Accepted Programme current at the dividing date.
- When assessing delay only those operations which the *Contractor* has not completed and which are affected by the compensation event are changed.
- Notwithstanding any other provision of this contract, there shall be no change to the Completion Date and no change to any Key Date due to the occurrence of a compensation event of the type referred to in clause 60.1(13).
- 63.6 Without prejudice to the provisions of clause 82 (*Recovery of costs*), the rights of the *Client* and the *Contractor* to changes to the Prices, the Completion Date and the Key Dates are their only rights in respect of the occurrence of a compensation event.
- 63.7 If the *Project Manager* has stated in the instruction to submit quotations that the *Contractor* did not give an early warning of the event which an experienced contractor could have given, the compensation event is assessed as if the *Contractor* had given the early warning.
- 63.8 The assessment of the effect of a compensation event includes risk allowances for cost and time for matters which have a significant chance of occurring and are not compensation events.
- 63.9 The assessment of the effect of a compensation event is based upon the assumptions that the *Contractor* reacts competently and promptly to the event and that any Defined Cost and time due to the event are reasonably incurred.
- 63.10 The *Contractor* shall not be entitled to a compensation event as a result of any conflict, ambiguity, discrepancy, error, omission, inadequacy, divergence or inconsistency referred to in clause 17.3.
- 63.11 If a change to the Scope makes the description of the Condition for a Key Date incorrect, the *Project Manager* corrects the description. This correction is taken into account in assessing the compensation event for the change to the Scope.
- 63.12 If the effect of a compensation event is to reduce the total Defined Cost and the event is a change to the Scope provided by the *Client*, which the *Contractor* proposed and the *Project Manager* accepted, the Prices are not reduced.
- 63.13 Assessments for changed Prices for compensation events are in the form of changes to the Activity Schedule.

**The Project
Manager's
assessments**

64

64.1

- The *Project Manager* assesses a compensation event
- if the *Contractor* has not submitted the quotation and details of its assessment within the time allowed,
 - if the *Project Manager* decides that the *Contractor* has not assessed the compensation event correctly in the quotation and has not instructed the *Contractor*

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to submit a revised quotation,

- if, when the *Contractor* submits quotations for the compensation event, it has not submitted a programme or alterations to a programme which the contract requires it to submit or
- if, when the *Contractor* submits quotations for the compensation event, the *Project Manager* has not accepted the *Contractor's* latest programme for one of the reasons stated in the contract.

- 64.2 The *Project Manager* assesses the programme for the remaining work and uses it in the assessment of a compensation event if
- there is no Accepted Programme,
 - the *Contractor* has not submitted a programme or alterations to a programme for acceptance as required by the contract or
 - the *Project Manager* has not accepted the *Contractor's* latest programme for one of the reasons stated in the contract.
- 64.3 The *Project Manager* notifies the *Contractor* of the assessment of a compensation event and gives details of the assessment within the period allowed for the *Contractor's* submission of its quotation for the same compensation event. This period starts when the need for the *Project Manager's* assessment becomes apparent.
- 64.4 If the *Project Manager* does not assess a compensation event within the time allowed, the *Contractor* may notify the *Project Manager* of that failure. If the *Contractor* submitted more than one quotation for the compensation event, the notification states which quotation the *Contractor* proposes is to be used.

Proposed instructions	65	
	65.1	The <i>Project Manager</i> may instruct the <i>Contractor</i> to submit a quotation for a proposed instruction. The <i>Project Manager</i> states in the instruction the date by which the proposed instruction may be given. The <i>Contractor</i> does not put a proposed instruction into effect.
	65.2	The <i>Contractor</i> submits quotations for a proposed instruction within three weeks of being instructed to do so by the <i>Project Manager</i> . The <i>Project Manager</i> replies to the <i>Contractor's</i> quotation by the date when the proposed instruction may be given. The reply is <ul style="list-style-type: none"> • an instruction to submit a revised quotation including the reasons for doing so, • the issue of the instruction together with a notification of the instruction as a compensation event and acceptance of the quotation or • a notification that the quotation is not accepted. If the <i>Project Manager</i> does not reply to the quotation within the time allowed, the quotation is not accepted.
	65.3	If the quotation is not accepted, the <i>Project Manager</i> may issue the instruction, notify the instruction as a compensation event and instruct the <i>Contractor</i> to submit a quotation.
Implementing compensation events	66	
	66.1	A compensation event is implemented when <ul style="list-style-type: none"> • the <i>Project Manager</i> notifies acceptance of the <i>Contractor's</i> quotation, or • the <i>Project Manager</i> notifies the <i>Contractor</i> of an assessment made by the <i>Project Manager</i>.
	66.2	When a compensation event is implemented the Prices (where and to the extent that the <i>Contractor</i> is entitled to a change to the Prices under this contract), the Completion Date and the Key Dates are changed accordingly.
	66.3	The assessment of an implemented compensation event is not revised except as stated in these <i>conditions of contract</i> .
	66.4	Neither Party has any liability whether under common law or otherwise in respect of compensation events except as expressly stated in this Section 6 (<i>Compensation Events</i>) of the <i>conditions of contract</i> .

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7. TITLE

**The *Client's* title
to Plant and
Materials**

70

- 70.1 Whatever title the *Contractor* has to Plant and Materials which are outside the Working Areas passes to the *Client* if the *Supervisor* has marked them as for the contract.
- Subject to the following provisions of this clause 70, any Plant and Materials which the *Contractor* acquires or allocates for the purpose of being incorporated within the *works* vests in and become the absolute property of the *Client* as from the time the carrying out of the relevant part of the *works* begins or (if earlier) from the time the Plant and Materials is first acquired or specifically allocated for incorporation in to the *works* and from that time is in the possession of the *Contractor* for the sole purpose of the *works* and/or incorporating the same into the *works* and is not within the control or disposition of the *Contractor* other than for that purpose.
- 70.2 Whatever title the *Contractor* has to Plant and Materials passes to the *Client* if they have been brought within the Working Areas. The title to Plant and Materials passes back to the *Contractor* if they are removed from the Working Areas with the *Project Manager's* permission.
- 70.3 Notwithstanding the vesting of any Plant and Materials, prior to their incorporation within the *works* under the terms of clause 70.1, the *Contractor* remains responsible for any loss or damage to such Plant and Materials, as well as retaining responsibility for maintaining insurance in respect of the same in accordance with the contract.
- 70.4 In respect of any Plant and Materials as referred to in this clause 70 which are held off-site, and as a condition precedent to the *Client's* obligation to make any payments to the *Contractor* in respect of same, the *Contractor* must deliver to the *Project Manager* a Vesting Certificate duly executed by the relevant supplier and the *Contractor* in respect of any such off-site Plant and Materials in the form appearing in Annex 4G to the contract (or in such other form as the *Client* may reasonably require). Should the grantor of the vesting certificate be an entity registered outside the UK, a legal opinion (duly signed by an independent law firm approved by the *Client* and qualified to practice in the country where the grantor of the vesting certificate is incorporated) is provided to the *Project Manager*, by the *Contractor*, in terms approved by the *Client*.
- 70.5 Neither the *Contractor* nor any of the *Contractor's* Personnel nor any third party will have a lien on any part of the *works* (or any goods or Plant and Materials associated therewith) which have vested in the *Client* for any sum due to or by the *Contractor*, the *Contractor's* Personnel or any third party. The *Contractor* will take all reasonable steps necessary to ensure that the provisions of this clause are brought to the notice of all the *Contractor's* Personnel and any third parties dealing with any such parts of the *works*.
- 70.6 Without prejudice to clause 70.1, the *Contractor* will ensure that from the time when the *works* begin, or as soon as practicable thereafter, or when any goods or Plant and Materials are acquired specifically for or are allocated for incorporation in any of the *works*, they are marked or recorded so that they are readily identifiable as the property of the *Client*. The *Contractor* will comply with any direction given by the *Project Manager* in this respect.
- 70.7 Any goods or Plant and Materials which are rejected by the *Project Manager* will immediately re-vest in the *Contractor*.
- 70.8 If, for any reason, the *Client* terminates the contract, then, without prejudice to any other right the *Client* may have, any goods or Plant and Materials which have not been incorporated into the *works* will remain vested in the *Client* unless the *Project Manager* gives the *Contractor* written notice that the *Client* elects to re-vest the property in such goods or Plant and Materials in the *Contractor* or supplier, which notice is given within 6 months of the date of termination.
- 70.9 Any payment made by the *Client* in respect of any goods or Plant and Materials which re-vests in the *Contractor* under clauses 70.7 or 70.8 will be recoverable by the *Client* from the *Contractor* as a debt.
- 70.10 The *Contractor* will hand over to the *Client* any goods or Plant and Materials in which the *Client* has elected to retain the property. If the *Contractor* fails to do so, the *Project Manager* or his representative(s) will have the right to enter the *Contractor's* premises and remove goods or Plant and Materials and recover the cost of doing so from the *Contractor*.
- 70.11 The *Client* will pay a price for any Plant and Materials in which it has elected to retain the property under clause 70.8 and which are handed over to the *Client* by the *Contractor* or otherwise come into the *Client's* possession, which price is based upon the rates and

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prices in the Schedule of Cost Components or an otherwise fair and reasonable price having regard to the Plant and Materials concerned.

- 70.12 Where any Plant and Materials in the *Client's* possession or control has re-vested in the *Contractor* in accordance with clauses 70.7 or 70.8, the *Contractor* will bear the cost of resuming possession and control of them from the place of delivery in the UK as specified in the contract. If the Plant and Materials are on the premises of the *Client* or the premises of any OGD (including any agencies thereof), the *Contractor* will remove them within 10 Working Days of the date of their re-vesting.

Marking Equipment, Plant and Materials outside the Working Areas	71	
	71.1	The <i>Supervisor</i> marks Equipment, Plant and Materials which are outside the Working Areas if <ul style="list-style-type: none"> the contract identifies them for payment and the <i>Contractor</i> has prepared them for marking as the Scope requires.
	71.2	If requested by the <i>Project Manager</i> , the <i>Contractor</i> provides evidence of his title to Plant and Materials prior to their inclusion in the assessment of the amount due.
Removing Equipment	72	
	72.1	The <i>Contractor</i> removes Equipment from the Site when it is no longer needed unless the <i>Project Manager</i> allows it to be left in the <i>works</i> .
Objects and materials within the Site	73	
	73.1	The <i>Contractor</i> has no title to an object of value or of historical or other interest within the Site. The <i>Contractor</i> informs the <i>Project Manager</i> when such an object is found and the <i>Project Manager</i> instructs the <i>Contractor</i> how to deal with it. The <i>Contractor</i> does not move the object without instructions.
	73.2	The <i>Contractor</i> has title to materials from excavation and demolition unless the Scope states otherwise.
The Contractor's use of material	74	
	74.1	The <i>Contractor</i> has the right to use material provided by the <i>Client</i> only to Provide the Works. The <i>Contractor</i> may make this right available to a Subcontractor.

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8. LIABILITIES AND INSURANCE**Client's liabilities 80**

- 80.1 The *Client's* liabilities are limited to the following exhaustive list, save where expressly stated to the contrary in the contract and (a) only to the extent that such matters or events are not consequent upon or necessitated by any act, negligence, omission, default, breach of contract or breach of statutory duty of the *Contractor* or any *Contractor's* Personnel (whether arising out of or in connection with this contract or otherwise) and (b) save to the extent that the *Contractor* is stated to be responsible for or assumed the liability of or for or to have allowed for such matters or events under this contract.
- Subject to all warranties and undertakings of the *Contractor* set out in the contract, claims and proceedings from Others and compensation and costs payable to Others which are due to
 - use or occupation of the Site by the *works* or for the purpose of the *works* which is the unavoidable result of the *works* (but only to the extent that such claims, proceedings, compensation and costs relate to interests in land, and not to the extent relating to other matters including the manner in which the *Contractor* Provides the Works pursuant to that use and occupation) or
 - negligence, breach of statutory duty or interference with any legal right by the *Client* or by any person employed by or contracted to it (excluding the *Contractor* and all *Contractor's* Personnel).
 - Any negligence, breach of contract or breach of statutory duty of the *Client* (whether arising out of or in connection with this contract or otherwise).
 - A fault in the design contained in
 - an instruction from the *Project Manager* changing the Scope
 (other than design for which the *Contractor* is responsible under the contract).
 - Loss of or damage to Plant and Materials supplied to the *Contractor* by the *Client*, or by Others on the *Client's* behalf, until the *Contractor* has received and accepted them.
 - Loss of or damage to the *works*, Plant and Materials due to
 - war, civil war, rebellion, revolution, insurrection, terrorism, military or usurped power,
 - strikes, riots and civil commotion not confined to the *Contractor's* employees or any other *Contractor's* Personnel or
 - radioactive contamination.
 - After take over of the *works*, loss or damage to the completed *works* caused by Others and fair wear and tear (but the latter shall not relieve or diminish the *Contractor's* obligations or liability with regard to the *works* complying with this contract).
 - Loss of or damage to the *works* and any Equipment, Plant and Materials retained on the Site by the *Client* after a termination, except loss or damage due to the activities of the *Contractor* on the Site after the termination.
 - Loss of or damage to property owned or occupied by the *Client* other than the *works*, unless the loss or damage arises from or in connection with the *Contractor* Providing the Works.
 - Additional *Client's* liabilities (if any) stated in the Contract Data.

Contractor's liabilities 81

- 81.1 The *Contractor's* liabilities include the following, unless they are stated as being *Client's* liabilities in the contract:
- Claims and proceedings from Others and compensation and costs payable to Others which arise from or in connection with the *Contractor* Providing the Works.
 - Loss of or damage to the *works*, Plant and Materials and Equipment.
 - Loss of or damage to property owned or occupied by the *Client* other than the *works*, which arises from or in connection with the *Contractor* Providing the Works.
 - Death or bodily injury to the employees of the *Contractor* or any of its

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Subcontractors (of any tier).

- Death or bodily injury to any person employed by the *Client*, which arises from or in connection with the *Contractor* Providing the Works.
- Death or bodily injury to any other person or loss of or damage to the property of Others, which arises from or in connection with the *Contractor* Providing the Works.

Recovery of costs	82	
	82.1	Subject to clauses 82.3 and without prejudice to any other rights or remedies of the <i>Client</i> , any cost which the <i>Client</i> has paid or will pay as a result of an event for which the <i>Contractor</i> is liable is paid by the <i>Contractor</i> .
	82.2	Subject to the provisions of the contract, any cost which the <i>Contractor</i> has paid or will pay to Others as a result of an event for which the <i>Client</i> is liable is paid by the <i>Client</i> .
	82.3	The right of a Party to recover these costs is reduced if an event for which it was liable contributed to the costs. The reduction is in proportion to the extent that the event for which that Party is liable contributed, taking into account each Party's responsibilities under the contract.
	82.4	<p>Subject to clause 82.5, the <i>Contractor</i> indemnifies and holds harmless the <i>Client</i> against all expenses, liabilities, losses, claims, proceedings, compensation and costs whatsoever (collectively called Losses) in respect of</p> <ul style="list-style-type: none"> • death or injury to any persons, and • loss or damage to property (including property belonging to the <i>Client</i> or for which it is responsible) <p>to the extent that those Losses are due to any negligence, breach of contract, breach of statutory duty, error, wrongful act, wrongful omission or default by the <i>Contractor</i> or any <i>Contractor's</i> Personnel or due to matters, circumstances or events for which the <i>Contractor</i> is liable under the contract.</p>
	82.5	The <i>Contractor's</i> indemnity under clause 82.4 remains in force for the duration of the contract and survives the expiry or termination of the contract. The <i>Contractor</i> is not responsible for and does not indemnify the <i>Client</i> for Losses to the extent that those Losses are caused by the negligence of the <i>Client</i> .
Insurance cover	83	
	83.1	The <i>Client</i> provides the insurances (if any) which the <i>Client</i> is to provide as stated in the Contract Data.
	83.2	The <i>Contractor</i> provides the insurances stated in the Insurance Table (which appears in Annex 2 to the Contract) and the Contract Data except any insurance which the <i>Client</i> is to provide as stated in the Contract Data. The <i>Contractor</i> provides additional insurances as stated in the Contract Data.
	83.3	[Not used] .
	83.4	<p>(1) The <i>Contractor</i> maintains (and shall continue to maintain) professional indemnity insurance:</p> <ul style="list-style-type: none"> • covering all its liability under the contract in respect of defects or insufficiency in design, • upon customary and usual terms and conditions prevailing for the time being in the insurance market, • with reputable insurers lawfully carrying on such insurance business in the United Kingdom, • in an amount not less than that, and of the type, stated in the Insurance Table and/or the Contract Data, and • for a period beginning not later than the Contract Date and ending 12 (twelve) years after Completion of the whole of the <i>works</i> or 12 (twelve) years after the termination of the contract for any reason, including breach by the <i>Client</i>, whichever is earlier <p>provided that the said insurance is generally available at commercially reasonable premiums. Insofar as there is any conflict or inconsistency between the requirements of (i) this clause 83.4(1) and (ii) the Insurance Table as regards the professional indemnity insurance to be maintained by the <i>Contractor</i>, the requirements of the Insurance Table shall take precedence and prevail.</p> <p>(2) Save for the settlement of claims made under the professional indemnity insurance</p>

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maintained by the *Contractor* (to which this clause 83.4(2) does not apply), the *Contractor* does not, without the prior approval in writing of the *Client*, (i) settle or compromise with insurers any claim which the *Contractor* may have against insurers and which relates to a claim by the *Client* against the *Contractor*, or by any act or omission lose or prejudice the *Contractor's* right to make or proceed with such a claim against insurers or (ii) make any admission of liability to any third party in relation to any potential claim.

- (3) Any increased or additional premium required by insurers by reason of the *Contractor's* claims record or other matters particular to the *Contractor* shall be considered to be within commercially reasonable premiums.
 - (4) The *Contractor* immediately informs the *Client* if such insurance ceases to be available at commercially reasonable premiums, and fully co-operates with any measures reasonably required by the *Client*, including
 - completing any proposals for insurance and associated documents,
 - maintaining such insurance at premiums above commercially reasonable premiums, if the *Client* undertakes in writing to reimburse the *Contractor* in respect of the net cost of such insurance to the *Contractor* above commercially reasonable premiums.
 - (5) The *Contractor's* obligations in respect of professional indemnity insurance continue after termination of the contract for any reason, including breach by the *Client*.
 - (6) Neither any failure to comply nor full compliance with the insurance provisions of the contract limits or relieves the *Contractor* of any of its liabilities, duties and/or obligations under the contract and, in particular, the *Contractor's* obligations in compliance with any indemnity provisions contained in the contract.
- 83.5
- (1) The *Contractor* at all times takes reasonable measures to prevent any trespass, public or private nuisance (including, without limitation, any statutory nuisance as defined by reference to Environmental Laws as may be amended from time to time or any 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 and activities of any adjoining or neighbouring landowner, tenant or occupier or any statutory undertaker arising out of the carrying out of the *works* or of any obligation under clause 43 (Searching for and notifying Defects) and assists the *Client* in defending any relevant action or proceedings which may be instituted.
 - (2) The *Contractor* is responsible for and indemnifies the *Client* from and against any and all expenses, liabilities, losses, claims and proceedings whatsoever resulting from any such trespass, nuisance or interference, except only where such trespass, nuisance or interference is the consequence of an instruction of the *Client* (which is itself not the result of any negligence, default or breach of contract by or on behalf of the *Contractor* or any Subcontractor or supplier) and has not been avoided despite the *Contractor* using reasonable and practical means to avoid the same.
 - (3) The *Client* issues to the *Contractor* such instructions as it considers necessary if any injunction is granted or court order is made in consequence of any such trespass, nuisance or interference, but (except as described above) the *Contractor* is not entitled to any additional payment (whether by way of an addition to the total of the Prices or otherwise) or to an extension of time by reason of any such instruction.
 - (4) The *Contractor* provides (amongst other things in connection with the *works*) and maintains at its own cost all lights guards fencing warning signs and watching when and where necessary or required by the *Project Manager* or by any statutory or other competent authority for the protection of the *works* or for the safety and convenience of the public or others.
 - (5) If the *Contractor* is ever in breach of clause 83.2, the *Client* may pay (at its option) any premiums 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.
 - (6) Where any policy of insurance to be maintained by the *Contractor* requires the payment of a premium, the *Contractor* is liable for such premium.
 - (7) Where any insurance to be maintained under the contract is subject to an excess or deductible below which the indemnity from the insurers is excluded, the *Contractor* pays such excess or deductible except where the event of loss or damage giving rise to the relevant claim under the Required Insurances arises solely due to the negligence, breach of contract or breach of statutory duty of the *Client* (whether arising out of or in connection with this contract or otherwise).

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	<p>(8) The <i>Contractor</i> is not entitled to recover from the <i>Client</i> any sum paid by the <i>Contractor</i> by way of excess or deductible under the insurances, whether under the terms of the contract or otherwise.</p>
	<p>83.6 The <i>Contractor</i> hereby warrants and undertakes that with respect to the carrying out of the <i>works</i> and the design, construction and operation of the plant forming part of the <i>works</i> and the remedying of Defects therein, there shall be no breach of Environmental Law.</p> <p>The <i>Contractor</i> further warrants that it shall not introduce or cause to be introduced any substances, debris or materials onto any land (including land adjacent to or near the Site) or into any stream, river, lake or other body of water which may pollute or contaminate the same or constitute a hazard to the Environment.</p> <p>In the event of any breach by the <i>Contractor</i> of this clause 83.6, the <i>Contractor</i> shall forthwith at its own expense, alter, repair or replace any affected <i>works</i> or part thereof, or otherwise remedy the breach and indemnify the <i>Client</i> from any and all losses arising as a consequence of such breach.</p>
Insurance policies	<p>83.6 The <i>Contractor</i> hereby warrants and undertakes that with respect to the carrying out of the <i>works</i> and the design, construction and operation of the plant forming part of the <i>works</i> and the remedying of Defects therein, there shall be no breach of Environmental Law.</p> <p>The <i>Contractor</i> further warrants that it shall not introduce or cause to be introduced any substances, debris or materials onto any land (including land adjacent to or near the Site) or into any stream, river, lake or other body of water which may pollute or contaminate the same or constitute a hazard to the Environment.</p> <p>In the event of any breach by the <i>Contractor</i> of this clause 83.6, the <i>Contractor</i> shall forthwith at its own expense, alter, repair or replace any affected <i>works</i> or part thereof, or otherwise remedy the breach and indemnify the <i>Client</i> from any and all losses arising as a consequence of such breach.</p>

84	
84.1	<p>Without prejudice to its obligation to indemnify or otherwise be liable to the <i>Client</i> 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 requirements specified in the Insurance Table (at clause 84.15) and any other insurances as may be required by law or relevant regulation (together the Required Insurances).</p> <p>The Contractor will ensure that the Required Insurances are effective in each case not later than the date on which the relevant risk commences.</p>
84.2	<p>The Required Insurances referred to in clause 84.1 will be taken out and maintained with insurers who (in the reasonable opinion of the <i>Client</i>) are of good financial standing, appropriately regulated and of good repute in the United Kingdom insurance market.</p>
84.3	<p>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.</p>
84.4	<p>The Insurances referred to in clause 84.1 will:</p> <p>(a) Where specified in the Insurance Table (at clause 84.15) name the <i>Client</i> as co-insured for its separate interest.</p> <p>(b) Where specified in the Insurance Table (at clause 84.15) provide for non-vitiation and severability of interests protection in respect of any claim made by the <i>Client</i> as a co-insured.</p> <p>(c) Where specified in the Insurance Table (at clause 84.15), include an undertaking from the relevant insurer to waive all rights of subrogation howsoever arising and/or claims against the <i>Client</i>, its employees, servants or agents which they may have or acquire, arising out of any occurrence in respect of which any claim is admitted and is insured under the Required Insurances. The provisions of this clause 84.4c) will not apply against any <i>Client</i> officer, director, employee, agent and assign who has caused or contributed to such an occurrence or claim by fraud, deliberate misrepresentation, deliberate nondisclosure or deliberate breach of policy condition,</p> <p>(d) Where specified in the Insurance Table (at clause 84.15), contain an indemnity to principals clause under which the <i>Client</i> is indemnified in respect of claims made against the <i>Client</i> arising from death or bodily injury or third party property damage for which the <i>Contractor</i> is legally liable in respect of this contract.</p> <p>(e) Be maintained from the date referred to in clause 84.1 above and until at least the</p>

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expiry or termination of this contract and for such further period as may be specified in the Insurance Table (at clause 84.15) subject to the terms, cover features and extensions and principal exclusions as specified in the Insurance Table (at clause 84.15).

- f) Be maintained from time to time (as far as is reasonably practicable), on terms no less favourable than those generally available to a contractor in respect of the risks insured in the United Kingdom insurance market from time to time.

84.5 The *Contractor* will:

- a) Without limiting any specific requirements 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) Discharge all its obligations under the Insurance Act 2015 when placing, renewing, amending or maintaining any insurances required by this contract including complying with the duty of fair presentation to insurers and taking the actions needed to protect the *Client's* separate interests.
- c) 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).

84.6 The *Contractor* will provide, on request, to the *Client*:

- a) Evidence of the Required Insurances, in a form satisfactory to the *Client*; and
- b) 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 requirements 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.

- 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

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):

- a) Of any incident or circumstances which may give rise to any claim amounting to or in excess of seventy five thousand pounds (£75,000) in connection with this contract under any of the Required Insurances.
- b) 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.

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.

84.12 Where any policy requires the payment of a premium, the Contractor will be liable for such premium.

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- 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.
- 84.14 All insurance proceeds received under the Construction "All Risks" Insurance referred to in the Insurance Table (at clause 84.15), will be applied to repair, reinstate and replace each part or parts of the insured property in respect of which the proceeds were received.

If the Contractor does not insure	85
	85.1 The <i>Client</i> may insure an event or liability which the contract requires the <i>Contractor</i> to insure if the <i>Contractor</i> does not submit a required certificate. The cost of this insurance to the <i>Client</i> is paid by the <i>Contractor</i> .
Insurance by the Client	86
	86.1 The <i>Project Manager</i> submits certificates for insurance provided by the <i>Client</i> to the <i>Contractor</i> for acceptance before the <i>starting date</i> and afterwards as the <i>Contractor</i> instructs. The <i>Contractor</i> accepts the certificates if the insurance complies with the contract and if the insurer's commercial position is strong enough to carry the insured liabilities.
	86.2 The <i>Contractor's</i> acceptance of an insurance certificate provided by the <i>Client</i> does not change the responsibility of the <i>Client</i> to provide the insurances stated in the Contract Data.
	86.3 [Not used] .

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9. TERMINATION**Termination 90**

- 90.1 If either Party wishes to terminate the *Contractor's* obligation to Provide the Works it notifies the *Project Manager* and the other Party giving details of the reason for terminating. The *Project Manager* issues a termination certificate to both Parties promptly if the reason complies with the contract.
- 90.2 The *Contractor* may terminate only for a reason identified in the Termination Table below. The *Client* may terminate for a reason identified in the Termination Table or in accordance with Secondary Option X11. The procedures followed and the amounts due on termination are in accordance with the Termination Table.

TERMINATION TABLE			
TERMINATING PARTY	REASON	PROCEDURE	AMOUNT DUE
The Client	R1–R15 or R18 or R20 R17 R19	P1, P2 and P3 P1 and P3 P1 and P4	A1 and A3 A1 and A2 A1 and A2
The Contractor	R1–R10 or R16 R17	P1 and P4 P1 and P4	A1 and A2 A1 and A2

- 90.3 The procedures for termination are implemented immediately after the *Project Manager* has issued a termination certificate.

If the *Client* terminates for one of reasons R1 to R15 or R18 and a certified payment has not been made at the date of the termination certificate, the *Client* need not make the certified payment unless these *conditions of contract* state otherwise.

- 90.4 After a termination certificate has been issued, the *Contractor* does no further work necessary to Provide the Works.

Reasons for termination 91

- 91.1 Either Party may terminate if the other Party has done any one of the following in England or Wales or its equivalent in another jurisdiction.
- If the other Party is an individual and has
 - presented an application for bankruptcy (R1),
 - had a bankruptcy order made against it (R2),
 - had a receiver appointed over its assets (R3) or
 - made an arrangement with its creditors (R4).
 - If the other Party is a company or partnership and has
 - had a winding-up order made against it (R5),
 - had a provisional liquidator appointed to it (R6),
 - passed a resolution for winding-up (other than in order to amalgamate or reconstruct) (R7),
 - had an administration order made against it or had an administrator appointed over it (R8),
 - had a receiver, receiver and manager, or administrative receiver appointed over the whole or a substantial part of its undertaking or assets (R9) or
 - made an arrangement with its creditors or is otherwise Insolvent (R10).
- 91.2 The *Client* may terminate if the *Project Manager* has notified the *Client* and the *Contractor* that the *Contractor* has:
- committed any Material Breach or Persistent Breach, has failed to Provide the Works or any part thereof within the time or times specified and to the standards set out in the contract, has (without reasonable cause) failed to proceed regularly and diligently with Providing the Works, has abandoned the *works* or has otherwise plainly demonstrated its intention not to continue performance of its obligations

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- under the contract at any time after the Contract Date and/or has otherwise materially failed to comply with any of its other obligations, and the *Contractor* has either not corrected that failure within 20 Working Days of being notified of that failure by the *Project Manager*, or, having corrected that failure, has at any subsequent time materially failed to comply with its obligations in the same or a similar manner (R11),
- not provided a parent company guarantee or performance bond which this contract requires (or the Guarantor or the issuer of any parent company guarantee or performance bond provided to the *Client* is or becomes Insolvent) or has become liable to pay to the *Client* the maximum aggregate amount of delay damages payable under clause X7 (R12),
 - appointed a Subcontractor without the *Project Manager* having approved that Subcontractor in accordance with clause 26 or has assigned (or purportedly assigned) any or all of the *Contractor's* benefit or interest in this contract without the *Client* having given its prior written consent thereto (R13).

- 91.3 The *Client* may terminate if the *Project Manager* has notified the *Client* and the *Contractor* that the *Contractor* has defaulted in one of the following ways and has not stopped defaulting within 20 Working Days of being notified of that default by the *Project Manager*.
- Substantially hindered the *Client* or Others (R14).
 - Substantially broken a health or safety regulation (R15).
- 91.4 The *Contractor* may terminate if he has notified the *Project Manager* that the *Client* has not paid (without legal justification) an amount certified by the *Project Manager* as due under the contract by the final date for payment and the *Client* has not remedied the default within 40 Working Days of the notification (R16).
- 91.5 Either Party may terminate if the Parties have been released under the law from further performance of the whole of the contract (R17).
- 91.6 If the *Project Manager* has instructed the *Contractor* to stop or not to start any substantial work or all work and an instruction allowing the work to re-start or start or removing work from the Scope has not been given within thirteen weeks,
- the *Client* may terminate if the instruction was due to a default by the *Contractor* (R18).
- 91.7 The *Client* may terminate if an event occurs which
- stops the *Contractor* completing the whole of the *works* or
 - stops the *Contractor* completing the whole of the *works* by the date for planned Completion shown on the Accepted Programme and is forecast to delay Completion of the whole of the *works* by more than thirteen weeks,
- and which
- neither Party could prevent and
 - an experienced contractor would have judged at the Contract Date to have such a small chance of occurring that it would have been unreasonable to have allowed for it (R19).
- 91.8 The *Client* may terminate if the *Contractor's* appointment as a *Supplier Alliance Member* under the Framework Alliance Contract is terminated for any reason (R20).

Procedures on termination	92	
	92.1	On termination, the <i>Client</i> may complete the <i>works</i> itself or employ other people to do so and may use any Plant and Materials to which it has title (P1).
	92.2	The procedure on termination also includes one or more of the following as set out in the Termination Table.
	P2	The <i>Client</i> may instruct the <i>Contractor</i> to leave the Site, remove any Equipment, Plant and Materials from the Site and assign the benefit of any subcontract or other contract related to performance of the contract to the <i>Client</i> .
	P3	The <i>Client</i> may use any Equipment to which the <i>Contractor</i> has title to complete the <i>works</i> . The <i>Contractor</i> promptly removes the Equipment from Site when the <i>Project Manager</i> informs the <i>Contractor</i> that the <i>Client</i> no longer requires it to complete the <i>works</i> .
	P4	The <i>Contractor</i> leaves the Working Areas and removes the Equipment.

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- 92.3 Upon termination of all or any part of the contract, the *Contractor* provides all reasonable co-operation, assistance and information to the *Client* (and to any replacement contractor appointed by the *Client*) for a period of up to 3 months from the date of termination, if requested, to the extent necessary to effect an orderly assumption of the *works* by the *Client* or, as applicable, any replacement contractor appointed by the *Client* to complete the *works*, to include novation or assignment of any subcontracts as requested by the *Client* provided that, where termination of the contract is by the *Contractor* due to the *Client's* breach or by the *Client* pursuant to Option X11, the *Contractor* shall be entitled to reimbursement of its reasonable and properly incurred costs in providing co-operation to the *Client* under this clause 92.3.
- 92.4 On the termination of the contract for any reason, the *Contractor*:
- immediately returns to the *Project Manager* all Documents relating to the contract in its possession or in the possession or under the control of any *Contractor's* Personnel which was obtained or produced in the course of Providing the Works;
 - takes all steps necessary to secure and make safe the Site and close off the *works*, including the completion of any parts of the *works* that were ongoing at the date of termination and which are required to be completed to give effect to the foregoing; and
 - promptly provides all information concerning the *works* which may reasonably be requested by the *Project Manager* for the purposes of adequately understanding the provision of the *works* or for the purpose of allowing the *Project Manager* or any replacement contractor to conduct due diligence.

**Payment on
termination**

- 93**
- 93.1 The amount due on termination includes (A1)
- an amount due assessed as for normal payments,
 - the Defined Cost of Plant and Materials
 - within the Working Areas or
 - to which the *Client* has title and which the *Contractor* delivers to the Working Areas or to another location reasonably instructed by the *Project Manager*,
 - other Defined Cost reasonably incurred in expectation of completing the whole of the *works*,
 - any amounts retained by the *Client* and
 - a credit to the *Client* of any un-repaid balance of any advanced payment made by it under the contract.
- 93.2 The amount due on termination also includes one or more of the following as set out in the Termination Table.
- A2 The forecast Defined Cost of removing the Equipment.
- A3 A credit to the *Client* of the forecast of the additional cost to the *Client* of completing the whole of the *works*.
- For the avoidance of doubt, (a) the *Client* will not be liable on termination for any of the *Contractor's* future loss of profits, loss of opportunity, loss of revenue, loss of use of capital or any indirect or consequential losses whatsoever and (b) the termination provisions of this contract are without prejudice to any other rights or remedies that either Party may have.
- 93.4 If there is a termination, the *Project Manager* assesses the *Contractor's* share after certifying termination. The assessment uses as the Price for Work Done to Date the total of the Defined Cost which the *Contractor* has paid and which it is committed to pay for work done before termination, and uses as the total of the Prices
- the lump sum price for each activity which has been completed and
 - a proportion of the lump sum price for each incomplete activity which is the proportion of the work in the activity which has been completed.
- 93.6 The *Project Manager's* assessment of the *Contractor's* share is added to the amount due to the *Contractor* on termination if there has been a saving or deducted if there has been an excess. The *Contractor* is not entitled to a share of any saving if the *Client* has terminated the contract for any of reasons R1-R15.

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10. Extraordinary Inflation

Inflation 100.1 Where the Parties consider, acting reasonably, that the prices are materially affected by an unforeseeable and extraordinary change in the rate of inflation that, based on market conditions that have a cross-industry impact, and an experienced contractor would have judged the difference between the Tender Return Date and the Contract Date, such a change would have had such a small chance of occurring ('Extraordinary Change in Inflation'), it would have been unreasonable to have allowed for it, the Parties shall meet to discuss whether such change is an Extraordinary Change in Inflation and if so how to manage such change under the contract.

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Resolving and Avoiding Disputes

OPTION W1: NOT USED

OPTION W2

Used when Adjudication is the method of dispute resolution and the United Kingdom Housing Grants, Construction and Regeneration Act 1996 applies.

The procedures set out in this Option W2 shall apply to all Disputes between the Parties in connection with this contract.

Unless the context otherwise requires, words and expressions used in this Protocol shall have the following meaning:-

"Dispute" means any dispute, difference or claim arising out of or in connection with the contract.

"Panel of Adjudicators" means (a) Trevor Pettigrew-Smith of HKA, 220 St Vincent Street, Glasgow, G2 5SG, (b) Janey Milligan of CDR, Pavilion 1, Parkway Court, 291 Springhill Parkway, Glasgow, G69 6GA and (c) Stephen Furst QC of Keating Chambers, 15 Essex Street, London, WC2R 3AA.

"Protocol" means the provisions of this Dispute Resolution Protocol.

The Parties will attempt in good faith to resolve any Dispute, failing which, subject to the rights of the Parties to refer a Dispute for determination pursuant to the remainder of this Protocol, either Party may refer the Dispute to the *Client's Representative* and the *Contractor's Representative* for resolution by requesting a meeting for that purpose in writing. If either Party refers a Dispute to the *Client's Representative* and the *Contractor's Representative* for resolution, each Party shall co-operate to procure that the *Client's Representative* and the *Contractor's Representative* meet in good faith to seek to resolve the relevant Dispute.

If the *Client's Representative* and the *Contractor's Representative* are able to agree on a joint resolution of the Dispute then such joint resolution shall be recorded in writing and shall be final and binding on the Parties. If a Dispute has not been resolved within 10 Working Days of it being referred to the *Client's Representative* and the *Contractor's Representative* or such other period as the Parties may agree, either Party may refer the Dispute to the *Senior Representatives* in accordance with clause W2.1.

Resolving disputes	W2
	W2.1 (1) [Not used].
	(2) The Party referring a dispute notifies in writing the <i>Senior Representatives</i> , the other Party and the <i>Project Manager</i> of the nature of the dispute it wishes to resolve. Each Party submits to the other their written statement of case within one week of the notification. Each statement of case is limited to no more than ten sides of A4 paper together with supporting evidence, unless otherwise agreed by the Parties.
	(3) The <i>Senior Representatives</i> attend as many meetings and use any procedure they consider necessary to try to resolve the dispute over a period of up to three weeks after receipt of the last written statement of case referred to in clause W2.1(2). At the end of this period the <i>Senior Representatives</i> produce a joint written resolution of the Dispute.
	(4) If the <i>Senior Representatives</i> are able to agree a joint written resolution of the Dispute then such joint resolution shall be final and binding on the Parties.
The Adjudicator	W2.2 (5) A Dispute arising under or in connection with the contract is referred to and decided by the adjudicator nominated in accordance with this clause W2.2: .
	<ul style="list-style-type: none"> The Party referring a Dispute to adjudication shall nominate an adjudicator from the Panel of Adjudicators who is of the most relevant discipline to the Dispute. In the event that the panel member nominated is unable or unwilling to confirm acceptance of their appointment as adjudicator, then the Parties may nominate an adjudicator in accordance with the procedure set out in clause W2.2(5). The adjudicator nominated in accordance with this clause W2.2 is hereinafter referred to as the <i>Adjudicator</i>.

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(1A) A Party may refer a Dispute to the *Adjudicator* at any time whether or not the Dispute has been referred to the *Client's Representative* and the *Contractor's Representative* or the *Senior Representatives*.

(6) In this Option, time periods stated in days exclude Christmas Day, Good Friday and bank holidays.

(7) The Parties appoint the *Adjudicator* under the NEC Dispute Resolution Service Contract current at the *starting date*.

(8) The *Adjudicator* acts impartially and decides the dispute as an independent adjudicator and not as an arbitrator.

(9) If the *Adjudicator* resigns or becomes unable to act, or any of the adjudicators on the Panel of Adjudicators resigns, or the third panel member on the Panel of Adjudicators nominated in accordance with clause W2.2(1) is unwilling or unable to act

- the Parties may choose an adjudicator jointly or
- a Party may ask the *Adjudicator nominating body* to choose an adjudicator.

The *Adjudicator nominating body* chooses an adjudicator within four days of the request. The chosen adjudicator becomes the *Adjudicator* or the replacement adjudicator on the Panel of Adjudicators, as appropriate.

(10) A replacement *Adjudicator* has the power to decide a dispute referred to a predecessor but not decided at the time when the predecessor resigned or became unable to act. The *Adjudicator* deals with an undecided dispute as if it had been referred on the date of appointment as replacement *Adjudicator*.

(11) A Party does not refer a dispute to the *Adjudicator* that is the same or substantially the same as one that has already been decided by the *Adjudicator*.

(12) The *Adjudicator*, and the *Adjudicator's* employees and agents are not liable to the Parties for any action or failure to take action in an adjudication unless the action or failure to take action was in bad faith.

The adjudication	W2.3	<p>(13) Before a Party refers a dispute to the <i>Adjudicator</i>, it gives a notice of adjudication to the other Party with a brief description of the dispute, the remedy sought, and the legal basis for that remedy which it wishes the <i>Adjudicator</i> to make. If the <i>Adjudicator</i> is named in the Contract Data, the Party sends a copy of the notice of adjudication to the <i>Adjudicator</i> when it is issued. Within three days of the receipt of the notice of adjudication, the <i>Adjudicator</i> informs the Parties that the <i>Adjudicator</i></p> <ul style="list-style-type: none"> • is able to decide the dispute in accordance with the contract or • is unable to decide the dispute and has resigned. <p>If the <i>Adjudicator</i> does not so inform within three days of the issue of the notice of adjudication, either Party may act as if the <i>Adjudicator</i> has resigned.</p> <p>(14) Within seven days of a Party giving a notice of adjudication it</p> <ul style="list-style-type: none"> • refers the dispute to the <i>Adjudicator</i>, • provides the <i>Adjudicator</i> with the information on which it relies, including any supporting documents and • provides a copy of the information and supporting documents it has provided to the <i>Adjudicator</i> to the other Party. <p>Within seven (7) days of the referral the other Party may submit to the <i>Adjudicator</i> any statements, representations and/or documents which that Party relies upon relating to the Dispute. This period may be extended if the <i>Adjudicator</i> and the Parties agree.</p> <p>(15) If a matter disputed by the <i>Contractor</i> under or in connection with a subcontract is also a matter disputed under or in connection with the contract, the <i>Contractor</i> may, with the consent of the Subcontractor, refer the subcontract dispute to the <i>Adjudicator</i> at the same time as the main contract referral. The <i>Adjudicator</i> then decides the disputes together and references to the Parties for the purposes of the dispute are interpreted as including the Subcontractor.</p> <p>(16) The <i>Adjudicator</i> may</p> <ul style="list-style-type: none"> • review and revise any action or inaction of the <i>Project Manager</i> or <i>Supervisor</i> related to the dispute and alter a matter which has been treated as accepted or correct,
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- take the initiative in ascertaining the facts and the law related to the dispute,
- instruct a Party to provide further information related to the dispute within a stated time,
- instruct a Party to take any other action which is considered necessary to reach a decision and to do so within a stated time,
- require oral submissions and the attendance before the *Adjudicator* for questioning of any Party or employee or agent of any Party,
- make Site visits,
- obtain advice from specialist consultants provided the Parties agree and
- review and revise any of the *Adjudicator's* previous directions.

(17) If a Party does not comply with any instruction within the time stated by the *Adjudicator*, the *Adjudicator* may continue the adjudication and make a decision based upon the information and evidence received.

(18) A communication between a Party and the *Adjudicator* is communicated to the other Party at the same time.

(19) If the *Adjudicator's* decision includes assessment of additional cost or delay caused to the *Contractor*, the assessment is made in the same way as a compensation event is assessed. If the *Adjudicator's* decision changes an amount notified as due, the date on which payment of the changed amount becomes due is seven days after the date of the decision.

(20) The *Adjudicator* decides the dispute and informs the Parties and the *Project Manager* of the decision and reasons within twenty-eight days of the dispute being referred. This period may be extended by up to fourteen days with the consent of the referring Party or by any other period agreed by the Parties. The *Adjudicator* may in the decision allocate the *Adjudicator's* fees and expenses between the Parties.

(21) Unless and until the *Adjudicator* has informed the Parties of the decision, the Parties, the *Project Manager* and the *Supervisor* proceed as if the matter disputed was not disputed.

(22) If the *Adjudicator* does not inform the Parties of the decision within the time provided by the contract, the Parties and the *Adjudicator* may agree to extend the period for making a decision. If they do not agree to an extension, either Party may act as if the *Adjudicator* has resigned.

(23) The *Adjudicator's* decision is binding on the Parties unless and until revised by the *tribunal* and is enforceable as a matter of contractual obligation between the Parties and not as an arbitral award. The *Adjudicator's* decision is final and binding if neither Party has notified the other within the times required by the contract that it is dissatisfied with a matter decided by the *Adjudicator* and intends to refer the matter to the *tribunal*.

(24) The *Adjudicator* may, within five days of giving the decision to the Parties, correct the decision to remove a clerical or typographical error arising by accident or omission.

The *tribunal*

W2.4

(25) Subject to the right of either Party at any time to refer a Dispute to adjudication in accordance with the procedure set out in clause W2.3, either Party may refer the Dispute to the *tribunal* in accordance with this clause W2.4.

(26) Either Party may notify the other Party of the matter which is disputed and state that it intends to refer the disputed matter to the *tribunal*. The dispute may not be referred to the *tribunal* unless this notification is given within four weeks of being informed of the *Adjudicator's* decision.

(27) The *tribunal* settles the dispute referred to it. The *tribunal* has the power to reconsider any decision of the *Adjudicator* and to review and revise any action or inaction of the *Project Manager* or the *Supervisor* related to the dispute. A Party is not limited in *tribunal* proceedings to the information, evidence or arguments put to the *Adjudicator*.

(28) If the *tribunal* is arbitration, the *arbitration procedure*, the place where the arbitration is to be held and the method of choosing the arbitrator are those stated in the Contract Data.

(29) A Party does not call the *Adjudicator* as a witness in *tribunal* proceedings.

OPTION W3: NOT USED

Secondary Option Clauses

OPTION X1: NOT USED

OPTION X2: NOT USED

OPTION X3: NOT USED

OPTION X4: NOT USED

OPTION X5: NOT USED

OPTION X6: NOT USED

OPTION X7: DELAY DAMAGES

Delay damages

X7

- X7.1 The *Contractor* pays delay damages at the rate stated in the Contract Data from the Completion Date for each day until the earlier of
- Completion and
 - the date on which the *Client* takes over the *works*.
- X7.2 If the Completion Date is changed to a later date after delay damages have been paid, the *Client* repays the overpayment of damages with interest. Interest is assessed from the date of payment to the date of repayment.
- X7.3 If the *Client* takes over a part of the *works* before Completion, the delay damages are reduced from the date on which the part is taken over. The *Project Manager* assesses the benefit to the *Client* of taking over the part of the *works* as a proportion of the benefit to the *Client* of taking over the whole of the *works* not previously taken over. The delay damages are reduced in this proportion.
- X7.4 The *Contractor's* maximum liability to pay delay damages under this Option X7 is limited to the maximum aggregate amount therefor stated in the Contract Data Part One.
- X7.5 If any part of the *works* remains uncompleted by the date on which the *Client* has become entitled to the maximum aggregate amount of delay damages (as specified in the Contract Data Part One), the *Client* may by notice to the *Contractor* at any time either
- require the *Contractor* to complete the *works* within a specified period (failing which the *Contractor* will be deemed to be in Material Breach of the contract),
 - complete the *works* himself, at the *Contractor's* cost, provided he does so in a reasonable manner or
 - terminate the contract.

OPTION X8: Undertakings to the *Client* or Others

Undertakings to the *Client* or Others

X8

- X8.1 The *Contractor* gives *undertakings to Others* (in the form set out in Annex 4A to the contract) as stated in the Contract Data or as notified to it by the *Client* from time to time. The *Contractor* executes each of the *undertakings to Others* as a deed and returns them to the *Client* within fourteen (14) days of receiving the engrossment(s) of the relevant *undertakings to Others*.
- X8.2 If the *Contractor* subcontracts the work stated in the Contract Data it arranges for the

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Subcontractor to provide a *Subcontractor undertaking to Others* if required by the *Client*.

- X8.3 If the *Contractor* subcontracts the work stated in the Contract Data it arranges for the Subcontractor to provide a *Subcontractor undertaking to the Client*.
- X8.4 The *Subcontractor undertaking to Others* and *Subcontractor undertaking to the Client* are in the form set out in Annex 4B or Annex 4C to the contract (as applicable), subject to such reasonable amendments as the beneficiary of the undertaking requires or agrees and any reasonable amendments that are requested by the design consultant and/or subcontractor and agreed to by the *Client*. The *Contractor* uses the “consultant” form of undertaking in Annex 4C for all design consultants and the “subcontractor” form of undertaking in Annex 4B for all other Key Subcontractors.
- X8.5 The *Client* prepares the undertakings to be provided by the *Contractor* and sends them to the *Contractor* for signature. The *Contractor* prepares the Subcontractor undertakings to Others and the Subcontractor undertakings to the *Client*. The *Contractor* executes the undertaking(s) as a deed, or arranges for the Subcontractor(s) to execute the undertaking(s) as a deed, and returns them to the *Client* within three weeks of receipt of the undertakings or the *Client's* request for Subcontractor undertakings to Others and/or Subcontractor undertakings to the *Client*.
- X8.6 Notwithstanding any other term of the contract and in addition to any other right or remedy of the *Client*, until the *Contractor* has procured (a) the delivery of the certified true and complete copy of the relevant subcontract and (b) the execution and delivery of all Subcontractor undertakings to Others and/or Subcontractor undertakings to the *Client*, the *Contractor* is not entitled to payment of any sums relating to the subcontracted work or services of such Subcontractor(s) which would otherwise be due and payable under the terms of the contract and (without prejudice to the generality of the foregoing) the provisions of Section 5 (*Payment*) of the contract are to be read and construed accordingly.

OPTION X9: TRANSFER OF RIGHTS

Transfer of rights X9

- X9.1 The *Client* owns the *Contractor's* rights over material prepared for the design of the *works* except as stated otherwise in the Scope. The *Contractor* obtains other rights for the *Client* as stated in the Scope and obtains from a Subcontractor equivalent rights for the *Client* over the material prepared by the Subcontractor. The *Contractor* provides to the *Client* the documents which transfer these rights to the *Client*.

OPTION X10: INFORMATION MODELLING

Defined terms X10

- X10.1 (1) The Information Execution Plan is the *information execution plan* or is the latest Information Execution Plan accepted by the *Project Manager*. The latest Information Execution Plan accepted by the *Project Manager* supersedes the previous Information Execution Plan.
- (2) Project Information is information provided by the *Contractor* which is used to create or change the Information Model Requirements.
- (3) The Information Model is the electronic integration of Project Information and similar information provided by the *Client* and other Information Providers and is in the form stated in the Information Model.
- (4) The Information Model Requirements are the requirements identified in the Scope for creating or changing the Information Model.
- (5) Information Providers are the people or organisations who contribute to the Information Model and are identified in the Information Model Requirements.

Collaboration X10.2 The *Contractor* collaborates with other Information Providers as stated in the Information Model Requirements.

Early warning X10.3 The *Contractor* and the *Project Manager* give an early warning by notifying the other as soon as either becomes aware of any matter which could adversely affect the creation or

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		use of the Information Model.
Information Execution Plan	X10.4	<p>(1) If an Information Execution Plan is not identified in the Contract Data, the <i>Contractor</i> submits a first Information Execution Plan to the <i>Project Manager</i> for acceptance within the period stated in the Contract Data.</p> <p>(2) Within two weeks of the <i>Contractor</i> submitting an Information Execution Plan for acceptance, the <i>Project Manager</i> notifies the <i>Contractor</i> of the acceptance of the Information Execution Plan or the reasons for not accepting it. A reason for not accepting an Information Execution Plan is that</p> <ul style="list-style-type: none"> • it does not comply with the Information Model Requirements or • it does not allow the <i>Contractor</i> to Provide the Works. <p>If the <i>Project Manager</i> does not notify acceptance or non-acceptance within the time allowed, the <i>Contractor</i> may notify the <i>Project Manager</i> of that failure. If the failure continues for a further one week after the <i>Contractor's</i> notification, it is treated as acceptance by the <i>Project Manager</i> of the Information Execution Plan.</p> <p>(3) The <i>Contractor</i> submits a revised Information Execution Plan to the <i>Project Manager</i> for acceptance</p>
		<ul style="list-style-type: none"> • within the period for reply after the Project Manager has instructed it to and • when the Contractor chooses to. <p>(4) The Contractor provides the Project Information in the form stated in the Information Model Requirements and in accordance with the accepted Information Execution Plan</p>
Compensation events	X10.5	If the Information Execution Plan is altered by a compensation event, the Contractor includes the alterations to the Information Execution Plan in the quotation for the compensation event.
Use of the Information Model	X10.6	The Client owns the Information Model and the Contractor's rights over Project Information except as stated otherwise in the Information Model Requirements. The Contractor obtains from a Subcontractor equivalent rights for the Client over information prepared by the Subcontractor. The Contractor provides to the Client the documents which transfer these rights to the Client.
Liability	X10.7	<p>(1) The following are Client's liabilities.</p> <ul style="list-style-type: none"> • A fault or error in the Information Model other than a Defect in the Project Information. • A fault in information provided by Information Providers other than the Contractor. <p>(2) The Contractor is not liable for a fault or error in the Project Information unless it failed to provide the Project Information using the skill and care normally used by professionals providing information similar to the Project Information.</p> <p>(3) The Contractor provides insurance for claims made against it arising out of its failure to provide the Project Information using the skill and care normally used by professionals providing information similar to the Project Information. The minimum amount of this insurance is as stated in the Contract Data. This insurance provides cover from the starting date until the end of the period stated in the Contract Data.</p>

OPTION X11: TERMINATION BY THE CLIENT

Termination by the Client

- X11
- X11.1 The *Client* may terminate the *Contractor's* obligation to Provide the Works for a reason not identified in the Termination Table by notifying the *Project Manager* and the *Contractor*.
- X11.2 If the *Client* terminates for a reason not identified in the Termination Table the termination procedures followed are P1 and P2 and the amounts due on termination are A1, A2 and A4.

OPTION X12: NOT USED

OPTION X13: NOT USED

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OPTION X14: NOT USED

OPTION X15: THE CONTRACTOR'S DESIGN

The Contractor's design X15

- X15.1 The *Contractor* is only liable for a Defect which arose from the design for which the *Contractor* is responsible where the *Contractor* (or the person who produced such design) failed to use all the reasonable skill and care to be expected of a skilled, properly resourced, qualified and experienced professional designer of the relevant discipline applicable to the design in question who is experienced in preparing design of a similar size, scope, nature and complexity to the design in question and in connection with work of a similar scale, complexity and subject matter as the *works* at sites of a similar nature, complexity, size and use as the Site.
- X15.2 If the *Contractor* corrects a Defect for which it is not liable under the contract it is a compensation event.
- X15.3 The *Contractor* may use the material provided by it under the contract for other work unless
- the ownership of the material has been given to the *Client* or
 - it is stated otherwise in the Scope.
- X15.4 The *Contractor* retains copies of drawings, specifications, reports and other documents which record the *Contractor's* design for the *period for retention*. The copies are retained in the form stated in the Scope.
- X15.5 The *Contractor* provides insurance for claims made against it arising out of its failure to use the skill and care normally used by professionals designing works similar to the *works*. The minimum amount of this insurance is as stated in the Contract Data. This insurance provides cover from the *starting date* until the end of the period stated in the Contract Data.

OPTION X16: RETENTION

Retention X16

- X16.1 After the Price for Work Done to Date has reached the *retention free amount*, an amount is retained in each amount due. Until the date when the Defects Certificate is due to be issued, the amount retained is the *retention percentage* applied to the excess of the Price for Work Done to Date above the *retention free amount*. No amount is retained (as retention under this clause X16) in the assessments made after the Defects Certificate is due to be issued.
- X16.2 [Not used] .
- X16.3 If stated in the Contract Data or agreed by the *Client*, the *Contractor* may give the *Client* a retention bond, provided by a bank or insurer which the *Project Manager* has accepted, for the total amount to be retained and in the form set out in the Scope. A reason for not accepting the bank or insurer is that its commercial position is not strong enough to carry the bond. Any amount retained after the *Contractor* gives the *Client* a retention bond is paid to the *Contractor* in the next assessment.

OPTION X17: NOT USED

OPTION X18: LIMITATION OF LIABILITY

Limitation of liability X18

- X18.1 Each of the limits to the *Contractor's* liability in this clause X18 apply if a limit is stated in the Contract Data.

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- X18.2 Save in relation to the *Contractor's* obligations with respect to delay damages under clause X7, the *Contractor's* liability to the *Client* for the *Client's* indirect or consequential loss is limited to the amount stated in the Contract Data.
- X18.3 For any one event, the liability of the *Contractor* to the *Client* for loss of or damage to the *Client's* property is limited to the amount stated in the Contract Data.
- X18.4 The *Contractor's* liability to the *Client* for Defects due to its design which are not listed on the Defects Certificate is limited to the amount stated in the Contract Data.
- X18.5 The *Contractor'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 the amount stated in the Contract Data and applies in contract, tort or delict and otherwise to the extent allowed under the *law of the contract*.
- The excluded matters are liabilities owed and amounts payable by the *Contractor* as stated in the contract for
- loss of or damage to the *Client's* property,
 - delay damages if Option X7 applies,
 - low performance damages if Option X17 applies,
 - *Contractor's* share,
 - matters in respect of which the *Contractor* is entitled to recovery (or would be entitled to recovery but for its own default) under the terms of the insurances to be maintained by the *Contractor* under the contract, and
 - any of the matters referred to in clause X18.7.
- X18.6 The *Contractor* is not liable to the *Client* for a matter unless details of the matter are notified to the *Contractor* before the *end of liability date*.
- X18.7 Nothing in this Option X18 or elsewhere in this contract shall limit the *Contractor's* liability in respect of any claim arising out of or in relation to:
- fraud, fraudulent misrepresentation, gross negligence or wilful default;
 - any alleged or actual infringement of any third party's Intellectual Property Rights including but not limited to claims of any third parties arising out of or in relation to the *Contractor's* design, manufacture, construction or execution of the *works* and/or the *Client's* proper use of the *works*;
 - third party property damage and/or loss provided always that, in the event of such claims, the *Contractor's* liability for each claim shall be limited to the minimum level of public liability insurance to be maintained by the *Contractor* under this contract;
 - death or personal injury caused by the *Contractor's* (or any *Contractor's* Personnel's) negligence or any other matter for which the *Contractor's* liability cannot be excluded or limited by law;
 - any Contamination introduced into the Site by the *Contractor* or any of the *Contractor's* Personnel;
 - any criminal acts, sanctions and/or Prohibited Acts; or
 - any interest due on any debt or damages payable by the *Contractor* under this contract and any costs and expenses of any proceedings conducted under the Dispute Resolution Protocol.
- X18.8 The *Contractor's* maximum aggregate liability for delay damages under Option X7 is limited to the amount, if any, stated in the Contract Data Part One.

OPTION X20: KEY PERFORMANCE INDICATORS

Incentives X20

- X20.1 A Key Performance Indicator is aspect of performance by the *Contractor* for which a target is stated in the Incentive Schedule. The Incentive Schedule is the *incentive schedule* unless later changed in accordance with the contract.
- X20.2 From the starting date until the Defects Certificate has been issued, the *Contractor* reports to the *Project Manager* its performance against each of the Key Performance Indicators. Reports are provided at the intervals stated in the Contract Data and include the forecast

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final measurement against each indicator.

- X20.3 If the *Contractor*'s forecast final measurement against a Key Performance Indicator will not achieve the target stated in the Incentive Schedule, it submits to the *Project Manager* its proposals for improving performance.
- X20.4 The *Contractor* is paid the amount stated in the Incentive Schedule if the target stated for a Key Performance Indicator is improved upon or achieved. Payment of the amount is due when the target has been improved upon or achieved.
- X20.5 The *Client* may add a Key Performance Indicator and associated payment to the Incentive Schedule but may not delete or reduce a payment stated in the Incentive Schedule.

OPTION X21: NOT USED

OPTION X22: NOT USED

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Option Y

OPTION Y(UK)1: NOT USED

OPTION Y(UK)2: THE HOUSING GRANTS, CONSTRUCTION AND REGENERATION ACT 1996

The Housing Grants, Construction and Regeneration Act 1996		Y(UK)2	
Definitions	Y2.1	In this Option, time periods stated in days exclude Christmas Day, Good Friday and bank holidays but, for the avoidance of doubt, include Weekends .	
Dates for payment	Y2.2	<p>The date on which a payment becomes due is fourteen days after the assessment date. The date on which the final payment becomes due is</p> <ul style="list-style-type: none"> if the <i>Project Manager</i> makes an assessment after the issue of a Defects Certificate, five weeks after the issue of the Defects Certificate, if the <i>Project Manager</i> does not make an assessment after the issue of a Defects Certificate, one week after the <i>Contractor</i> issues its assessment or if the <i>Project Manager</i> has issued a termination certificate, fourteen weeks after the issue of the certificate. <p>The final date for payment is thirty-one days after the date on which payment becomes due or a different period for payment if stated in the Contract Data.</p> <p>The <i>Project Manager's</i> certificate is the notice of payment specifying the amount due at the payment due date (the notified sum, which may be zero) and stating the basis on which the amount was calculated. If the <i>Project Manager</i> does not make an assessment after the issue of a Defects Certificate, the <i>Contractor's</i> assessment is the notice of payment.</p> <p>Notwithstanding the foregoing provisions of this clause Y2.2, the provisions of clause 53 apply to payment of the final amount due.</p>	
Notice of intention to pay less	Y2.3	If either Party intends to pay less than the notified sum, it notifies the other Party not later than seven days (the prescribed period) before the final date for payment by stating the amount considered to be due and the basis on which that sum is calculated. A Party does not withhold payment of an amount due under the contract unless it has notified its intention to pay less than the notified sum as required by the contract.	
	Y2.4	<p>If the <i>Client</i> terminates for one of reasons R1 to R15 or R18 or R20 and a certified payment has not been made at the date of the termination certificate, the <i>Client</i> makes the certified payment unless</p> <ul style="list-style-type: none"> it has notified the <i>Contractor</i> in accordance with the contract that it intends to pay less than the notified sum or the termination is for one of reasons R1 to R10 and the reason occurred after the last date on which it could have notified the <i>Contractor</i> in accordance with the contract that it intends to pay less than the notified sum. 	
Suspension of performance	Y2.5	If the <i>Contractor</i> exercises its right under the Housing Grants, Construction and Regeneration Act 1996 as amended by the Local Democracy, Economic Development and Construction Act 2009 to suspend performance, it is a compensation event.	

OPTION Y(UK)3: THE CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

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Third party rights Y(UK)3

Y3.1 Subject and without prejudice to clauses 26 and X8, other than the Parties, no person can enforce any of the terms of the contract under the Contracts (Rights of Third Parties) Act 1999.

OPTION Z: [NOT USED]

[Note: All amendments to the published NEC4 ECC Option C have been incorporated into the *conditions of contract*.]

Schedule of Cost Components

An amount is included

- only in one cost component and
- only if it is incurred in order to Provide the Works.

People	<p>1 The following components of</p> <ul style="list-style-type: none"> • the cost of people who are directly employed by the <i>Contractor</i> and whose normal place of working is within the Working Areas and • the cost of people who are directly employed by the <i>Contractor</i> and whose normal place of working is not within the Working Areas but who are working in the Working Areas, proportionate to the time they spend working in the Working Areas. <p>11 Wages, salaries and amounts paid by the <i>Contractor</i> for people paid according to the time worked on the contract.</p> <p>12 Payments related to work on the contract and made to people for</p> <ul style="list-style-type: none"> (a) bonuses and incentives (b) overtime (c) working in special circumstances (d) special allowances (e) absence due to sickness and holidays (f) severance. <p>13 Payments made in relation to people in accordance with their employment contract for</p> <ul style="list-style-type: none"> (a) travel (b) subsistence and lodging (c) relocation (d) medical examinations (e) passports and visas (f) travel insurance (g) items (a) to (f) for dependents (h) protective clothing (i) contributions, levies or taxes imposed by law (j) pensions and life assurance (k) death benefit (l) occupational accident benefits (m) medical aid and health insurance (n) a vehicle (o) safety training. <p>14 The following components of the cost of people who are not directly employed by the <i>Contractor</i> but are paid for by the <i>Contractor</i> according to the time worked while they are within the Working Areas.</p> <p>Amounts paid by the <i>Contractor</i>.</p>
Equipment	<p>2 The following components of the cost of Equipment which is used within the Working Areas.</p>

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- 21 Payments for the hire or rent of Equipment not owned by
- the *Contractor*,
 - the *Contractor's* ultimate holding company or
 - a company with the same ultimate holding company
- at the hire or rental rate multiplied by the time for which the Equipment is required.
- 22 Payments for Equipment which is not listed in the Contract Data but is
- owned by the *Contractor*,
 - purchased by the *Contractor* under a hire purchase or lease agreement or
 - hired by the *Contractor* from the *Contractor's* ultimate holding company or from a company with the same ultimate holding company
- at open market rates, multiplied by the time for which the Equipment is required.
- 23 Payments for Equipment purchased for work included in the contract listed with a time-related on cost charge, in the Contract Data, of
- the change in value over the period for which the Equipment is required and
 - the time-related on cost charge stated in the Contract Data for the period for which the Equipment is required.
- The change in value is the difference between the purchase price and either the sale price or the open market sale price at the end of the period for which the Equipment is required. Interim payments of the change in value are made at each assessment date. A final payment is made in the next assessment after the change in value has been determined.
- If the *Project Manager* agrees, an additional item of Equipment may be assessed as if it had been listed in the Contract Data.
- 24 Payments for special Equipment listed in the Contract Data. These amounts are the rates stated in the Contract Data multiplied by the time for which the Equipment is required.
- If the *Project Manager* agrees, an additional item of special Equipment may be assessed as if it had been listed in the Contract Data.
- 25 Payments for the purchase price of Equipment which is consumed.
- 26 Unless included in the hire or rental rates, payments for
- transporting Equipment to and from the Working Areas other than for repair and maintenance,
 - erecting and dismantling Equipment and
 - constructing, fabricating or modifying Equipment as a result of a compensation event.
- 27 Payments for purchase of materials used to construct or fabricate Equipment.
- 28 Unless included in the hire rates, the cost of operatives is included in the cost of people.

Plant and Materials	3	The following components of the cost of Plant and Materials.
	31	Payments for <ul style="list-style-type: none"> • purchasing Plant and Materials, • delivery to and removal from the Working Areas, • providing and removing packaging and • samples and tests.
	32	Cost is credited with payments received for disposal of Plant and Materials unless the cost is disallowed.
Subcontractors	4	The following components of the cost of Subcontractors.
	41	Payments to Subcontractors for work which is subcontracted without taking into account any amounts paid to or retained from the Subcontractor by the <i>Contractor</i> , which would result in the <i>Client</i> paying or retaining the amount twice.
Charges	5	The following components of the cost of charges paid or received by the <i>Contractor</i> .

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- 51 Payments for the provision and use in the Working Areas of
- water,
 - gas,
 - electricity,
 - telephone and
 - internet.
- 52 Payments to public authorities and other properly constituted authorities of charges which they are authorised to make in respect of the *works*.
- 53 Payments for
- (p) cancellation charges arising from a compensation event
 - (q) buying or leasing land or buildings within the Working Areas
 - (r) compensation for loss of crops or buildings
 - (s) royalties
 - (t) inspection certificates
 - (u) charges for access to the Working Areas
 - (v) facilities for visits to the Working Areas by Others
 - (w) consumables and equipment provided by the *Contractor* for the *Project Manager's* and *Supervisor's* offices.
- 54 Payments made and received by the *Contractor* for the removal from Site and disposal or sale of materials from excavation and demolition.
- 55 Payments for any specialist insurances required by the *Client* under the contract but, for the avoidance of doubt, does not include any of the *Contractor's* Public Liability Insurance, Professional Indemnity Insurance and Employers' Liability insurance all of which, subject to 56 below, are included within the Fee.
- 56 Payments for Professional Indemnity Insurance, Public Liability Insurance or Employers' Liability Insurance required by this contract but only to the extent that (a) such requirements exceed the levels for such insurance stated in the Contract Data and/or the Insurance Table and (b) such payments relate to such excess only.
- 57 Payment for any performance bond that is required by the *Client* (other than any replacement or extended performance bond to be provided under clause X13.4 or clause X13.5).
- 58 Payment for any IT equipment and/or systems or software purchasing or licensing that the *Contractor* does not possess prior to the Contract Date and which the *Client* requires the *Contractor* to procure specifically and wholly for delivery of the *works*.

Manufacture and fabrication	6	The following components of the cost of manufacture and fabrication of Plant and Materials by the <i>Contractor</i> which are
		<ul style="list-style-type: none"> • wholly or partly designed specifically for the <i>works</i> and • manufactured or fabricated outside the Working Areas.
	61	Amounts calculated by multiplying each of the rates for people in the Contract Data by the total time appropriate to that rate spent on manufacturing and fabrication of Plant and Materials outside the Working Areas.
Design	7	The following components of the cost of design of the <i>works</i> and Equipment done outside the Working Areas.
	71	Amounts calculated by multiplying each of the rates for people in the Contract Data by the total time appropriate to that rate spent on design of the <i>works</i> and Equipment outside the Working Areas.
	72	The cost of travel to and from the Working Areas for the categories of design people listed in the Contract Data.
Insurance	8	The following are deducted from cost
		<ul style="list-style-type: none"> • the cost of events for which the contract requires the <i>Contractor</i> to insure and

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-
- other costs paid to the *Contractor* by insurers.

Contract Data

Part One – Data Provided by the *Client*

Completion of the data in full, according to the Options chosen, is essential to create a complete contract.

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 secondary Options of the NEC4 Engineering and Construction Contract June 2017 (with amendments October 2020)

Main Option Option for resolving and avoiding disputes

Secondary Options X7, X8, X9 X10, X11, X15, X16 X18, X20, Y(UK)2 Y(UK)3

The *works* are The refurbishment of the RAF Wittering Aircraft Operating Surface and Aeronautical Ground Lighting

The *Client* is

Name THE SECRETARY OF STATE FOR DEFENCE of the United Kingdom of Great Britain and Northern Ireland including his successors, assigns and transferees

Address for communications c/o Paul Hedley. Defence Infrastructure Organisation (DIO), Room 1202-1221, Kentigern House, 65 Brown Street, Glasgow, G2 8EX

Address for electronic communications

The *Project Manager* is

Name

Address for communications

Address for electronic communications

The *Supervisor* is

Name

Address for communications

Address for electronic communications

The Scope is in

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The Site Information is in	20221118_RAF Wittering_Scope _SI_v4.0		
The <i>boundaries of the site are</i>	Outlined in the Scope Document for RAF Wittering		
The <i>language of this contract is</i>	English		
The <i>law of the contract</i> is the law of	England		
The <i>period for reply is</i>	2 Weeks	Except that	
The <i>period for reply for</i>		Is	
The <i>period for reply for</i>			
The following matters will be included in the Early Warning Register			
Not applicable			
Early warning meetings are to be held at intervals no longer than	2 weeks		

2 The Contractor's main responsibilities

	<i>The key dates and conditions to be met are</i>	<i>key date</i>
(1)	Contract Start Date	25 th May 2023
(2)	Construction Start Date	TBC
(3)	Construction Complete Date	TBC
If Option C, D, E or F is used	The Contractor prepares forecasts of the total Defined Cost for the whole of the <i>works</i> at intervals no longer than	4 weeks

3 Time

	The <i>starting date</i> is	25 th May 2023
	The <i>access dates are</i>	25 th May 2023
	Part of the Site	Date
(1)	N/A	
(2)		
(3)		
	The Contractor submits revised programmes at intervals no longer than	4 weeks
	the completion date for the whole of the works is	16 th September 2024
	The Client is not willing to take over the works before the Completion Date. (Delete as applicable)	

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The period after the Contract Date within which the Contractor is to submit a first programme for acceptance is

2 weeks

4 Quality Management

The period after the Contract Date within which the Contractor is to submit a quality policy statement and quality plan is

4 weeks

The period between Completion of the whole of the works and the defects date is

52 weeks

The defect correction period is

4 weeks

except that

The defect correction period for

Serious Defects

is

7 days

The defect correction period for

Emergency Defects

is

24 hours

5 Payment

The currency of the contract is the

Pound Sterling (£ GBP)

The assessment interval is

4 weeks (Not more than 5)

The interest rate is

3

% per annum (not less than 2) above the

base

rate of the

Bank of England

bank

The Contractor's share percentages and the share ranges are

share range

Contractor's share percentage

less than 80 %

0 %

If Option C or D is used

from 80 % to 120 %

50 %

greater than 120 %

100 %

6 Compensation Events

The place where weather is to be recorded is

RAF Wittering

The weather measurements to be recorded for each calendar month are the cumulative rainfall (mm)

the number of days with rainfall more than 5 mm

the number of days with minimum air temperature less than 0 degrees Celsius

the number of days with snow lying at 09:00 hours GMT

and these measurements:

Not applicable

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The *weather measurements* are supplied by

Meteorological Office at RAF Wittering

The *weather data* are the records of past *weather measurements* for each calendar month

which were recorded at

RAF Wittering

and which are available from

Met Office

Where no recorded data are available

Assumed values for the ten-year return *weather data* for each *weather measurement* for each calendar month are

Not applicable

8 Liabilities and insurance

The *Contractor* provides the insurances specified in the Insurance Table appearing in Annex 2 to the contract.

The minimum limit of indemnity for insurance in respect of loss of or damage to property (except the *works*, Plant and Materials and Equipment) and liability for bodily injury to or death of a person (not an employee of the *Contractor*) caused by activity in connection with this contract for any one event is set out in the Insurance Table appearing in Annex 2 to the contract.

The minimum limit of indemnity for insurance in respect of death of or bodily injury to employees of the *Contractor* arising out of and in the course of their employment in connection with this contract for any one event is set out in the Insurance Table appearing in Annex 2 to the contract.

Resolving and avoiding disputes

The *tribunal* is

Arbitration

The *arbitration procedure* is

The latest version of the Institution of Civil Engineers Arbitration Procedure in force when the arbitrator is appointed

The place where arbitration is to be held is

London

The person or organisation who will choose an arbitrator if the Parties cannot agree a choice or if the *arbitration procedure* does not state who selects an arbitrator is

The Institution of Civil Engineers, One Great George Street, London, SW1P 3AA

The *Senior Representatives* of the *Client* are

Name (1)

Karen Carter

If Option W1 or W2 is used

Address for communications

DIO Building 1057,
RAF Lossiemouth,
Moray,
IV31 6SD

Address for electronic communications

Karen.Carter676@mod.gov.uk

Name (2)

Richard Harker

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Address for communications	Defence Infrastructure Organisation Swales Pavilion, RAF Wyton, Huntingdon Cambs PE28 2EA
Address for electronic communications	Richard.Harker781@mod.gov.uk
The <i>Adjudicator</i> is as determined in accordance with the Dispute Resolution Protocol	
The <i>Adjudicator</i> nominating <i>body</i> is	the Technology and Construction Solicitors' Association (TeCSA)
Address for communications	160 Aldergate Street, Barbican, London EC1A 4HT
Address for electronic communications	

X1: Not Used

X3: Not Used

X5: Not Used

X6: Not Used

X7: Delay damages

If Option X7 is used without Option X5	Delay damages for Completion of the whole of the <i>works</i> are	£9,000.00	Per day
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X8: Undertakings to the *Client* or Others

If Option X8 is used	Refer to Secondary Clause X8
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X10: Information modelling

The period after the Contract Date within which the Contractor is to submit a first Information Execution Plan for acceptance is	4 weeks
--	---------

X12: Not Used

X13: Not Used

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X14: Not Used**X15: The Contractor's design**

	The <i>period for retention</i> following Completion of the whole of the <i>works</i> or earlier termination is	<input type="text"/>
If Option X15 is used	The minimum amount of insurance cover for claims made against the <i>Contractor</i> arising out of its failure to use the skill and care normally used by professionals designing works similar to the <i>works</i> is, in respect of each claim	<input type="text"/>
	The period following Completion of the whole of the <i>works</i> or earlier termination for which the <i>Contractor</i> maintains insurance for claims made against it arising out of its failure to use the skill and care is	<input type="text"/>

X16: Retention (Not used with Option F)

If Option X16 is used	The <i>retention free</i> amount is	<input type="text" value="£0 (nil pounds sterling)"/>
	The <i>retention percentage</i> is	<input type="text" value="2"/> %
Retention bond	The <i>Contractor</i> <u>may not</u> give the <i>Client</i> a retention bond.	

X17: Not Used**X18: Limitation of liability**

Subject and without prejudice to the Contractor's liability for delay damages and low performance damages, the Contractor's liability to the Client for indirect or consequential loss (including but not limited to loss of profit, loss of revenue, loss of use, loss of contract, loss of goodwill, loss of opportunity and loss of production) is limited to **£0** (nil pounds sterling).

For any one occurrence, the Contractor's liability to the Client for loss of or damage to the Client's property is limited to the minimum level of public liability insurance to be maintained by the Contractor under this contract.

The Contractor's liability for Defects due to his design which are not listed on the Defects Certificate is limited (in respect of each individual claim) to a sum equal to the minimum level of professional indemnity insurance to be maintained by the Contractor under this contract.

The Contractor's total liability to the Client for all matters arising under or in connection with this contract, other than excluded matters, is limited to a sum equal to one hundred and twenty per cent (120%) of the higher of (a) the tendered total of the Prices, (b) the total amount paid to the Contractor by the Client in relation to the works or otherwise arising out of this contract and (c) £45,000,000 (forty-five million pounds sterling).

The Client's liability to the Contractor for indirect or consequential loss (including but not limited to loss of profit, loss of revenue, loss of use, loss of contract, loss of goodwill, loss of opportunity and loss of production) is limited to £0 (nil pounds sterling).

The Contractor's maximum aggregate liability to the Client for delay damages payable under Option X7 of this contract is limited to a sum equal to two per cent (2%) of the tendered total of the Prices

The *end of liability date* is years after the Completion of the whole of the *works*

X20: KPI's (not used with Option X12)

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If Option X20 is used

The incentive schedule for Key Performance Indicators is in

Annex 8 – Construction KPIs

A report of performance against each Key Performance Indicator is provided at intervals of

3

Months

X22: Not Used

Option Y(UK)1: Not Used

Option Y(UK)2: The Housing Grants, Construction and Regeneration Act 1996

If Option Y(UK)2 is used and the final date for payment is not fourteen days after the date on which payment becomes due

The period for payment is

30

days after the date on which payment becomes due

Option Y(UK)3: Not Used

Z: Additional conditions of contract

[Note: All amendments to the published NEC4 ECC Option C have been incorporated into the conditions of contract.]

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Part Two – Data Provided by the Contractor

Completion of the data in full, according to the Options chosen, is essential to create a complete contract.

The Contractor is

Name

Lagan Aviation & Infrastructure Limited

Address for communications

Rosemount House, 21-23 Sydenham Road,
Belfast, BT3 9HA

Address for electronic communications

Will.hornby@laganscg.com

The *direct fee percentage* is %

The *working areas* are the Site and

Offices used for design and planning,
including any remote working of staff who
are involved with providing the works.

The key people are

Name (1)

Will Hornby

Job

AOS Framework Director

Responsibilities

Overall responsibility for the delivery of the
works

Qualifications

BSc (Hons) Construction Engineering,
National Diploma Civil Engineering, NVQ 3
Site Contracting Operations

Experience

15 years' experience within the construction
industry

Name (2)

Brian Donovan

Job

Project Manager

Responsibilities

Day to day responsibility for the delivery of
the works

Qualifications

BEng Structural Engineering, EngTech ICE,
NEBOSH H&S Cert, CSCS Supervisors Card
(NVQ Level 3), SMSTS

Experience

15 years' experience in the construction
industry

The following matters will be included in the Risk Register

Please see Appendix C2 – Risk Register

2 The Contractor's main responsibilities

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If the Contractor is to provide Scope for its design

The Scope for the Contractor's design is in

3 Time

If a programme is to be identified in the Contract Data

The programme identified in the Contract Data is

Appendix B1 – Construction Programme

If the Contractor is to decide the completion date for the whole of the works

The completion date for the whole of the works is

16th September 2024

5 Payment

If Option A or C is used

The activity schedule is

RAF Wittering AOS DIO AOS Pricing Tool – LAIL Submission (Rev 1)

If Option B or D is used

The bill of quantities is

£

If Option A, B, C or D is used

The tendered total of the Prices is

£35,199,836.97

If Option F used

Work which the Contractor will do is

activity	Price

Resolving and avoiding disputes

The Senior Representatives of the Contractor are

Name (1)

Steve Turner

Address for communications

Rosemount House, 21-23 Sydenham Road, Belfast, BT3 9HA

Address for electronic communications

Steve.turner@laganscg.com

Name (2)

David McAlernon

Address for communications

Rosemount House, 21-23 Sydenham Road, Belfast, BT3 9HA

Address for electronic communications

David.mcalernon@laganscg.com

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The *Contractor's* nomination for the Dispute Avoidance Board is

If Option W3 is used and the number of members of the Dispute Avoidance Board is three

Name	N/A
Address for communications	
Address for electronic communications	

X10: Information modelling

If Option X10 is used

If an *information execution plan* is to be identified in the Contract Data

The *information execution plan* identified in the Contract Data is

Appendix I3 Task Information Delivery Plan
--

X22: Early Contractor involvement (only used with Options C and E)

The Stage One *key persons* are

If Option X22 is used

Name (1)	
Job	
Responsibilities	
Qualifications	
Experience	
Name (2)	
Job	
Responsibilities	
Qualifications	
Experience	
The Pricing Information is in	

(Y(UK)1: Project Bank Account

If Option Y(UK)1 is used

The *project bank* is
named suppliers are

Data for the Schedule of Cost Components (only used with Options C, D or E)

The listed items of Equipment purchased for work on the contract, with an on-cost charge, are

Equipment	Time-related on cost charge	Per time period
-----------	-----------------------------	-----------------

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The rates for Special Equipment are

Equipment	Rate

The rates for Defined Cost of manufacture and fabrication outside the Working Areas by the *Contractor* are

category of person	rate

The rates for Defined Cost of design outside the Working Areas are

category of person	rate

The categories of design people whose travelling expenses to and from the Working Areas are included as a cost of design of the *works* and Equipment done outside the Working Areas are

Data for the Schedule of Cost Components

The *people* rates are

category of person	unit	rate

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The published list of Equipment is the edition current at the Contract Date of the list published by

Civil Engineering
Contractors Association

The percentage for adjustment for Equipment in the published list is

Minus
5%

% (state plus or minus)

The rates for other Equipment are

equipment	rate
Roadstar 300 Asphalt batching Plant	£3,000 / Day
Voyager Concrete batching plant	£400 / day
Meka Concrete batching plant	£1,200 / day

The rates for Defined Cost of manufacture and fabrication outside the Working Areas by the Contractor are

category of person	rate

The rates for Defined Cost of design outside the Working Areas are

category of person	rate
<input type="checkbox"/> Geoff Dewick – Senior AOS Designer - £138.50/hr <input type="checkbox"/> Dan Bentham – Senior AOS Designer - £138.50/hr <input type="checkbox"/> Chris Johnson – Senior Civil Engineer - £110.50/hr <input type="checkbox"/> Dale Hack – Senior Structural Engineer - £110.50/hr <input type="checkbox"/> Richard Stacey – Qualified AOS Designer - £66.50/hr <input type="checkbox"/> Kai Armes – Technician AOS Designer - £45.00/hr <input type="checkbox"/> Tom Watkins – Technician Civil Designer - £40.50/hr <input type="checkbox"/> Rebecca Huby – Senior Commercial Manager - £80.76/hr <input type="checkbox"/> Kerstin Hucknall – Senior Planner - £63.56/hr <input type="checkbox"/> Steve Ogden – Senior Electrical/Mechanical Engineer - £106.00/hr	

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The categories of design people whose travelling expenses to and from the Working Areas are included in Defined Cost are

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ANNEX 2 – Insurance Table

This is the Insurance Table referred to in the *conditions of contract*:

1. Construction “All Risks” Insurance (CAR)**1.1 Insureds**

1. *Contractor*
2. *Client*

as appropriate, each for their respective rights and interests in this contract.

1.2 Insured property

The permanent and temporary *works*, materials, goods, plant and equipment for incorporation into the *works* plus Plant and Materials, constructional plant, tools, temporary accommodation and all other property used or for use in connection with the *works* under this contract.

1.3 Coverage

“All Risks” of physical loss, damage or destruction to the insured property (in paragraph 1.2 above) unless otherwise excluded.

1.4 Sum insured

At all times an amount not less than the full reinstatement or replacement value of the insured property (in paragraph 1.2 above), plus provision to include cover features and extensions (in paragraph 1.8 below) as appropriate.

1.5 Maximum deductible threshold

Not to exceed £10,000.00 for each and every claim, increasing to £250,000.00 in respect of DE5 claims. .

1.6 Territorial limits

United Kingdom, including offsite storage and during inland transit.

1.7 Period of insurance

From the date of this contract until Completion of the whole of the *works* and thereafter in respect of defects liability until the *defects date*.

1.8 Cover features and extensions

1. Terrorism
2. Munitions of war clause
3. Additional costs of completion clause
4. Professional fees clause
5. Debris removal clause
6. Seventy-two (72) hour clause
7. European Union/UK local authorities clause
8. Free issue materials clause
9. Ten per cent (10%) escalation clause

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10. Automatic reinstatement of sum insured clause
11. Loss minimisation
12. Plans and specifications clause
13. Guarantee maintenance or extended maintenance to the extent available
14. Payments on account
15. Temporary repairs
16. Offsite storage and repairs
17. Fire Joint Code of Practice
18. *Client* co-insured party status with attendant non-vitiation, waiver of subrogation and notice of cancellation in accordance with clauses 84.4(1), 84.4(2) and 84.4(3) of this contract.

1.9 Principal exclusions

1. War and related perils.
2. Nuclear/radioactive risks.
3. Pressure waves caused by aircraft and other aerial devices travelling at sonic or supersonic speeds.
4. Wear, tear and gradual deterioration.
5. Consequential financial losses.
6. Cyber risks.
7. Inventory losses, fraud and employee dishonesty
8. Faulty design, workmanship and materials DE5 or LEG3/06.

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

2.1 Insured

Contractor

2.2 Interest

To indemnify the insured (in paragraph 2.1 above) in respect of all sums that the insured (in paragraph 2.1 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 (in paragraph 2.7 below) and arising out of or in connection with this contract.

2.3 Limit of indemnity

Not less than fifty million pounds (£50,000,000) 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).

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2.4 Maximum deductible threshold

Not to exceed £5,000.00 for each and every occurrence of third party property damage.

2.5 Territorial limits

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

2.6 Choice of law relating to policy interpretation

This insurance shall be governed by and in accordance with the laws of England.

2.7 Period of insurance

From the date of this contract until the *defects date* or, if later, the end of the last *defect correction period*.

2.8 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(3)
6. Indemnity to principals clause in accordance with clause 84.4(4).
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.

2.9 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 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 (in paragraph 2.1 above).
6. Liability in respect of loss or damage to property in the care, custody and control of the insured 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 (in paragraph 2.1 above).
7. Events more properly covered under a professional indemnity insurance policy (as specified in paragraph 3 below).
8. Liability arising from the ownership, possession or use of any aircraft or marine vessels.
9. Liability arising from seepage and pollution unless caused by a sudden, unintended and unexpected occurrence.

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10. Losses indemnified under the Construction "All Risks" Insurance policy (as specified in paragraph 1 above).
11. Liability arising from toxic mould
12. Liability arising from asbestos
13. Cyber risks.

3. Professional Indemnity Insurance**3.1 Insured***Contractor***3.2 Interest**

To indemnify the insured (in paragraph 3.1 above) for all sums which the insured (in paragraph 3.1 above) shall become legally liable to pay (including claimant's costs and expenses) as a result of any claim or claims first made against the insured (in paragraph 3.1 above) during the period of insurance (in paragraph 3.7 below) by reason of any act, error and/or omission arising from or in connection with professional services, advice, design and specification relevant to this contract.

3.3 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 (in paragraph 3.7 below).

3.4 Maximum deductible threshold

Not to exceed £200,000.00 for each and every claim.

3.5 Territorial limits

United Kingdom.

3.6 Choice of law relating to policy interpretation

This insurance shall be governed by and in accordance with the laws of England.

3.7 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 for a period of twelve (12) years following (i) the date of Completion of the whole of the *works* or (ii) the date of termination of this contract, whichever occurs earlier.

3.8 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.

3.9 Principal exclusions

1. War and related perils.
2. Nuclear/radioactive risks.
3. Insolvency of the Insured
4. Bodily injury, sickness, disease or death sustained by any employee.

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4. Airside Third Party Liability Insurance**4.1 Insured***Contractor***4.2 Interest**

Legal liability the insured (in paragraph 4.1 above) may incur for bodily injury to or property damage arising from the performance of this contract airside, including legal liability for damage to aircraft.

4.3 Limit of indemnity

Not less than combined single limit for bodily injury and/or property damage of fifty million pounds (£50,000,000) any one occurrence the number of occurrences being unlimited in any annual policy period.

4.4 Maximum deductible threshold

Not to exceed £5,000.00 for each and every claim increasing to £15,000.00 in respect of damage to aircraft in respect of third-party property damage.

4.5 Territorial limits

Any relevant airport or airfield in the United Kingdom.

4.6 Choice of law relating to policy interpretation

This insurance will be governed by and in accordance with the laws of England.

4.7 Period of insurance

From the date of this contract until the *defects date* or, if later, the end of the last *defect correction period*.

4.8 Cover features and extensions

1. Cross liability clause.
2. Waiver of subrogation in accordance with clause 84.4(3).
3. Indemnity to principals clause in accordance with clause 84.4(4).

4.9 Principal exclusions

1. Radioactive contamination.
2. Claims caused by any hostile detonation of any weapon of war employing atomic or nuclear fission and or fusion or other like reaction or radioactive force or matter.
3. Noises, pollution, contamination exclusion (other than pollution or contamination of a product supplied by the insured (in paragraph 4.1 above)).
4. Liability for death, illness, disease or bodily injury sustained by employees of the Insured (in paragraph 4.1 above) arising out of the course of their employment.
5. Liability arising out of the use of mechanically propelled vehicles whilst required to be compulsorily insured by legislation in respect of such vehicles.

5. Airside Motor Third Party Liability Insurance**5.1 Insured***Contractor***5.2 Interest**

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Legal liability of the insured (in paragraph 5.1 above) to pay damages (including claimants costs and expenses) in respect of:

1. any accident, injury, loss or liability, due to the presence of an insured's (in paragraph 5.1 above) vehicle in any premises or area to which aircraft has access;
2. any accident, loss or damage to any aircraft or any liability or injury arising from such damage; and
3. any consequential loss in connection with any aircraft, airport or airfield operation arising from the presence of the Insured's (in paragraph 5.1 above) vehicles in any area to which any aircraft has access.

5.3 Limit of indemnity

Not less than unlimited other than in respect of damage occasioned to third party property where it will be not less than fifty million pounds (£50,000,000) any one occurrence the number of occurrences being unlimited during the period of insurance (in paragraph 5.6 below).

5.4 Maximum deductible threshold

Not to exceed £5,000.00 for each and every claim, increasing to £15,000.00 in respect of damage to aircraft in respect of third party property damage.

5.5 Situation

Any relevant airport or airfield in the United Kingdom.

5.6 Period of insurance

From the date of this contract until the *defects date* or, if later, the end of the last *defect correction period*.

5.7 Cover features and extensions

1. Cross liability clause.
2. Obstruction, trespass, nuisance, loss of amenities, interference with easements or any like clause.
3. Indemnity to principals clause in accordance with clause 84.4(4).

5.8 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 arising out of the course of their employment.

6. **Policies to be taken out as required by Applicable Law**

The Parties to this contract are each required to meet their statutory insurance obligations in full. Their respective insurances are required to comply with all Applicable Law and Statutory Requirements including, but not limited to, Employers' Liability Insurance and Motor Third Party Liability Insurance.

The *Contractor's* compulsory insurances are to contain an "indemnity to principals" clause in respect of claims made against the *Client* arising out of the performance of the *Contractor* of its duties and obligations under this contract, in accordance with clause 84.4(4).

The said statutory insurances shall be maintained by the Parties from the date of this contract until the *defects date* or, if later, the end of the last *defect correction period*.

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ANNEX 3 – The Programme

The Parties acknowledge and agree that the following document comprises the Accepted Programme as at the Contract Date and is stored as a .pdf file in the folder named “*Programme*” in (and copies of it can be downloaded by the Parties from) the project (Defence Share/ vRoom) entitled “***RAF WITTERING AOS REFURBISHMENT PROJECT***”, which document has the file title given to it below:

- RAF Wittering CL31 Programme Submission.pdf

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ANNEX 4 – The Prescribed Forms

Annex 4A – Form of *Contractor undertakings to Others*

Annex 4B – Form of *Subcontractor undertakings to the Client* (Subcontractor form & Consultant form)

Annex 4C – Form of *Subcontractor undertakings to Others* (Subcontractor form & Consultant form)

Annex 4D – Form of Novation Agreement

Annex 4E – Form of Vesting Certificate

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ANNEX 4A– Form of *Contractor* undertakings to Others

DATED _____ **202[]**

PARENT COMPANY GUARANTEE

between

(1) **LAGAN AVIATION & INFRASTRUCTURE**

and

(2) **[INSERT BENEFICIARY]**

and

(3) **THE SECRETARY OF STATE FOR DEFENCE**

AGREEMENT

in relation to Contract Agreement for
**RAF WITTERING AOS REFURBISHMENT
PROJECT**

OFFICIAL - COMMERCIAL

The Particulars

Date of this Deed is [] 20[]

The following terms used in this Deed have the meanings given to them below:

The Contractor	LAGAN AVIATION & INFRASTRUCTURE [(registered number [INSERT NUMBER])] [whose registered office is at] [of] [INSERT ADDRESS]
The Beneficiary	[INSERT NAME OF BENEFICIARY] [(registered number [INSERT NUMBER])] [whose registered office is at] [of] [INSERT ADDRESS] (which term includes its successors in title and permitted assigns)
The <i>Client</i>	THE SECRETARY OF STATE FOR DEFENCE OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND , Ministry of Defence, Whitehall, London, SW1A 2HB including his successors in title and permitted assigns
The Contract	the contract dated [INSERT DATE] made between the <i>Contractor</i> and the <i>Client</i> in connection with the Works
The Works	the design and construction of the works to be provided by the <i>Contractor</i> in accordance with the provisions of the Contract as more particularly set out in the Contract
The Site	the site defined in the Contract
Documents	all drawings, designs, charts, specifications, plans and any other documents or materials (including any computer software developed by the <i>Contractor</i> used to generate them and any designs contained in them) but excluding internal memoranda and documents, working papers and templates, which have been created and/or developed by the <i>Contractor</i> in the course of performing its obligations under the Contract
Liability Period	the period from the date of the Contract until no less than 12 years after Completion of the Works as certified under the Contract
Professional Indemnity Insurance	professional indemnity insurance with a minimum limit of indemnity of not less than £10,000,000 (ten million pounds) for any one occurrence or series of occurrences arising out of any one event and in the annual aggregate.

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THIS DEED is made on the date set out in the Particulars

BETWEEN:

- (1) the *Contractor*; [and]
- (2) the Beneficiary; [and]
- (3) [the *Client*] .

BACKGROUND:

- A In accordance with the Contract, the *Client* has appointed the *Contractor* to carry out and complete the Works
- B [The Beneficiary has an interest in the Site as it is [narrate interest] of **[INSERT SITE] [INSERT SITE DESCRIPTION]**] .
- C The *Contractor* is obliged under the Contract to give a warranty in this form in favour of the Beneficiary.

OPERATIVE PROVISIONS

1. DEFINITIONS

The words and expressions defined in the Particulars have the same meaning throughout this Deed and references to the Particulars and clauses are to the Particulars and clauses of this Deed.

1. CONSIDERATION

This Deed is made in consideration of the payment of one pound (£1.00) by the Beneficiary to the *Contractor* receipt of which the *Contractor* acknowledges.

2. CONTRACTOR'S DUTIES UNDER THE CONTRACT

The *Contractor* warrants to the Beneficiary that:

- 2.1 it has complied and will continue to comply with its duties and obligations under the Contract in accordance with the Contract; and
- 2.2 it has exercised and shall continue to exercise reasonable skill and care in the design of the Works and the selection of any materials, goods, equipment and plant in relation thereto that would be expected of a skilled, properly resourced, qualified and competent professional designer of the relevant discipline(s) applicable to the design experienced in carrying out design or selection activities for works of a similar size, nature, scope and complexity to those comprised in the Works at sites of a similar nature, complexity, size, previous use and location as the Site.

3. COPYRIGHT LICENCE

- 3.1 Save where and to the extent that the intellectual property rights in the Documents are vested in the *Client*, the *Contractor* hereby grants to the Beneficiary, with effect from the date of this Deed or in the case of any Documents not yet in existence with effect from the creation of such Documents, an irrevocable, royalty-free, non-exclusive licence (such licence to remain in full force and effect notwithstanding the completion of the *Contractor's* obligations or the termination of this Deed or the determination of the *Contractor's* engagement under the Contract or any dispute under this Deed or the Contract) to use the Documents and to reproduce all Documents for use by the Beneficiary to carry out any statutory duty and for any purpose whatsoever connected with the Works, the completed Works, or the Site. The Beneficiary may use the Documents in relation to any extension at the Site (or the facilities thereon) but shall not be entitled to reproduce the designs in the design for any such extension. Such licence will carry the right to grant sub-licences and will be transferable to third parties.

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- 3.2 The *Contractor* shall have no liability under the licences granted under this clause 4 for any use of the Intellectual Property Rights or the Documents other than for the purpose for which they were originally created or provided.
- 3.3 The *Contractor* makes available to the Beneficiary all such Documents created by the *Contractor*, any subcontractor, suppliers or any others for whom the Contractor is responsible in relation to the Contract for use by the *Client* to carry out any statutory duty or for any purpose connected with the Works, the completed Works, and/or the Site(s). The *Contractor* makes available the Documents in the format and manner as required by the Beneficiary.
- 3.4 The *Contractor* warrants that the Documents (i) are either its own original works or if not that it has all necessary rights to use and licence same in accordance with this clause; (ii) that the Beneficiary's exercise of any such Intellectual Property Rights shall not infringe the Intellectual Property Rights of any third parties and the *Contractor* shall indemnify the Beneficiary against any claims, damages, losses, costs or expenses suffered by the Beneficiary (or its assignees or licensees) as a result of the Beneficiary's exercise of such Intellectual Property Rights or for which the Beneficiary is otherwise liable arising out of or in connection with any infringement of any Intellectual Property Rights of any third party caused by or arising out of performing any statutory duty, the Beneficiary exercising its rights under this clause (or under any licence granted pursuant to this clause) for any purpose connected with this Deed, the Contract, the Works or the Site(s).

4. PROHIBITED MATERIALS

Subject to clause 2, the *Contractor* warrants to the Beneficiary that it shall comply in all respects with its obligations contained in the Contract regarding prohibited materials.

5. PROFESSIONAL INDEMNITY INSURANCE

- 5.1 The *Contractor* by this Deed covenants with the Beneficiary that it has taken out and shall maintain Professional Indemnity Insurance, for the duration of the Liability Period in relation to the Works, provided always that:
- 5.1.1 if such insurance is not available to the *Contractor* at commercially reasonable rates and terms (excluding any increase in premiums attributable to the actions, omissions, errors or defaults of the *Contractor*), the *Contractor* and the Beneficiary shall meet, the *Contractor* shall outline the steps it intends to take to manage such risks and the *Contractor* and the Beneficiary shall use reasonable endeavours to agree a method of managing such risks;
- 5.1.2 the *Contractor* shall provide the Beneficiary with reasonable evidence that the policies referred to in this clause 5 are in full force and effect.

6. NO APPROVAL

The *Contractor's* liabilities under this Deed shall not in any way be reduced or extinguished by reason of any inspection or approval of the Documents or attendance at site meetings or other enquiry or inspection which the Beneficiary may make or procure to be made for the Beneficiary's benefit or on its behalf.

7. ASSIGNMENT

- 7.1 The Beneficiary may, without the consent of the *Contractor* [and without prejudice to the provisions of clause 14] , assign the benefit of and its benefits and rights under this Deed to any person by way of absolute legal assignment, subject to clause 7.2, on not more than two occasions only.
- 7.2 Notwithstanding clause 7.1, assignments in security and on redemption of security shall be permitted and shall not be deemed to be assignments in terms of the restriction in clause 7.1.
- 7.3 The Beneficiary shall give the *Contractor* notice following any such assignment specifying the name and address of the assignee and the date of the assignment. The *Contractor* shall not contend that any such assignee is precluded from recovering any loss resulting from any breach of this Deed (whatever the date of such breach) by reason only that that person is an assignee and not the

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original beneficiary under this Deed or by reason that the original beneficiary or any intermediate beneficiary escaped any loss resulting from such breach by reason of the disposal of any interest in the Site or that the original beneficiary or any intermediate beneficiary has not suffered any or as much loss.

8. FURTHER WARRANTIES

The *Contractor* shall within 14 days of a request made at any time by the Beneficiary, duly execute and deliver as a deed a collateral warranty in the same terms as this Deed mutatis mutandis (save for this clause 8 [and clause 14]) in favour of any person in whose favour a collateral warranty may be required pursuant to the Contract, provided that the *Contractor* has not already executed a collateral warranty in favour of the said party.

9. NOTICES

Any notice, approval, request or other communication to be given by either party under this Deed shall be in writing and shall be sufficiently served if sent by hand, by fax or by post to the registered office or if there is none the last known address of the party to be served. Any notice, approval, request or other communication sent by hand shall be deemed to be served on the date of delivery and if sent by fax shall be deemed to be served in full at the time recorded on the fax sheet, provided that if sent by hand or fax is sent after 4.45pm on any day it shall be deemed to be served on the next Working Day. Any notice, approval, request or other communication sent by post shall be deemed to have been duly served at the expiration of 48 hours after the time of posting if the end of that period falls before 4.45pm on a Working Day and otherwise on the next Working Day.

10. OTHER RIGHTS AND REMEDIES

The rights and benefits conferred upon the Beneficiary by this Deed are in addition to any other rights and remedies it may have against the *Contractor* including, without limitation, any remedies in negligence.

11. LIMITATION

- 11.1 The *Contractor* has no liability under this Deed which is greater or of longer duration than it would have had if, in lieu of this Deed, the Beneficiary had been a party to the Contract as joint employer, provided that the *Contractor* shall not be entitled to set-off or deduct from any sums payable to the Beneficiary under this Deed any sums due or claimed as due by the *Contractor* from the *Client*.
- 11.2 The *Contractor* shall be entitled in any action or proceedings brought by the Beneficiary under this Deed to rely on any limitation in the Contract and to raise equivalent rights in defence of liability (but excluding set-offs and counterclaims) as it would have against the Beneficiary if, in lieu of this Deed, the Beneficiary had been a party to the Contract as joint employer.
- 11.3 The parties agree that no action or proceedings may be brought or commenced under this Deed at any time after the Liability Period has come to an end.
- 11.4 [Save where the Beneficiary has exercised its rights pursuant to clause 14] ¹ the *Contractor* shall have no liability under this Deed for any delay in carrying out or completing the Works.

12. THIRD PARTY RIGHTS

Subject to clause 8 (*Assignment*), the parties do not intend that any term of this Deed shall be enforceable under the Contracts (Rights of Third Parties) Act 1999 by any person other than the parties.

13. GOVERNING LAW AND JURISDICTION

- 13.1 This Deed and any non-contractual obligations arising out of or in connection with it shall be governed by English Law.

¹ Remove the text in brackets where clause 15 does not apply.

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13.2 In the event of any dispute arising between the parties to this Deed, the dispute shall be referred to arbitration and the arbitration procedure, place where the arbitration is to be held and method of choosing an arbitrator shall be as in the Contract.

14. [STEP-IN RIGHTS]²

14.1 Subject to clause 14.7, the *Contractor* shall not exercise or seek to exercise any right which may be or become available to it to terminate or treat as terminated or repudiated the Contract or its engagement under it or discontinue or suspend the performance of any duties or obligations under the Contract, without first giving to the Beneficiary not less than twenty- eight days' prior notice specifying the *Contractor's* grounds for terminating or treating as terminated or repudiated the Contract or its engagement under it or discontinuing or suspending its performance of the Contract and stating the amount (if any) of monies outstanding under the Contract. Within such period of notice:

14.1.1 the Beneficiary may give notice to the *Contractor* expressly confirming its intention to comply with clause 14.1.3 and that the Beneficiary shall become the employer under the Contract to the exclusion of the *Client* and, upon giving such notice, that shall be the case and the Contract shall be and remain in full force and effect notwithstanding any of the grounds in the *Contractor's* notice under clause 14.1; and

14.1.2 if the Beneficiary has given notice under clause 14.1.1 or under clause 14.3, the Beneficiary shall then as soon as practicable remedy any outstanding breach by the *Client*; and

14.1.3 if:

14.1.3.1 the Beneficiary has given notice under clause 14.1.1 then from the date of the *Contractor's* notice; or

14.1.3.2 the Beneficiary has given notice under clause 14.3 then from the date of the Beneficiary's notice,

the Beneficiary shall, by clause 14.1.1, become responsible for all sums properly payable to the *Contractor* under the Contract and for the observance and performance of all of the other duties and obligations on the part of the *Client* to be observed and performed under the Contract accruing due after the service of such *Contractor's* notice or Beneficiary's notice (as applicable) but the Beneficiary shall in paying such sums be entitled to the same rights of set-off and deduction as would have applied to the *Contractor* under the Contract.

14.2 Notwithstanding anything contained in this Deed and notwithstanding any payments which may be made by the Beneficiary to the *Contractor* the Beneficiary shall not be under any obligation to the *Contractor* nor shall the *Contractor* have any claim or cause of action against the Beneficiary unless and until the Beneficiary has given notice to the *Contractor* under either clause 14.1.1 or clause 14.3.

14.3 The *Contractor* further covenants with the Beneficiary that if requested by the Beneficiary by notice expressly confirming the Beneficiary's intention to comply with clause 14.1.3 and subject to clause 14.1.2 and clause 14.1.3, it shall accept the instructions of the Beneficiary to the exclusion of the *Client* in respect of the Works upon the terms and conditions of the Contract. The Beneficiary shall then become the employer under the Contract to the exclusion of the *Client* and the *Contractor* shall, if so requested, enter into a novation agreement in order to substitute the Beneficiary for the *Client* under the Contract.

14.4 Where the *Contractor* has given rights in relation to the Contract similar to those contained in this clause 14 to any other person then if both the Beneficiary and any such other person serve notice under clause 14.1 or clause 14.3 or its equivalent the notice served by the Beneficiary shall [prevail]

² This clause is only to be included if the Client requires this, provided that the Client has demonstrated to the Contractor that the Beneficiary has the means to satisfy the Client's payment obligations under the Contract.

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[not prevail] [not prevail over any notice served by **[Name]** but prevail over any notice served by any other person] .

- 14.5 The *Client* acknowledges that the *Contractor* shall be entitled to rely on a notice given to the *Contractor* by the Beneficiary under clause 14.3 as conclusive evidence that the Beneficiary is entitled to serve such notice.
- 14.6 The Beneficiary may by notice to the *Contractor* appoint another person to exercise its rights under this clause 14 subject to the Beneficiary remaining liable to the *Contractor* as guarantor for its appointee in respect of its obligations under this Deed.
- 14.7 Where the *Contractor* is seeking to exercise a right to suspend the performance of any duties or obligations under the Contract as a result of non-payment or in accordance with section 112 of the Housing Grants, Construction and Regeneration Act 1996, the *Contractor* shall give to the Beneficiary notice of its intention so to do at the same time as it serves notice on the *Contractor*.
- 14.8 Notwithstanding the other provisions of this clause 14, if the Contract has for any reason been terminated prior to receipt by the *Contractor* of a notice from the Beneficiary served under clause 14.1.1 or clause 14.1.3, the *Contractor* shall on receipt of any such notice from the Beneficiary enter into a new subcontract with the Beneficiary on the same terms as the Contract to continue the Works in all respects as if the Contract had been transferred to the Beneficiary in accordance with the provisions of this clause 14.

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ANNEX 4B – Form of Subcontractor undertakings to the *Client* (Subcontractor form)

DATED

20**

(1) **[INSERT SUBCONTRACTOR]**

and

(2) **[INSERT BENEFICIARY]**

and

(3) **LAGAN AVIATION & INFRASTRUCTURE**

AGREEMENT

in relation to a Subcontract for work forming part
of the **RAF WITTERING AOS
REFURBISHMENT PROJECT**

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The **Particulars**

Date of this Deed is [] 20[]

The following terms used in this Deed have the meanings given to them below:

The Subcontractor	[NAME OF SUBCONTRACTOR] [(registered number [INSERT NUMBER])] [whose registered office is at] [of] [INSERT ADDRESS]
The Beneficiary	[INSERT NAME OF BENEFICIARY] [(registered number [INSERT NUMBER])] [whose registered office is at] [of] [INSERT ADDRESS] (which term includes its successors in title and permitted assigns)
The <i>Contractor</i>	LAGAN AVIATION & INFRASTRUCTURE [(registered number [INSERT NUMBER])] [whose registered office is at] [of] [INSERT ADDRESS]
The Main Contract	the contract dated [INSERT DATE] made between the <i>Contractor</i> and the [INSERT BENEFICIARY] [<i>Client</i>] in connection with the Main Works
The Main Works	the design and construction of the works to be provided by the <i>Contractor</i> in accordance with the provisions of the Main Contract as more particularly set out in the Main Contract
The Subcontract	the contract dated [INSERT DATE] made between the <i>Contractor</i> and the Subcontractor in connection with the Subcontract Works
The Subcontract Works	the [INSERT WORKS TO BE COMPLETED] works as more detailed in the Subcontract
The Site	the site defined in the Contract
Documents	all drawings, designs, charts, specifications, plans and any other documents or materials (including any computer software developed by the Subcontractor used to generate them and any designs contained in them) but excluding internal memoranda and documents, working papers and templates, which have been created and/or developed by the Subcontractor in the course of performing its obligations under the Subcontract
Liability Period	the period from the date of the Subcontract until no less than 12 years after completion of the Main Works as certified under the Main Contract
Professional Indemnity Insurance	professional indemnity insurance with a minimum limit of indemnity of not less than £[figures] ([words] million pounds) for any one occurrence or series of occurrences arising out of any one event and in the annual aggregate.

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THIS DEED is made on the date set out in the Particulars

BETWEEN:

- (1) the Subcontractor; and
- (2) the Beneficiary; [and
- (3) the *Contractor*] .

BACKGROUND:

- A In accordance with the Main Contract, the Beneficiary has appointed the *Contractor* to provide the Main Works at the Site.
- B In accordance with the Subcontract the *Contractor* has appointed the Subcontractor to carry out and complete the Subcontract Works at the Site.
- C The Subcontractor is obliged under the Subcontract to give a warranty in this form in favour of the Beneficiary.

OPERATIVE PROVISIONS**1. DEFINITIONS**

The words and expressions defined in the Particulars shall have the same meaning throughout this Deed and references to the Particulars and clauses are to the Particulars and clauses of this Deed.

2. CONSIDERATION

This Deed is made in consideration of the payment of one pound (£1.00) by the Beneficiary to the Subcontractor receipt of which the Subcontractor acknowledges.

3. SUBCONTRACTOR'S DUTIES UNDER THE SUBCONTRACT

The Subcontractor warrants to the Beneficiary that:

- 3.1 it has complied and will continue to comply with its duties and obligations under the Subcontract in accordance with the Subcontract; and
- 3.2 it has exercised and shall continue to exercise reasonable skill and care in the design of the Subcontract Works and the selection of any materials, goods, equipment and plant in relation thereto that would be expected of a skilled, properly resourced, qualified and competent professional designer of the relevant discipline(s) applicable to the design experienced in carrying out design or selection activities for works of a similar size, nature, scope and complexity to those comprised in the Subcontract Works at sites of a similar nature, complexity, size, previous use and location as the Site.

4. COPYRIGHT LICENCE

- 4.1 Save where and to the extent that the intellectual property rights in the Documents are vested in the *Client* under the Main Contract, the Subcontractor hereby grants to the Beneficiary, with effect from the date of this Deed or in the case of any Documents not yet in existence with effect from the creation of such Documents, an irrevocable, royalty-free, non-exclusive licence (such licence to remain in full force and effect notwithstanding the completion of the Subcontractor's obligations or the termination of this Deed or the determination of the Subcontractor's engagement under the Subcontract or any dispute under this Deed or the Subcontract) to use the Documents and to reproduce all Documents for use by the Beneficiary to carry out any statutory duty and for any purpose whatsoever connected with the Subcontract Works, the completed Subcontract Works, the Main Works or the Site. The Beneficiary may use the Documents in relation to any extension at the Site (or the facilities thereon) but shall not be entitled to reproduce the designs in the design

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for any such extension. Such licence will carry the right to grant sub- licences and will be transferable to third parties.

- 4.2 The Subcontractor shall have no liability under the licences granted under this clause 4 for any use of the Intellectual Property Rights or the Documents other than for the purpose for which they were originally created or provided.
- 4.3 The Subcontractor makes available to the Beneficiary all such Documents created by the Subcontractor, any subcontractor, suppliers or any others for whom the Subcontractor is responsible in relation to the Subcontract for use by the *Client* to carry out any statutory duty or for any purpose connected with the Subcontract Works, the completed Subcontract Works, the Main Works and/or the Site(s). The Subcontractor makes available the Documents in the format and manner as required by the Beneficiary.
- 4.4 The Subcontractor warrants that the Documents (i) are either its own original works or if not that it has all necessary rights to use and licence same in accordance with this clause; (ii) that the Beneficiary's exercise of any such Intellectual Property Rights shall not infringe the Intellectual Property Rights of any third parties and the Subcontractor shall indemnify the Beneficiary against any claims, damages, losses, costs or expenses suffered by the Beneficiary (or its assignees or licensees) as a result of the Beneficiary's exercise of such Intellectual Property Rights or for which the Beneficiary is otherwise liable arising out of or in connection with any infringement of any Intellectual Property Rights of any third party caused by or arising out of performing any statutory duty, the Beneficiary exercising its rights under this clause (or under any licence granted pursuant to this clause) for any purpose connected with this Deed, the Main Contract, the Subcontract, the Subcontract Works, the Main Works or the Site(s)

5. PROHIBITED MATERIALS

- 5.1 Subject to clause 3, the Subcontractor warrants to the Beneficiary that it shall comply in all respects with its obligations contained in the Subcontract regarding prohibited materials.
- 5.2 For the avoidance of doubt, this clause 5 does not create any additional duty for the Subcontractor to inspect or check the work of others which is not required by the Subcontract.

6. PROFESSIONAL INDEMNITY INSURANCE

The Subcontractor by this Deed covenants with the Beneficiary that it has taken out and shall maintain Professional Indemnity Insurance, for the duration of the Liability Period in relation to the Subcontract Works, provided always that:

- 6.1 if such insurance is not available to the Subcontractor at commercially reasonable rates and terms (excluding any increase in premiums attributable to the actions, omissions, errors or defaults of the Subcontractor), the Subcontractor and the Beneficiary shall meet, the Subcontractor shall outline the steps it intends to take to manage such risks and the Subcontractor and the Beneficiary shall use reasonable endeavours to agree a method of managing such risks;
- 6.2 the Subcontractor shall provide the Beneficiary with reasonable evidence that the policies referred to in this clause 6 are in full force and effect.

7. NO APPROVAL

The Subcontractor's liabilities under this Deed shall not in any way be reduced or extinguished by reason of any inspection or approval of the Documents or attendance at site meetings or other enquiry or inspection which the Beneficiary may make or procure to be made for the Beneficiary's benefit or on its behalf.

8. ASSIGNMENT

- 8.1 The Beneficiary may, without the consent of the Subcontractor [and without prejudice to the provisions of clause 14] , assign the benefit of and its benefits and rights under this Deed to any person by way of absolute legal assignment, subject to clause 8.2, on not more than two occasions only.

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- 8.2 Notwithstanding clause 8.1, assignments in security and on redemption of security shall be permitted and shall not be deemed to be assignments in terms of the restriction in clause 8.1.
- 8.3 The Beneficiary shall give the Subcontractor notice following any such assignment specifying the name and address of the assignee and the date of the assignment. The Subcontractor shall not contend that any such assignee is precluded from recovering any loss resulting from any breach of this Deed (whatever the date of such breach) by reason only that that person is an assignee and not the original beneficiary under this Deed or by reason that the original beneficiary or any intermediate beneficiary escaped any loss resulting from such breach by reason of the disposal of any interest in the Site or that the original beneficiary or any intermediate beneficiary has not suffered any or as much loss.

9. FURTHER WARRANTIES

The Subcontractor shall within 14 days of a request made at any time by the Beneficiary, duly execute and deliver as a deed a collateral warranty in the same terms as this Deed mutatis mutandis (save for this clause 9 [and clause 15]) in favour of any person in whose favour a collateral warranty may be required pursuant to the Main Contract, provided that the Subcontractor has not already executed a collateral warranty in favour of the said party.

10. NOTICES

Any notice, approval, request or other communication to be given by either party under this Deed shall be in writing and shall be sufficiently served if sent by hand, by fax or by post to the registered office or if there is none the last known address of the party to be served. Any notice, approval, request or other communication sent by hand shall be deemed to be served on the date of delivery and if sent by fax shall be deemed to be served in full at the time recorded on the fax sheet, provided that if sent by hand or fax is sent after 4.45pm on any day it shall be deemed to be served on the next Working Day. Any notice, approval, request or other communication sent by post shall be deemed to have been duly served at the expiration of 48 hours after the time of posting if the end of that period falls before 4.45pm on a Working Day and otherwise on the next Working Day.

11. OTHER RIGHTS AND REMEDIES

The rights and benefits conferred upon the Beneficiary by this Deed are in addition to any other rights and remedies it may have against the Subcontractor including, without limitation, any remedies in negligence.

12. LIMITATION

- 12.1 The Subcontractor has no liability under this Deed which is greater or of longer duration than it would have had if, in lieu of this Deed, the Beneficiary had been a party to the Subcontract as joint employer, provided that the Subcontractor shall not be entitled to set-off or deduct from any sums payable to the Beneficiary under this Deed any sums due or claimed as due by the Subcontractor from the *Contractor*.
- 12.2 The Subcontractor shall be entitled in any action or proceedings brought by the Beneficiary under this Deed to rely on any limitation in the Subcontract and to raise equivalent rights in defence of liability (but excluding set-offs and counterclaims) as it would have against the Beneficiary if, in lieu of this Deed, the Beneficiary had been a party to the Subcontract as joint employer.
- 12.3 The parties agree that no action or proceedings may be brought or commenced under this Deed at any time after the Liability Period has come to an end.
- 12.4 [Save where the Beneficiary has exercised its rights pursuant to clause 15]³ the Subcontractor shall have no liability under this Deed for any delay in carrying out or completing the Subcontract Works

³ Remove the text in brackets where clause 15 does not apply.

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13. THIRD PARTY RIGHTS

Subject to clause 8 (*Assignment*), the parties do not intend that any term of this Deed shall be enforceable under the Contracts (Rights of Third Parties) Act 1999 by any person other than the parties.

14. GOVERNING LAW AND JURISDICTION

14.1 This Deed and any non-contractual obligations arising out of or in connection with it shall be governed by English Law.

14.2 In the event of any dispute arising between the parties to this Deed, the dispute shall be referred to arbitration and the arbitration procedure, place where the arbitration is to be held and method of choosing an arbitrator shall be as in the Main Contract.

15. [STEP-IN RIGHTS]

15.1 Subject to clause 15.7, the Subcontractor shall not exercise or seek to exercise any right which may be or become available to it to terminate or treat as terminated or repudiated the Subcontract or its engagement under it or discontinue or suspend the performance of any duties or obligations under the Subcontract, without first giving to the Beneficiary not less than twenty-eight days' prior notice specifying the Subcontractor's grounds for terminating or treating as terminated or repudiated the Subcontract or its engagement under it or discontinuing or suspending its performance of the Subcontract and stating the amount (if any) of monies outstanding under the Subcontract. Within such period of notice:

15.1.1 the Beneficiary may give notice to the Subcontractor expressly confirming its intention to comply with clause 15.1.3 and that the Beneficiary shall become the employer under the Subcontract to the exclusion of the *Contractor* and, upon giving such notice, that shall be the case and the Subcontract shall be and remain in full force and effect notwithstanding any of the grounds in the Subcontractor's notice under clause 15.1; and

15.1.2 if the Beneficiary has given notice under clause 15.1.1 or under clause 15.3, the Beneficiary shall then as soon as practicable remedy any outstanding breach by the *Contractor*; and

15.1.3 if:

15.1.3.1 the Beneficiary has given notice under clause 15.1.1 then from the date of the Subcontractor's notice; or

15.1.3.2 the Beneficiary has given notice under clause 15.3 then from the date of the Beneficiary's notice,

the Beneficiary shall, by clause 15.1.1, become responsible for all sums properly payable to the Subcontractor under the Subcontract and for the observance and performance of all of the other duties and obligations on the part of the *Contractor* to be observed and performed under the Subcontract accruing due after the service of such Subcontractor's notice or Beneficiary's notice (as applicable) but the Beneficiary shall in paying such sums be entitled to the same rights of set-off and deduction as would have applied to the *Contractor* under the Subcontract.

15.2 Notwithstanding anything contained in this Deed and notwithstanding any payments which may be made by the Beneficiary to the Subcontractor the Beneficiary shall not be under any obligation to the Subcontractor nor shall the Subcontractor have any claim or cause of action against the Beneficiary unless and until the Beneficiary has given notice to the Subcontractor under either clause 15.1.1 or clause 15.3.

15.3 The Subcontractor further covenants with the Beneficiary that if requested by the Beneficiary by notice expressly confirming the Beneficiary's intention to comply with clause 15.1.3 and subject to clause 15.1.2 and clause 15.1.3, it shall accept the instructions of the Beneficiary to the exclusion

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of the *Contractor* in respect of the Subcontract Works upon the terms and conditions of the Subcontract. The Beneficiary shall then become the employer under the Subcontract to the exclusion of the *Contractor* and the Subcontractor shall, if so requested, enter into a novation agreement in order to substitute the Beneficiary for the Contractor under the Subcontract.

- 15.4 Where the Subcontractor has given rights in relation to the Subcontract similar to those contained in this clause 15 to any other person then if both the Beneficiary and any such other person serve notice under clause 15.1 or clause 15.3 or its equivalent the notice served by the Beneficiary shall [prevail] [not prevail] [not prevail over any notice served by [Name] but prevail over any notice served by any other person] .
- 15.5 The Contractor acknowledges that the Subcontractor shall be entitled to rely on a notice given to the Subcontractor by the Beneficiary under clause 15.3 as conclusive evidence that the Beneficiary is entitled to serve such notice.
- 15.6 The Beneficiary may by notice to the Subcontractor appoint another person to exercise its rights under this clause 15 subject to the Beneficiary remaining liable to the Subcontractor as guarantor for its appointee in respect of its obligations under this Deed.
- 15.7 Where the Subcontractor is seeking to exercise a right to suspend the performance of any duties or obligations under the Subcontract as a result of non-payment or in accordance with s112 of the Housing Grants, Construction and Regeneration Act 1996, the Subcontractor shall give to the Beneficiary notice of its intention so to do at the same time as it serves notice on the Contractor.
- 15.8 Notwithstanding the other provisions of this clause 15, if the Subcontract has for any reason been terminated prior to receipt by the Subcontractor of a notice from the Beneficiary served under clause 15.1.1 or clause 15.1.3, the Subcontractor shall on receipt of any such notice from the Beneficiary enter into a new subcontract with the Beneficiary on the same terms as the Subcontract to continue the subcontract works in all respects as if the Subcontract had been transferred to the Beneficiary in accordance with the provisions of this clause 15.

OFFICIAL - COMMERCIAL

ANNEX 4B – Form of Subcontractor undertakings to the *Client* (Consultant form)

DATED _____ **202[]**

PARENT COMPANY GUARANTEE

between

(1) **[INSERT CONSULTANT]**

and

(2) **[INSERT BENEFICIARY]**

and

(3) **LAGAN AVIATION & INFRASTRUCTURE**

AGREEMENT

in relation to a Subcontract for work forming part
of the **RAF WITTERING AOS
REFURBISHMENT PROJECT**

OFFICIAL - COMMERCIAL

The **Particulars**

Date of this Deed is [] 20[]

The following terms used in this Deed have the meanings given to them below:

The Consultant	[INSERT NAME OF CONSULTANT] [(registered number [INSERT NUMBER])] [whose registered office is at] [of] [INSERT ADDRESS]
The Beneficiary	[INSERT NAME OF BENEFICIARY] [(registered number [INSERT NUMBER])] [whose registered office is at] [of] [INSERT ADDRESS] (which term includes its successors in title and permitted assigns)
The Contractor	LAGAN AVIATION & INFRASTRUCTURE [(registered number [INSERT NUMBER])] [whose registered office is at] [of] [INSERT ADDRESS]
The Appointment	the contract dated [INSERT DATE] made between the Contractor and the Consultant
The Main Contract	the contract dated [INSERT DATE] made between the Contractor and the [INSERT BENEFICIARY] [<i>Client</i>] in connection with the Main Works
The Main Works	the [design and] construction of the works to be provided by the Contractor in accordance with the provisions of the Main Contract as more particularly set out in the Main Contract
The Services	the services specified in the Appointment
The Site	the site defined in the Main Contract
Documents	all drawings, designs, charts, specifications, plans and any other documents or materials (including any computer software developed by the Consultant used to generate them and any designs contained in them) but excluding internal memoranda and documents, working papers and templates, which have been created and/or developed by the Consultant in the course of performing its obligations under the Appointment
Liability Period	the period from the date of the Appointment until no less than 12 years after completion of the Main Works as certified under the Main Contract
Professional Indemnity Insurance	professional indemnity insurance with a minimum limit of indemnity of not less than £5,000,000 (five million pounds) for any one occurrence or series of occurrences arising out of any one event and in the annual aggregate.

OFFICIAL - COMMERCIAL

THIS DEED is made on the date set out in the Particulars

BETWEEN:

- (1) the Consultant; and
- (2) the Beneficiary; [and
- (3) the Contractor] .

BACKGROUND:

In accordance with the Main Contract, the Beneficiary has appointed the Contractor to provide the Main Works at the Site.

In accordance with the Appointment the Contractor has appointed the Consultant to carry out and complete the Services in connection with the Main Works.

The Consultant is obliged under the Appointment to give a warranty in this form in favour of the Beneficiary.

OPERATIVE PROVISIONS

1. DEFINITIONS

The words and expressions defined in the Particulars shall have the same meaning throughout this Deed and references to the Particulars and clauses are to the Particulars and clauses of this Deed.

2. CONSIDERATION

This Deed is made in consideration of the payment of one pound (£1.00) by the Beneficiary to the Consultant receipt of which the Consultant acknowledges.

3. CONSULTANT'S DUTIES UNDER THE APPOINTMENT

The Consultant warrants to the Beneficiary that:

- 3.1 it has complied with and will comply with its obligations arising out of or in connection with the Appointment in accordance with the Appointment; and
- 3.2 it has exercised and shall continue to exercise reasonable skill and care in the carrying out of the Services that would reasonably be expected of a skilled, properly resourced, qualified and competent professional designer of the relevant discipline(s) experienced in carrying out services similar to the Services for works of a similar size, nature, scope and complexity to those comprised in the Main Works at sites of a similar nature, complexity, size, previous use and location as the Site.

4. COPYRIGHT LICENCE

- 4.1 Save where and to the extent that the intellectual property rights in the Documents are vested in the *Client* under the Main Contract, the Consultant hereby grants to the Beneficiary, with effect from the date of this Deed or in the case of any Documents not yet in existence with effect from the creation of such Documents, an irrevocable, royalty-free, non-exclusive licence (such licence to remain in full force and effect notwithstanding the completion of the Subcontractor's obligations or the termination of this Deed or the determination of the Consultant's engagement under the Appointment or any dispute under this Deed or the Appointment) to use the Documents and to reproduce all Documents for use by the Beneficiary to carry out any statutory duty and for any purpose whatsoever connected with the Services, the Main Works or the Site. The Beneficiary may use the Documents in relation to any extension at the Site (or the facilities thereon) but shall not be entitled to reproduce the designs in the design for any such extension. Such licence will carry the right to grant sub-licences and will be transferable to third parties.

OFFICIAL - COMMERCIAL

- 4.2 The Consultant shall have no liability under the licences granted under this clause 4 for any use of the Intellectual Property Rights or the Documents other than for the purpose for which they were originally created or provided.
- 4.3 The Consultant makes available to the Beneficiary all such Documents created by the Consultant, any subconsultant, suppliers or any others for whom the Consultant is responsible in relation to the Subcontract for use by the *Client* to carry out any statutory duty or for any purpose connected with the Services, the completed Services, the Main Works and/or the Site(s). The Consultant makes available the Documents in the format and manner as required by the Beneficiary.
- 4.4 The Consultant warrants that the Documents (i) are either its own original works or if not that it has all necessary rights to use and licence same in accordance with this clause; (ii) that the Beneficiary's exercise of any such Intellectual Property Rights shall not infringe the Intellectual Property Rights of any third parties and the Consultant shall indemnify the Beneficiary against any claims, damages, losses, costs or expenses suffered by the Beneficiary (or its assignees or licensees) as a result of the Beneficiary's exercise of such Intellectual Property Rights or for which the Beneficiary is otherwise liable arising out of or in connection with any infringement of any Intellectual Property Rights of any third party caused by or arising out of performing any statutory duty, the Beneficiary exercising its rights under this clause (or under any licence granted pursuant to this clause) for any purpose connected with this Deed, the Main Contract, the Appointment, the Services, the Main Works or the Site(s).

5. PROHIBITED MATERIALS

- 5.1 Subject to clause 3, the Consultant warrants to the Beneficiary that it shall comply in all respects with its obligations contained in the Appointment regarding prohibited materials.
- 5.2 For the avoidance of doubt, this clause 5 does not create any additional duty for the Consultant to inspect or check the work of others which is not required by the Appointment.

6. PROFESSIONAL INDEMNITY INSURANCE

The Consultant by this Deed covenants with the Beneficiary that it has taken out and shall maintain Professional Indemnity Insurance, for the duration of the Liability Period in relation to the Services, provided always that:

- 6.1 if such insurance is not available to the Consultant at commercially reasonable rates and terms (excluding any increase in premiums attributable to the actions, omissions, errors or defaults of the Consultant), the Consultant and the Beneficiary shall meet, the Consultant shall outline the steps it intends to take to manage such risks and the Consultant and the Beneficiary shall use reasonable endeavours to agree a method of managing such risks;
- 6.2 the Consultant shall provide the Beneficiary with reasonable evidence that the policies referred to in this clause 6 are in full force and effect.

7. NO APPROVAL

The Consultant's liabilities under this Deed shall not in any way be reduced or extinguished by reason of any inspection or approval of the Documents or attendance at site meetings or other enquiry or inspection which the Beneficiary may make or procure to be made for the Beneficiary's benefit or on its behalf.

8. ASSIGNMENT

- 8.1 The Beneficiary may, without the consent of the Consultant [and without prejudice to the provisions of clause 15] , assign the benefit of and its benefits and rights under this Deed to any person by way of absolute legal assignment, subject to clause 8.2, on not more than two occasions only.
- 8.2 Notwithstanding clause 8.1, assignments to and from a subsidiary or a holding company or a subsidiary of such holding company or other associated company within the same group of companies as the Beneficiary or assignments in security and on redemption of security shall be permitted and shall not be deemed to be assignments in terms of the restriction in clause 8.1.

OFFICIAL - COMMERCIAL

- 8.3 The Beneficiary shall give the Consultant notice following any such assignment specifying the name and address of the assignee and the date of the assignment. The Consultant shall not contend that any such assignee is precluded from recovering any loss resulting from any breach of this Deed (whatever the date of such breach) by reason only that that person is an assignee and not the original beneficiary under this Deed or by reason that the original beneficiary or any intermediate beneficiary escaped any loss resulting from such breach by reason of the disposal of any interest in the Site or that the original beneficiary or any intermediate beneficiary has not suffered any or as much loss.

9. FURTHER WARRANTIES

The Consultant shall within 14 days of a request made at any time by the Beneficiary, duly execute and deliver as a deed a collateral warranty in the same terms as this Deed mutatis mutandis (save for this clause 9 [and clause 15]) in favour of any person in whose favour a collateral warranty may be required pursuant to the Main Contract, provided that the Consultant has not already executed a collateral warranty in favour of the said party.

10. NOTICES

Any notice, approval, request or other communication to be given by either party under this Deed shall be in writing and shall be sufficiently served if sent by hand, by fax or by post to the registered office or if there is none the last known address of the party to be served. Any notice, approval, request or other communication sent by hand shall be deemed to be served on the date of delivery and if sent by fax shall be deemed to be served in full at the time recorded on the fax sheet, provided that if sent by hand or fax is sent after 4.45pm on any day it shall be deemed to be served on the next Working Day. Any notice, approval, request or other communication sent by post shall be deemed to have been duly served at the expiration of 48 hours after the time of posting if the end of that period falls before 4.45pm on a Working Day and otherwise on the next Working Day.

11. OTHER RIGHTS AND REMEDIES

The rights and benefits conferred upon the Beneficiary by this Deed are in addition to any other rights and remedies it may have against the Consultant including, without limitation, any remedies in negligence.

12. LIMITATION

- 12.1 The Consultant has no liability under this Deed which is greater or of longer duration than it would have had if, in lieu of this Deed, the Beneficiary had been a party to the Appointment as joint employer, provided that the Consultant shall not be entitled to set-off or deduct from any sums payable to the Beneficiary under this Deed any sums due or claimed as due by the Consultant from the Contractor.
- 12.2 The Consultant shall be entitled in any action or proceedings brought by the Beneficiary under this Deed to rely on any limitation in the Appointment and to raise equivalent rights in defence of liability (but excluding set-offs and counterclaims) as it would have against the Beneficiary if, in lieu of this Deed, the Beneficiary had been a party to the Appointment as joint employer.
- 12.3 The parties agree that no action or proceedings may be brought or commenced under this Deed at any time after the Liability Period has come to an end.

13. THIRD PARTY RIGHTS

Subject to clause 8 (*Assignment*), the parties do not intend that any term of this Deed shall be enforceable under the Contracts (Rights of Third Parties) Act 1999 by any person other than the parties.

14. GOVERNING LAW AND JURISDICTION

- 14.1 This Deed and any non-contractual obligations arising out of or in connection with it shall be governed by English Law.

OFFICIAL - COMMERCIAL

- 14.2 In the event of any dispute arising between the parties to this Deed, the dispute shall be referred to arbitration and the arbitration procedure, place where the arbitration is to be held and method of choosing an arbitrator shall be as in the Main Contract.

15. [STEP-IN RIGHTS]

- 15.1 Subject to clause 15.7, the Consultant shall not exercise or seek to exercise any right which may be or become available to it to terminate or treat as terminated or repudiated the Appointment or its engagement under it or discontinue or suspend the performance of any duties or obligations under the Appointment, without first giving to the Beneficiary not less than twenty-eight days' prior notice specifying the Consultant's grounds for terminating or treating as terminated or repudiated the Appointment or its engagement under it or discontinuing or suspending its performance of the Appointment and stating the amount (if any) of monies outstanding under the Appointment. Within such period of notice:

15.1.1 the Beneficiary may give notice to the Consultant expressly confirming its intention to comply with clause 15.1.3 and that the Beneficiary shall become the employer under the Appointment to the exclusion of the Contractor and, upon giving such notice, that shall be the case and the Appointment shall be and remain in full force and effect notwithstanding any of the grounds in the Consultant's notice under clause 15.1; and

15.1.2 if the Beneficiary has given notice under clause 15.1.1 or under clause 15.3, the Beneficiary shall then as soon as practicable remedy any outstanding breach by the Contractor; and

15.1.3 if:

15.1.3.1 the Beneficiary has given notice under clause 15.1.1 then from the date of the Consultant's notice; or

15.1.3.2 the Beneficiary has given notice under clause 15.3 then from the date of the Beneficiary's notice,

the Beneficiary shall, by clause 15.1.1, become responsible for all sums properly payable to the Consultant under the Appointment and for the observance and performance of all of the other duties and obligations on the part of the Contractor to be observed and performed under the Appointment accruing due after the service of such Consultant's notice or Beneficiary's notice (as applicable) but the Beneficiary shall in paying such sums be entitled to the same rights of set-off and deduction as would have applied to the Contractor under the Appointment.

- 15.2 Notwithstanding anything contained in this Deed and notwithstanding any payments which may be made by the Beneficiary to the Consultant the Beneficiary shall not be under any obligation to the Consultant nor shall the Consultant have any claim or cause of action against the Beneficiary unless and until the Beneficiary has given notice to the Consultant under either clause 15.1.1 or clause 15.3.

- 15.3 The Consultant further covenants with the Beneficiary that if requested by the Beneficiary by notice expressly confirming the Beneficiary's intention to comply with clause 15.1.3 and subject to clause 15.1.2 and clause 15.1.3, it shall accept the instructions of the Beneficiary to the exclusion of the Contractor in respect of the Services upon the terms and conditions of the Appointment. The Beneficiary shall then become the employer under the Appointment to the exclusion of the Contractor and the Consultant shall, if so requested, enter into a novation agreement in order to substitute the Beneficiary for the Contractor under the Appointment.

- 15.4 Where the Consultant has given rights in relation to the Appointment similar to those contained in this clause 15 to any other person then if both the Beneficiary and any such other person serve notice under clause 15.1 or clause 15.3 or its equivalent the notice served by the Beneficiary shall [prevail] [not prevail] [not prevail over any notice served by [Name] but prevail over any notice served by any other person] .

OFFICIAL - COMMERCIAL

- 15.5 The Contractor acknowledges that the Consultant shall be entitled to rely on a notice given to the Consultant by the Beneficiary under clause 15.3 as conclusive evidence that the Beneficiary is entitled to serve such notice.
- 15.6 The Beneficiary may by notice to the Consultant appoint another person to exercise its rights under this clause 15 subject to the Beneficiary remaining liable to the Consultant as guarantor for its appointee in respect of its obligations under this Deed.
- 15.7 Where the Consultant is seeking to exercise a right to suspend the performance of any duties or obligations under the Appointment as a result of non-payment or in accordance with s112 of the Housing Grants, Construction and Regeneration Act 1996, the Consultant shall give to the Beneficiary notice of its intention so to do at the same time as it serves notice on the Contractor.
- 15.8 Notwithstanding the other provisions of this clause 15, if the Appointment has for any reason been terminated prior to receipt by the Consultant of a notice from the Beneficiary served under clause 15.1.1 or clause 15.1.3, the Consultant shall on receipt of any such notice from the Beneficiary enter into a new appointment with the Beneficiary on the same terms as the Appointment to continue the Services in all respects as if the Appointment had been transferred to the Beneficiary in accordance with the provisions of this clause 15.

THIS DOCUMENT is executed as a deed and delivered on the date stated at the beginning of this Deed.

Executed as a deed by [INSERT CONSULTANT] acting by a director and its company secretary:))	Signature	_____
		Name (block capitals)	_____
			On behalf of [INSERT DIRECTOR] [INSERT SECRETARY]
		Signature	_____
		Name (block capitals)	_____
			On behalf of [INSERT SECRETARY] [INSERT DIRECTOR]
Executed as a deed by [INSERT BENEFICIARY] acting by a director and its company secretary:))	Signature	_____
		Name (block capitals)	_____
			On behalf of [INSERT DIRECTOR] [INSERT SECRETARY]
		Signature	_____
		Name (block capitals)	_____
			On behalf of [INSERT SECRETARY] [INSERT DIRECTOR]

OFFICIAL - COMMERCIAL

Executed as a deed by **LAGAN AVIATION & INFRASTRUCTURE** acting by a director and its company secretary:

)
)
Signature _____

Name (block capitals) _____
On behalf of
[INSERT DIRECTOR]
[INSERT SECRETARY]

Signature _____

Name (block capitals) _____
On behalf of
[INSERT SECRETARY]
[INSERT DIRECTOR]

OFFICIAL - COMMERCIAL

THIS DOCUMENT is executed as a deed and delivered on the date stated at the beginning of this Deed.

Executed as a deed by **[INSERT SUBCONTRACTOR]** acting by a director and its company secretary:

Signature _____

Name (block capitals) _____
On behalf of
[INSERT DIRECTOR]
[INSERT SECRETARY]

Signature _____

Name (block capitals) _____
On behalf of
[INSERT SECRETARY]
[INSERT DIRECTOR]

Executed as a deed by **[INSERT BENEFICIARY]** acting by a director and its company secretary:

Signature _____

Name (block capitals) _____
On behalf of
[INSERT DIRECTOR]
[INSERT SECRETARY]

Signature _____

Name (block capitals) _____
On behalf of
[INSERT SECRETARY]
[INSERT DIRECTOR]

Executed as a deed by **LAGAN AVIATION & INFRASTRUCTURE** acting by a director and its company secretary:

Signature _____

Name (block capitals) _____
On behalf of
[INSERT DIRECTOR]
[INSERT SECRETARY]

Signature _____

Name (block capitals) _____
On behalf of
[INSERT SECRETARY]
[INSERT DIRECTOR]

OFFICIAL - COMMERCIAL

THIS DOCUMENT is executed as a deed and delivered on the date stated at the beginning of this Deed.

Executed as a deed by **LAGAN AVIATION & INFRASTRUCTURE** acting by a director and its company secretary:

Signature

Name (block capitals)

[INSERT DIRECTOR]

Signature

Name (block capitals)

**[INSERT SECRETARY]
[INSERT DIRECTOR]**

Executed as a deed by **[INSERT BENEFICIARY]** acting by a director and its company secretary:

Signature

Name (block capitals)

[INSERT DIRECTOR]

Signature

Name (block capitals)

**[INSERT SECRETARY]
[INSERT DIRECTOR]**

Executed by **THE SECRETARY OF STATE FOR DEFENCE**)
)
acting by)
)
.....)
[INSERT NAME OF SIGNATORY])
)
one of his attorneys / authorised signatories)
)
in the presence of:)

.....
(Attorney / Authorised Signatory)

..... Witness
[INSERT WITNESS SIGNATURE]

.....
[INSERT NAME OF WITNESS]

.....
[INSERT ADDRESS OF WITNESS]

.....

OFFICIAL - COMMERCIAL

ANNEX 4C – Form of Subcontractor undertakings to Others (Subcontractor form)

DATED _____ **202[]**

PARENT COMPANY GUARANTEE

between

(1) **[INSERT SUBCONTRACTOR]**

and

(2) **[INSERT BENEFICIARY]**

AGREEMENT

in relation to a Subcontract for work forming part
of the **RAF WITTERING AOS**
REFURBISHMENT PROJECT

OFFICIAL - COMMERCIAL

The Particulars

Date of this Deed is [] 20[]

The following terms used in this Deed have the meanings given to them below:

The Subcontractor	[NAME OF SUBCONTRACTOR] [(registered number [INSERT NUMBER])] [whose registered office is at] [of] [INSERT ADDRESS]
The Beneficiary	[INSERT NAME OF BENEFICIARY] [(registered number [INSERT NUMBER])] [whose registered office is at] [of] [INSERT ADDRESS] (which term includes its successors in title and permitted assigns)
The Contractor	LAGAN AVIATION & INFRASTRUCTURE [(registered number [INSERT NUMBER])] [whose registered office is at] [of] [INSERT ADDRESS]
The <i>Client</i>	[INSERT CLIENT] [(registered number [INSERT NUMBER])] [whose registered office is at] [of] [INSERT ADDRESS]
The Main Contract	the contract dated [INSERT DATE] made between the Contractor and the [INSERT BENEFICIARY] [<i>Client</i>] in connection with the Main Works
The Main Works	the design and construction of the works to be provided by the Contractor in accordance with the provisions of the Main Contract as more particularly set out in the Main Contract
The Subcontract	the contract dated [INSERT DATE] made between the Contractor and the Subcontractor in connection with the Subcontract Works
The Subcontract Works	the part of the Main Works specified in the Subcontract
The Site	the site defined in the Main Contract
Documents	all drawings, designs, charts, specifications, plans and any other documents or materials (including any computer software developed by the Subcontractor used to generate them and any designs contained in them) but excluding internal memoranda and documents, working papers and templates, which have been created and/or developed by the Subcontractor in the course of performing its obligations under the Subcontract
Liability Period	the period from the date of the Subcontract until no less than 12 years after completion of the Main Works as certified under the Main Contract
Professional Indemnity Insurance	professional indemnity insurance with a minimum limit of indemnity of not less than £5,000,000 (five million pounds) for any one occurrence or series of occurrences arising out of any one event and in the annual aggregate.

OFFICIAL - COMMERCIAL

THIS DEED is made on the date set out in the Particulars

BETWEEN:

- (1) the Subcontractor; and
- (2) the Beneficiary.

BACKGROUND:

- A In accordance with the Main Contract, the *Client* has appointed the Contractor to provide the Main Works at the Site.
- B In accordance with the Subcontract the Contractor has appointed the Subcontractor to carry out and complete the Subcontract Works at the Site.
- C [The Beneficiary has an interest in the Site as it is [narrate interest] of **[INSERT SITE] [INSERT SITE DESCRIPTION]**].
- D The Subcontractor is obliged under the Subcontract to give a warranty in this form in favour of the Beneficiary.

OPERATIVE PROVISIONS**1. DEFINITIONS**

The words and expressions defined in the Particulars shall have the same meaning throughout this Deed and references to the Particulars and clauses are to the Particulars and clauses of this Deed.

2. CONSIDERATION

This Deed is made in consideration of the payment of one pound (£1.00) by the Beneficiary to the Subcontractor receipt of which the Subcontractor acknowledges.

3. SUBCONTRACTOR'S DUTIES UNDER THE SUBCONTRACT

The Subcontractor warrants to the Beneficiary that:

- 3.1 it has complied and will continue to comply with its duties and obligations under the Subcontract in accordance with the Subcontract; and
- 3.2 it has exercised and shall continue to exercise reasonable skill and care in the design of the Subcontract Works and the selection of any materials, goods, equipment and plant in relation thereto that would be expected of a skilled, properly resourced, qualified and competent professional designer of the relevant discipline(s) applicable to the design experienced in carrying out design or selection activities for works of a similar size, nature, scope and complexity to those comprised in the Subcontract Works at sites of a similar nature, complexity, size, previous use and location as the Site.

4. NOT USED**5. PROHIBITED MATERIALS**

Subject to clause 3, the Subcontractor warrants to the Beneficiary that it shall comply in all respects with its obligations contained in the Subcontract regarding prohibited materials.

For the avoidance of doubt, this clause 5 does not create any additional duty for the Subcontractor to inspect or check the work of others which is not required by the Subcontract.

OFFICIAL - COMMERCIAL**6. PROFESSIONAL INDEMNITY INSURANCE**

The Subcontractor by this Deed covenants with the Beneficiary that it has taken out and shall maintain Professional Indemnity Insurance, for the duration of the Liability Period in relation to the Subcontract Works, provided always that:

- 6.1 if such insurance is not available to the Subcontractor at commercially reasonable rates and terms (excluding any increase in premiums attributable to the actions, omissions, errors or defaults of the Subcontractor), the Subcontractor and the Beneficiary shall meet, the Subcontractor shall outline the steps it intends to take to manage such risks and the Subcontractor and the Beneficiary shall use reasonable endeavours to agree a method of managing such risks;
- 6.2 the Subcontractor shall provide the Beneficiary with reasonable evidence that the policies referred to in this clause 6 are in full force and effect.

7. NO APPROVAL

The Subcontractor's liabilities under this Deed shall not in any way be reduced or extinguished by reason of any inspection or approval of the Documents or attendance at site meetings or other enquiry or inspection which the Beneficiary may make or procure to be made for the Beneficiary's benefit or on its behalf.

8. ASSIGNMENT

- 8.1 The Beneficiary may, without the consent of the Subcontractor [and without prejudice to the provisions of clause 15] , assign the benefit of and its benefits and rights under this Deed to any person by way of absolute legal assignment, subject to clause 8.2, on not more than two occasions only.
- 8.2 Notwithstanding clause 8.1, assignments to and from a subsidiary or a holding company or a subsidiary of such holding company or other associated company within the same group of companies as the Beneficiary or assignments in security and on redemption of security shall be permitted and shall not be deemed to be assignments in terms of the restriction in clause 8.1.
- 8.3 The Beneficiary shall give the Subcontractor notice following any such assignment specifying the name and address of the assignee and the date of the assignment. The Subcontractor shall not contend that any such assignee is precluded from recovering any loss resulting from any breach of this Deed (whatever the date of such breach) by reason only that that person is an assignee and not the original beneficiary under this Deed or by reason that the original beneficiary or any intermediate beneficiary escaped any loss resulting from such breach by reason of the disposal of any interest in the Site or that the original beneficiary or any intermediate beneficiary has not suffered any or as much loss.

9. NOTICES

Any notice, approval, request or other communication to be given by either party under this Deed shall be in writing and shall be sufficiently served if sent by hand, by fax or by post to the registered office or if there is none the last known address of the party to be served. Any notice, approval, request or other communication sent by hand shall be deemed to be served on the date of delivery and if sent by fax shall be deemed to be served in full at the time recorded on the fax sheet, provided that if sent by hand or fax is sent after 4.45pm on any day it shall be deemed to be served on the next Working Day. Any notice, approval, request or other communication sent by post shall be deemed to have been duly served at the expiration of 48 hours after the time of posting if the end of that period falls before 4.45pm on a Working Day and otherwise on the next Working Day.

10. OTHER RIGHTS AND REMEDIES

The rights and benefits conferred upon the Beneficiary by this Deed are in addition to any other rights and remedies it may have against the Subcontractor including, without limitation, any remedies in negligence.

OFFICIAL - COMMERCIAL

11. LIMITATION

- 11.1 The Subcontractor has no liability under this Deed which is greater or of longer duration than it would have had if, in lieu of this Deed, the Beneficiary had been a party to the Subcontract as joint employer, provided that the Subcontractor shall not be entitled to set-off or deduct from any sums payable to the Beneficiary under this Deed any sums due or claimed as due by the Subcontractor from the Contractor.
- 11.2 The Subcontractor shall be entitled in any action or proceedings brought by the Beneficiary under this Deed to rely on any limitation in the Subcontract and to raise equivalent rights in defence of liability (but excluding set-offs and counterclaims) as it would have against the Beneficiary if, in lieu of this Deed, the Beneficiary had been a party to the Subcontract as joint employer.
- 11.3 The parties agree that no action or proceedings may be brought or commenced under this Deed at any time after the Liability Period has come to an end.

12. THIRD PARTY RIGHTS

Subject to clause 8 (*Assignment*), the parties do not intend that any term of this Deed shall be enforceable under the Contracts (Rights of Third Parties) Act 1999 by any person other than the parties.

13. GOVERNING LAW AND JURISDICTION

- 13.1 This Deed and any non-contractual obligations arising out of or in connection with it shall be governed by English Law.
- 13.2 In the event of any dispute arising between the parties to this Deed, the dispute shall be referred to arbitration and the arbitration procedure, place where the arbitration is to be held and method of choosing an arbitrator shall be as in the Main Contract.

THIS DOCUMENT is executed as a deed and delivered on the date stated at the beginning of this Deed.

Executed as a deed by [INSERT SUBCONTRACTOR] acting by a director and its company secretary:

Signature _____

Name (block capitals) _____
On behalf of
[INSERT DIRECTOR]
[INSERT SECRETARY]

Signature _____

Name (block capitals) _____
On behalf of
[INSERT SECRETARY]
[INSERT DIRECTOR]

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Executed as a deed by **[INSERT BENEFICIARY]** acting by a director and its company secretary:

Signature _____

Name (block capitals) _____
On behalf of
[INSERT DIRECTOR]
[INSERT SECRETARY]

Signature _____

Name (block capitals) _____
On behalf of
[INSERT SECRETARY]
[INSERT DIRECTOR]

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ANNEX 4C – Form of Subcontractor undertakings to Others (Consultant form)

DATED _____ **202[]**

PARENT COMPANY GUARANTEE

between

(1) **[INSERT CONSULTANT]**

and

(2) **[INSERT BENEFICIARY]**

AGREEMENT

in relation to a Subcontract for work forming part
of the **RAF WITTERING AOS
REFURBISHMENT PROJECT**

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The **Particulars**

Date of this Deed is [] 20[]

The following terms used in this Deed have the meanings given to them below:

The Consultant	[INSERT NAME OF CONSULTANT] [(registered number [INSERT NUMBER])] [whose registered office is at] [of] [INSERT ADDRESS]
The Beneficiary	[INSERT NAME OF BENEFICIARY] [(registered number [INSERT NUMBER])] [whose registered office is at] [of] [INSERT ADDRESS] (which term includes its successors in title and permitted assigns)
The Contractor	LAGAN AVIATION & INFRASTRUCTURE [(registered number [INSERT NUMBER])] [whose registered office is at] [of] [INSERT ADDRESS]
The Appointment	the contract dated [INSERT DATE] made between the Contractor and the Consultant
The <i>Client</i>	[NAME] [(registered number [INSERT NUMBER])] [whose registered office is at] [of] [INSERT ADDRESS]
The Main Contract	the contract dated [INSERT DATE] made between the Contractor and the [INSERT BENEFICIARY] [<i>Client</i>] in connection with the Main Works
The Main Works	the [design and] construction of the works to be provided by the Contractor in accordance with the provisions of the Main Contract as more particularly set out in the Main Contract
The Services	the services specified in the Appointment
The Site	the site defined in the Main Contract
Documents	all drawings, designs, charts, specifications, plans and any other documents or materials (including any computer software developed by the Consultant used to generate them and any designs contained in them) but excluding internal memoranda and documents, working papers and templates, which have been created and/or developed by the Consultant in the course of performing its obligations under the Appointment
Liability Period	the period from the date of the Appointment until no less than 12 years after completion of the Main Works as certified under the Main Contract
Professional Indemnity Insurance	professional indemnity insurance with a minimum limit of indemnity of not less than £5,000,000 (five million pounds) for any one occurrence or series of occurrences arising out of any one event and in the annual aggregate.

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THIS DEED is made on the date set out in the Particulars

BETWEEN:

- (1) the Consultant; and
- (2) the Beneficiary;

BACKGROUND:

- A In accordance with the Main Contract, the *Client* has appointed the Contractor to provide the Main Works at the Site.
- B In accordance with the Appointment the Contractor has appointed the Consultant to carry out and complete the Services in connection with the Main Works.
- C [The Beneficiary has an interest in the Site as it is [narrate interest] of **[INSERT SITE]** **[INSERT SITE DESCRIPTION]**].
- D The Consultant is obliged under the Appointment to give a warranty in this form in favour of the Beneficiary.

OPERATIVE PROVISIONS**1. DEFINITIONS**

The words and expressions defined in the Particulars shall have the same meaning throughout this Deed and references to the Particulars and clauses are to the Particulars and clauses of this Deed.

2. CONSIDERATION

This Deed is made in consideration of the payment of one pound (£1.00) by the Beneficiary to the Consultant receipt of which the Consultant acknowledges.

3. CONSULTANT'S DUTIES UNDER THE APPOINTMENT

The Consultant warrants to the Beneficiary that it has performed and shall continue to perform its duties under the Appointment in accordance with the Appointment and that it has exercised and shall continue to exercise reasonable skill and care in the carrying out of the Services that would reasonably be expected of a skilled, properly resourced, qualified and competent professional designer of the relevant discipline(s) experienced in carrying out services similar to the Services for works of a similar size, nature, scope and complexity to those comprised in the Main Works at sites of a similar nature, complexity, size, previous use and location as the Site.

4. NOT USED**5. PROHIBITED MATERIALS**

- 5.1 Subject to clause 3, the Consultant warrants to the Beneficiary that it shall comply in all respects with its obligations contained in the Appointment regarding prohibited materials.
- 5.2 For the avoidance of doubt, this clause 5 does not create any additional duty for the Consultant to inspect or check the work of others which is not required by the Appointment.

6. PROFESSIONAL INDEMNITY INSURANCE

The Consultant by this Deed covenants with the Beneficiary that it has taken out and shall maintain Professional Indemnity Insurance, for the duration of the Liability Period in relation to the Services, provided always that:

- 6.1 if such insurance is not available to the Consultant at commercially reasonable rates and terms (excluding any increase in premiums attributable to the actions, omissions, errors or defaults of the

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Consultant), the Consultant and the Beneficiary shall meet, the Consultant shall outline the steps it intends to take to manage such risks and the Consultant and the Beneficiary shall use reasonable endeavours to agree a method of managing such risks;

- 6.2 the Consultant shall provide the Beneficiary with reasonable evidence that the policies referred to in this clause 6 are in full force and effect.

7. NO APPROVAL

The Consultant's liabilities under this Deed shall not in any way be reduced or extinguished by reason of any inspection or approval of the Documents or attendance at site meetings or other enquiry or inspection which the Beneficiary may make or procure to be made for the Beneficiary's benefit or on its behalf.

8. ASSIGNMENT

- 8.1 The Beneficiary may, without the consent of the Consultant [and without prejudice to the provisions of clause 15] , assign the benefit of and its benefits and rights under this Deed to any person by way of absolute legal assignment, subject to clause 8.2, on not more than two occasions only.
- 8.2 Notwithstanding clause 8.1, assignments to and from a subsidiary or a holding company or a subsidiary of such holding company or other associated company within the same group of companies as the Beneficiary or assignments in security and on redemption of security shall be permitted and shall not be deemed to be assignments in terms of the restriction in clause 8.1.
- 8.3 The Beneficiary shall give the Consultant notice following any such assignment specifying the name and address of the assignee and the date of the assignment. The Consultant shall not contend that any such assignee is precluded from recovering any loss resulting from any breach of this Deed (whatever the date of such breach) by reason only that that person is an assignee and not the original beneficiary under this Deed or by reason that the original beneficiary or any intermediate beneficiary escaped any loss resulting from such breach by reason of the disposal of any interest in the Site or that the original beneficiary or any intermediate beneficiary has not suffered any or as much loss.

9. NOTICES

Any notice, approval, request or other communication to be given by either party under this Deed shall be in writing and shall be sufficiently served if sent by hand, by fax or by post to the registered office or if there is none the last known address of the party to be served. Any notice, approval, request or other communication sent by hand shall be deemed to be served on the date of delivery and if sent by fax shall be deemed to be served in full at the time recorded on the fax sheet, provided that if sent by hand or fax is sent after 4.45pm on any day it shall be deemed to be served on the next Working Day. Any notice, approval, request or other communication sent by post shall be deemed to have been duly served at the expiration of 48 hours after the time of posting if the end of that period falls before 4.45pm on a Working Day and otherwise on the next Working Day.

10. OTHER RIGHTS AND REMEDIES

The rights and benefits conferred upon the Beneficiary by this Deed are in addition to any other rights and remedies it may have against the Consultant including, without limitation, any remedies in negligence.

11. LIMITATION

- 11.1 The Consultant has no liability under this Deed which is greater or of longer duration than it would have had if, in lieu of this Deed, the Beneficiary had been a party to the Appointment as joint employer, provided that the Consultant shall not be entitled to set-off or deduct from any sums payable to the Beneficiary under this Deed any sums due or claimed as due by the Consultant from the Contractor.
- 11.2 The Consultant shall be entitled in any action or proceedings brought by the Beneficiary under this Deed to rely on any limitation in the Appointment and to raise equivalent rights in defence of liability

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(but excluding set-offs and counterclaims) as it would have against the Beneficiary if, in lieu of this Deed, the Beneficiary had been a party to the Appointment as joint employer.

- 11.3 The parties agree that no action or proceedings may be brought or commenced under this Deed at any time after the Liability Period has come to an end.
- 11.4 The Consultant shall have no liability under this Deed for any delay in carrying out or completing the Services or the Main Works

12. THIRD PARTY RIGHTS

Subject to clause 8 (*Assignment*), the parties do not intend that any term of this Deed shall be enforceable under the Contracts (Rights of Third Parties) Act 1999 by any person other than the parties.

13. GOVERNING LAW AND JURISDICTION

- 13.1 This Deed and any non-contractual obligations arising out of or in connection with it shall be governed by English Law.
- 13.2 In the event of any dispute arising between the parties to this Deed, the dispute shall be referred to arbitration and the arbitration procedure, place where the arbitration is to be held and method of choosing an arbitrator shall be as in the Main Contract.

THIS DOCUMENT is executed as a deed and delivered on the date stated at the beginning of this Deed.

Executed as a deed by [INSERT CONSULTANT] acting by a director and its company secretary:

Signature
Name (block capitals)
On behalf of
[INSERT DIRECTOR]
[INSERT SECRETARY]

Signature
Name (block capitals)
On behalf of
[INSERT SECRETARY]
[INSERT DIRECTOR]

Executed as a deed by [INSERT BENEFICIARY] acting by a director and its company secretary:

Signature
Name (block capitals)
On behalf of
[INSERT DIRECTOR]
[INSERT SECRETARY]

Signature
Name (block capitals)
On behalf of
[INSERT SECRETARY]
[INSERT DIRECTOR]

ANNEX 4D – Form of Novation Agreement

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DATED _____ **202[]**

(1) **[SECRETARY OF STATE FOR DEFENCE]**

and

(2) **LAGAN AVIATION & INFRASTRUCTURE**

and

(3) **[INSERT CLIENT]**

DEED OF NOVATION

Re: Contract Agreement relating to
the **RAF WITTERING AOS REFURBISHMENT
PROJECT**

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THIS DEED OF NOVATION is dated the day of 20[]

between and among

- (1) **[THE SECRETARY OF STATE FOR DEFENCE OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND]**, Ministry of Defence, Whitehall, London, SW1A 2HB] (hereinafter called the “**Client**” which expression includes his successors in title and assigns); and
- (2) **LAGAN AVIATION & INFRASTRUCTURE** a company incorporated under the Companies Acts (Registered Number **[INSERT COMPANY NUMBER]** and having its registered office at **[INSERT CONTRACTOR OFFICE]** (“**Contractor**”); and
- (3) **[INSERT CLIENT]** a company incorporated under the Companies Acts (Registered Number **[INSERT COMPANY NUMBER]**) and having its registered office at **[INSERT CLIENT OFFICE]** (“**New Client**”).

WHEREAS:

- A By an Agreement in writing dated **[INSERT DATE]** (“**Contract**”) the *Client* appointed the Contractor to **[INSERT WORKS TO BE COMPLETED]** at Leuchars Station, Fife, Scotland (“**Project**”);
- B The parties have agreed to novate the Contract to the New *Client* on the terms set out below.

NOW IT IS HEREBY AGREED as follows:

NOVATION OF CONTRACT

The Contract is hereby novated from the *Client* and the Contractor to the New *Client* and the Contractor. The Contractor shall carry out the services and works which remain to be performed (in whole or in part) at the Effective Date (as defined in clause 21.2).

14. RELEASE OF CLIENT

The *Client* shall no longer owe any duty or obligation, and will have no liability, to the Contractor under or in respect of the Contract.

15. RELEASE OF CONTRACTOR

Without prejudice and subject to the provisions of clause 22, the Contractor shall no longer owe any liability, duty or obligation to the *Client* under the Contract whether by virtue of its terms or by virtue of any breach or otherwise being past, present or future.

16. BINDING OF CONTRACTOR TO NEW CLIENT

The Contractor hereby accepts the liability of the New *Client* in place of the liability of the *Client* under the Contract and agrees to be bound by the same terms in every way as if the New *Client* were named in the Contract as a party to the Contract in place of the *Client*. The Contractor acknowledges that the New *Client* is entitled to rely, and may rely, upon the performance by the Contractor of all of its obligations and the services required to be carried out by the Contractor under the Contract prior to and following the date hereof and that the New *Client* may suffer loss consequent upon the failure by the Contractor to perform such obligations and/or services to the standard required by the Contract and whether or not the obligations and/or services were originally performed for the New *Client* or the *Client*, before or after the date of this Deed. The Contractor further undertakes that it may be liable for the reasonably foreseeable and properly mitigated costs and losses of the New *Client* as a result of any breach of the Contract by the Contractor whether prior to or after novation taking place and irrespective of whether or not:

- 16.1 the relevant service was performed at the relevant time for the *Client*;

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16.2 those losses were or could be conceived as having been suffered by the *Client*;

16.3 the *Client* has suffered or could have suffered loss in respect of that breach.

17. BINDING OF NEW *CLIENT* TO CONTRACTOR

The New *Client* binds itself to the Contractor in the terms of the Contract as if the New *Client* were and always had been named in the Contract in place of the *Client*.

18. VESTING OF REMEDIES IN NEW *CLIENT*

Without prejudice and subject to the provisions of clause 22, all rights of action and remedies vested in the *Client* against the Contractor under the Contract shall hereupon vest in the New *Client*.

19. VESTING OF REMEDIES AGAINST CONTRACTOR

All rights of action and remedies vested in the Contractor against the *Client* under and in respect of the Contract shall hereinafter lie against the New *Client*.

20. FEES AND DISBURSEMENTS

20.1 The Contractor acknowledges that fees, disbursements and other sums earned by the Contractor in respect of services and works under the Contract in the sum of £[u] have been paid in full.

20.2 The parties agree that from the Effective Date (as defined in clause 21.2) all sums of whatever nature whether arising before or after the Effective Date due by the *Client* to the Contractor under the Contract shall be met in full by the New *Client* and paid to the Contractor when said sums fall due for payment.

21. AFFIRMATION OF CONTRACT

21.1 Subject to the terms of this Deed the Contract shall remain in full force and effect.

21.2 The provisions of this Deed shall take effect between the parties hereto on the effective date of **[INSERT DATE]** ("**Effective Date**") notwithstanding the date or dates hereof.

21.3 The Contractor warrants that it has not agreed with the *Client* to waive or release the Contractor from any of the Contractor's duties, obligations or services under the Contract.

21.4 The Contractor warrants that, as at the Effective Date, it is not in breach of the terms of the Contract and it is not aware of any breach of the Contract committed by the *Client*.

22. COLLATERAL WARRANTIES

Nothing in this Deed shall affect or derogate from any collateral warranty given or to be given by the Contractor to the *Client* or others in connection with the Project and/or the Contract (as novated) and/or the Contractor's duties, obligations and liabilities under any such collateral warranties.

23. GOVERNING LAW AND INTERPRETATION

23.1 The law of this Deed is English law. In the event of any dispute arising between the parties to this Deed, the dispute shall be referred to arbitration and the arbitration procedure, place where the arbitration is to be held and method of choosing an arbitrator shall be as in the Contract.

23.2 The definitions given in the Recitals hereto shall apply to this Deed.

23.3 Clause headings in this Deed shall be of no effect.

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24. THIRD PARTY RIGHTS

Subject to clause 25, the parties to this Deed do not intend that any term of this Deed shall be enforceable under the Contracts (Rights of Third Parties) Act 1999 by any person other than the parties to this Deed.

25. ASSIGNMENT

No party shall assign the benefit of the obligations in this Deed or any part of it without the prior written consent of the other parties unless that party's interest in the Contract is also being assigned.

THIS DOCUMENT is executed as a deed and delivered on the date stated at the beginning of this Deed.

Executed by THE SECRETARY OF STATE FOR DEFENCE)
)
acting by)
)
.....)
[INSERT NAME OF SIGNATORY])
) (Attorney / Authorised Signatory)
one of his attorneys / authorised signatories)
)
in the presence of:)
)

..... Witness
[INSERT WITNESS SIGNATURE]

.....
[INSERT NAME OF WITNESS]

.....
[INSERT ADDRESS OF WITNESS]

.....

Executed by LAGAN AVIATION & INFRASTRUCTURE)
)
acting by)
)
.....)
[INSERT NAME OF SIGNATORY])
) (Director)
one of its Directors)
)
and)
)
.....)
[INSERT NAME OF SIGNATORY])
) (Director / Company Secretary)
one of its Directors / its Company Secretary)
)

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Executed by [NEW CLIENT])	
)	
acting by)	
)	
.....)
[INSERT NAME OF SIGNATORY])	(Director)
)	
one of its Directors)	
)	
and)	
)	
.....)
[INSERT NAME OF SIGNATORY])	(Director / Company Secretary)
)	
one of its Directors / its Company Secretary)	

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ANNEX 4E – Form of Vesting Certificate*[ON HEADED NOTEPAPER OF THE SUPPLIER]*

The Secretary of State for Defence
 Ministry of Defence
 Whitehall
 London
 SW1A 2HB

[DATE] 20[]

Dear Sir,

Vesting Certificate in relation to [INSERT NATURE OF MATERIALS] in relation to design and construction of [INSERT WORKS TO BE COMPLETED] at [INSERT LOCATION] (“Project”)

In consideration of the payment of £1, receipt of which we acknowledge, we write in relation to the ownership of certain off-site materials, goods and items.

1. This letter relates to the following:
 - 1.1 A contract entered into or to be entered into between you and [insert Contractor details] (“**Contractor**”) in relation to the Project at [INSERT LOCATION] , dated [INSERT DATE] (“**Contract**”).
 - 1.2 A sub-contract entered into or to be entered into between us and [insert Contractor details] in relation to the Project at [INSERT LOCATION] , dated [INSERT] (“**Sub-Contract**”).
 - 1.3 The Sub-Contract relates to the design, construction and completion of [specify sub-contract works package] forming part of the Project, as more particularly described in the Sub-Contract (“**Works**”).
 - 1.4 The items listed in the appendix to this letter, as also described in the Sub-Contract (“**Listed Items**”).
2. Prior to their delivery to (or adjacent to) the site of the Works (“**Site**”), we have applied for payment from the Contractor in relation to the Listed Items in an interim application.
 - 2.1 We warrant that the Listed Items:
 - 2.1.1 have been manufactured or prepared and are ready for incorporation in the Works and are intended to be incorporated in the Works;
 - 2.1.2 are our absolute and unencumbered property. We warrant that we are able to transfer ownership in the Listed Items absolutely, free from any security or potential challenge and without breaching any agreement binding on us or our assets. However, on payment of the interim payment referred to in this letter, they will immediately become your absolute and unencumbered property. At that time, we, our sub-contractors, suppliers, servants and agents and any other third party shall have no property in any part or all of them, no claim to part or all of them and no lien or charge over part or all of them;
 - 2.1.3 are in accordance with the Sub-Contract. In the event that they are not in accordance with the Sub-Contract, we acknowledge that you may reject them and instruct us that they shall immediately re-vest in us and be entirely at our risk. Nothing in this letter or the Sub-Contract or any payment made to us in respect of the Listed Items shall be taken as an approval or acceptance by you any of your agents or servants (including the Contractor) that the Listed Items are in accordance with the Sub-Contract or this letter.

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- 2.1.4 are, at our cost, insured against loss or damage for their full reinstatement value under a policy of insurance protecting our interests and your interests, in our and your joint names against any loss or damage howsoever arising for a period no shorter than the period from the date of payment of the interim payment to the date of delivery of the Listed Items to (or adjacent to) the Site. Upon request, we shall provide you, your servants or agents (including the Contractor) with (i) a copy of the relevant insurance policy (and/or allow you, your servants or agents to inspect the original insurance policy that effects such insurance) and (ii) evidence that the insurance premia have been paid. We undertake to you that we will comply with all the terms of conditions of the policy of insurance.
- 2.2 We warrant that the Listed Items clearly identify that they are:
- 2.2.1 held to your order (or to the order of another person, whom you have notified to us) at the premises where they have been manufactured or assembled or are stored (details of which are set out in the Appendix to this letter) ("**Premises**"), and will not be removed without your written consent;
- 2.2.2 to be delivered to (or adjacent to) the Site; and we confirm that they:
- 2.2.2.1 are set apart;
- 2.2.2.2 have been clearly, indelibly and visibly marked, individually or in sets, in a manner agreed between us, in a way that such marks will remain legible until they are delivered to (or adjacent to) the Site;
- 2.2.2.3 are and will remain protected from and against loss, deterioration and damage howsoever caused;
- 2.2.2.4 will be stored to your satisfaction;
- 2.2.2.5 will be delivered to (or adjacent to) the Site to suit the agreed programme for the Works at our cost. In the event of the termination of the Sub-Contract or our employment under the Sub-Contract for any reason (including, without limitation, our insolvency or breach of contract), we shall, at our cost, deliver them to (or adjacent to) the Site or to an alternative location for the purposes of storage, as instructed by you. If we fail to promptly perform that delivery, you may enter the Premises and, at our cost, collect them and take them to (or adjacent to) the Site or to any location for the purposes of storage; and
- 2.2.2.6 may be inspected and/or removed at any time by you, your servants or agents.
3. Without prejudice to the terms of the Sub-Contract and notwithstanding the terms of clause 2, we shall be responsible for any damage to or destruction of the Listed Items in accordance with the terms of the Sub-Contract until completion of the Works under the Contract.
4. For the purposes of this letter, you and we have agreed that:
- 4.1 A person who is not a party to this letter shall not have any rights under or in connection with it, but you may assign the benefit of this letter to any person who acquires your interest in the Site, provided that such assignment takes place at the same time (and to the same person) as the assignment of your interest in the Site or at the same time (and to the same person) as a novation

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of the contract by which you have appointed the Contractor in relation to the Project (the “Contract”). Any reference to you in this letter includes your permitted assignees.

- 4.2 Any notice sent under this letter shall be sent by first class recorded delivery post to us at **[INSERT SUPPLIER OFFICE]** and to you at the address above.
- 4.3 In the event of any dispute or difference under this letter, that dispute or difference shall be settled in the same way as a dispute or difference under the Contract and shall be subject to the same governing law and exclusive jurisdiction as the Contract.

Please acknowledge receipt and acceptance of this letter by signing, dating and returning the enclosed copy.

Yours faithfully,

.....
Director, for and on behalf of **Lagan Aviation & Infrastructure**

Witness.....

Address.....

Client's acknowledgement

We hereby acknowledge receipt and accept the contents of this letter

Signed
For and on behalf of the Secretary of State for Defence

Date

Contractor's acknowledgement

We hereby acknowledge the terms of this letter

Signed
For an on behalf of **LAGAN AVIATION & INFRASTRUCTURE**

Date.....

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Appendix to Vesting Certificate - Listed Items

Item	Description	Mark	Value

These Listed Items are being held/stored at: [\[INSERT LOCATION\]](#) .

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ANNEX 5 – The Scope

The Parties acknowledge and agree that the following documents and drawings comprise the Scope as at the Contract Date and are stored as files in the folder named “Scope” in (and copies of them can be downloaded by the Parties from) the project (Defence Share/ vRoom) entitled “**RAF WITTERING AOS REFURBISHMENT PROJECT**”, which document has the file title given to it below:

SCOPE (main body)

- 20221208_RAF Wittering_Scope _ SI_v6.0.pdf

APPENDICES TO THE SCOPE

- 20221209-Witt AOS Scope Site Reference.xlsx

Appendix A- Outline Specifications

- 20220808_RAF Wittering_Scope SI_App A.1 v1.0.pdf
- 20221118_RAF Wittering_Scope_SI_App A.2 (2).pdf

Appendix A – Outline Drawings

- Z9F8133Y18-ACM-ZZ-XX-DR-PV-000001 P02
- Z9F8133Y18-ACM-ZZ-XX-DR-PV-000040 P02
- Z9F8133Y18-ACM-ZZ-XX-DR-PV-000041 P02
- Z9F8133Y18-ACM-ZZ-XX-DR-PV-000060 P02
- Z9F8133Y18-ACM-ZZ-XX-DR-PV-000061 P02
- Z9F8133Y18-ACM-ZZ-XX-DR-PV-000062 P02
- Z9F8133Y18-ACM-ZZ-XX-DR-PV-000063 P02
- Z9F8133Y18-ACM-ZZ-XX-DR-PV-000064 P02
- Z9F8133Y18-ACM-ZZ-XX-DR-PV-000065 P02
- Z9F8133Y18-ACM-ZZ-XX-DR-PV-000066 P02
- Z9F8133Y18-ACM-ZZ-XX-DR-PV-000067 P02
- Z9F8133Y18-ACM-ZZ-XX-DR-PV-000068 P02
- Z9F8133Y18-ACM-ZZ-XX-DR-PV-000069 P02
- Z9F8133Y18-ACM-ZZ-XX-DR-PV-000070 P02
- Z9F8133Y18-ACM-ZZ-XX-DR-PV-000071 P02
- Z9F8133Y18-ACM-ZZ-XX-DR-PV-000072 P02
- Z9F8133Y18-ACM-ZZ-XX-DR-PV-000073 P02
- Z9F8133Y18-ACM-ZZ-XX-DR-PV-000074 P02
- Z9F8133Y18-ACM-ZZ-XX-DR-PV-000075 P02
- Z9F8133Y18-ACM-ZZ-XX-DR-PV-000076 P02
- Z9F8133Y18-ACM-ZZ-XX-DR-PV-000077 P02
- Z9F8133Y18-ACM-ZZ-XX-DR-PV-000078 P02
- Z9F8133Y18-ACM-ZZ-XX-DR-PV-000080 P02
- Z9F8133Y18-ACM-ZZ-XX-DR-PV-000081 P02
- Z9F8133Y18-ACM-ZZ-XX-DR-PV-000082 P02
- Z9F8133Y18-ACM-ZZ-XX-DR-PV-000083 P02
- Z9F8133Y18-ACM-ZZ-XX-DR-PV-000084 P02
- Z9F8133Y18-ACM-ZZ-XX-DR-PV-000085 P02
- Z9F8133Y18-ACM-ZZ-XX-DR-PV-000086 P02
- Z9F8133Y18-ACM-ZZ-XX-DR-PV-000087 P02
- Z9F8133Y18-ACM-ZZ-XX-DR-PV-000088 P02
- Z9F8133Y18-ACM-ZZ-XX-DR-PV-000089 P02
- Z9F8133Y18-ACM-ZZ-XX-DR-PV-000090 P02

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- Z9F8133Y18-ACM-ZZ-XX-DR-PV-000091 P02
- Z9F8133Y18-ACM-ZZ-XX-DR-PV-000092 P03
- Z9F8133Y18-ACM-ZZ-XX-DR-PV-000093 P02
- Z9F8133Y18-ACM-ZZ-XX-DR-PV-000094 P02
- Z9F8133Y18-ACM-ZZ-XX-DR-PV-000095 P02
- Z9F8133Y18-ACM-ZZ-XX-DR-PV-000096 P02

Appendix B - Outline Drawings

- A1 AOS
- Z9F8133718-ACM-ZZ-XX-DR-PV-000220-P03.1.pdf
- Z9F8133718-ACM-ZZ-XX-DR-PV-000200-P03.1.pdf
- Z9F8133718-ACM-ZZ-XX-DR-PV-000252-P03.1.pdf
- Z9F8133718-ACM-ZZ-XX-DR-PV-000140-P03.1.pdf
- Z9F8133718-ACM-ZZ-XX-DR-PV-000280-P03.1.pdf
- Z9F8133718-ACM-ZZ-XX-DR-PV-000310-P03.1.pdf
- Z9F8133718-ACM-ZZ-XX-DR-PV-000312-P03.1.pdf
- Z9F8133718-ACM-ZZ-XX-DR-PV-000332-P03.1.pdf
- Z9F8133718-ACM-ZZ-XX-DR-PV-000330-P03.1.pdf
- Z9F8133718-ACM-ZZ-XX-DR-PV-000440-P03.1.pdf
- Z9F8133718-ACM-ZZ-XX-DR-PV-000481-P03.1.pdf
- Z9F8133718-ACM-ZZ-XX-DR-PV-000410-P03.1.pdf
- Z9F8133718-ACM-ZZ-XX-DR-PV-000412-P03.1.pdf
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- Z9F8133Y18-ACM-ZZ-XX-DR-PV-001021.pdf
- Z9F8133Y18-ACM-ZZ-XX-DR-PV-001040.pdf
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- Z9F8133Y18-ACM-ZZ-XX-DR-PV-001060.pdf
- Z9F8133Y18-ACM-ZZ-XX-DR-PV-001061.pdf
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- Z9F8133Y18-ACM-ZZ-XX-DR-PV-001305.pdf

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- Z9F8133Y18-ACM-ZZ-XX-DR-PV-001311.pdf
- Z9F8133Y18-ACM-ZZ-XX-DR-PV-001312.pdf
- Z9F8133Y18-ACM-ZZ-XX-DR-PV-001313.pdf
- Z9F8133Y18-ACM-ZZ-XX-DR-PV-001314.pdf
- Z9F8133Y18-ACM-ZZ-XX-DR-PV-001315.pdf
- Z9F8133Y18-ACM-ZZ-XX-DR-PV-001316.pdf

Appendix D - Design Requirements

- Connections-application-form-200617-v1.3.pdf
- Schedule 23 DEVELOPMENT PROJECT v1.2.pdf
- STS ED02 MOD Estate Development Guidelines.pdf
- STS ED04 Standards Estate Development v1.2.pdf
- STS3000 Engineering Specification v1.4.pdf

Appendix E - BIM Requirements

- ZF98133Y18-ACM-XX-XXX-AS-Z-000001_S2_P01_C0500_DI2_DXLX_ITAssessment.docx
- ZF98133Y18-ACM-XX-XXX-AS-Z-000001_S2_P01_C0500_DI2_DXLX_ResourceAssessment.docx
- ZF98133Y18-ACM-XX-XXX-AS-Z-000001_S2_P01_C0700_DI3_D0L0_BIMAssessmentForm.docx
- ZF98133Y18-ACM-XX-XXX-AS-Z-000001_S2_P01_C0700_DI3_D0L0_BMAT.docx
- ZF98133Y18-ACM-XX-XXX-AS-Z-000001_S3_P01_C2200_DI3_D0L0_IDP-MIDP.docx
- ZF98133Y18-ACM-XX-XXX-AS-Z-000001_S3_P02_C0500_DI3_D0L0_PostConBEP.docx

Appendix F - Sustainability Appraisal

- RAF Wittering SA - 08.09.22.docx

Appendix G - Sustainability Assessment Status Reports

- CEEQUAL-V6-WPA-Pre-Ass-Score-sheet July 2022.xls
- RAF Witteing-Sust Opp Register - DPO.xlsx
- Wittering -Proj Sustain.Strategy.xlsx

Appendix H - Pre-Construction Information (PCI)

- 20220808_AECOM PCI_RAF Wittering_AOS Refub_V2d.docx

Appendix I - Contractor's Ways of Working

- 20210501 - PT3 Lft2 Annex D- Contractor Induction Non-RPC.docx

Documents sent via DSP

- Tec Note 6.3 Alternative Main Effort +1 Final.pdf
- RAF Wittering. Main Runway and AOS Refurb DPO_AMF Ops Double Spec (FOR DISCUSSION).pdf
- 20220613_RAF Wittering - Tec Note Nov OLS Check v1.pdf
- 503 Models for Contractor - 18-01-2023 (1)\RAF Wittering - Derived Design Proposed Surface - 16 01 2023.xml

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- 503 Models for Contractor - 18-01-2023 (1)\Wittering Desription List.xlsx
- 503 Models for Contractor - 18-01-2023 (1)\Z9F8133Y18-ACM-ZZ-XX-M2-AG-000004.dwg
- 503 Models for Contractor - 18-01-2023 (1)\Z9F8133Y18-ACM-ZZ-XX-M2-AG-000005.dwg
- 503 Models for Contractor - 18-01-2023 (1)\Z9F8133Y18-ACM-ZZ-XX-M2-AG-000006.dwg
- 503 Models for Contractor - 18-01-2023 (1)\Z9F8133Y18-ACM-ZZ-XX-M2-PV-000007.dwg
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ANNEX 6 – The Site Information

The Parties acknowledge and agree that the following documents and drawings comprise the Site Information as at the Contract Date and are stored as files in the folder named “*Site Information*” in (and copies of them can be downloaded by the Parties from) the project (Defence Share/ vRoom) entitled “**RAF WITTERING AOS REFURBISHMENT PROJECT**”, which document has the file title given to it below:

SITE INFORMATION (main body)

- 20221208_RAF Wittering_Scope _ SI_v6.0.pdf

APPENDICES TO THE SITE INFORMATION

Appendix C - Site Record Data

1 AMIR

- RAF Wittering AMIR 2018_FINAL COMPILED.pdf

2 CIRAM

- 20140225 - Annex A-Estate_Climate Information wittering-U.doc_2_.doc
- 20210809 - WITG RAF Wittering CIRAM.doc

3 Runway 25 AGL Approach Lighting Cabling

- GR42070-UU.dwg
- GR42070-UU.pdf

4 Traffic

- RAF Wittering CTMP_rev 1.pdf

5 Topographical Survey

- RAF Wittering - TIN ONLY.dwg
- RAF Wittering - XYZ FILE.CSV
- WHIT-AECOM-00-P1-M3-S-00001.dwg
- WHIT-AECOM-P1-00-RP-SV-00001.pdf

6 Preliminary Ecological Assessment

- RAF Wittering PEA Report v2 25-Jan-2021 Issued.pdf

7 Pavement Survey

- RAF Wittering - GPR Comparison.xlsx
- RAF Wittering AOS Refurbishment_Pavement Evaluation_r1.pdf
- RAF Wittering Runway and AOS Refurbishment_Addendum_Pavement Report.pdf

8 Noise Survey

- RAF Wittering AOS Acoustic Assessment - final.pdf

9 GPR

- 2020_AECOM_Pavements_Template_Bravo.pdf
- 2020_AECOM_Pavements_Template_Charlie.pdf
- 2020_AECOM_Pavements_Template_Compass Swing.pdf
- 2020_AECOM_Pavements_Template_Delta.pdf

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- 2020_AECOM_Pavements_Template_Dispersal 13.pdf
- 2020_AECOM_Pavements_Template_Dispersal 14.pdf
- 2020_AECOM_Pavements_Template_Dispersal 15.pdf
- 2020_AECOM_Pavements_Template_Dispersal 16.pdf
- 2020_AECOM_Pavements_Template_Dispersal 1718.pdf
- 2020_AECOM_Pavements_Template_Dispersal 2.pdf
- 2020_AECOM_Pavements_Template_November.pdf
- 2020_AECOM_Pavements_Template_Runway.pdf
- 2020_AECOM_Pavements_Template_Sierra.pdf
- 2020_AECOM_Pavements_Template_Taxi Alpha.pdf
- 2020_AECOM_Pavements_Template_Whiskey.pdf
- 2020_AECOM_Pavements_Template_Yankee.pdf
- 2020_AECOM_Pavements_Template_Zulu.pdf

10 Earth and Tie Down Points

- Technical Note_Earth and Tie Down Point Survey_final.pdf (doesn't open)

11 Asbestos Register

- Bld 422 asbestos register Sept 20.xlsx
- Bld 423 asbestos register Sept 20.xlsx
- EICR 61572550 - MMS RAF WITTERING BUILDING 422 PETERBOROUGH PE8 6HB 16-06-20 UNS PRICED.pdf
- EICR 9273574 - MMS RAF WITTERING BUILDING 423 B1A PETERBOROUGH PE8 6HB 03-09-20 UNS PRICED.pdf

12 A B-Centre Building Survey

- 20110314_DIO Logo Landscape_u.JPG
- 60667883_WITTERING_DRAWING ISSUE SHEET 18-05-2022.pdf
- 60667883-ACM-WT_'A'C-00-DR-BR-040001_REV_Z0.dwg
- 60667883-ACM-WT_'A'C-00-DR-BR-040001_REV_Z0.pdf
- 60667883-ACM-WT_'A'C-00-DR-BR-040001_REV_Z0.txt
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- 60667883-ACM-WT_B1A-00-DR-BR-046002_REV_Z0.pdf
- 60667883-ACM-WT_B1A-00-DR-BR-046003_REV_Z0.dwg
- 60667883-ACM-WT_B1A-00-DR-BR-046003_REV_Z0.pdf
- 60667883-ACM-WT_REV_Z0.zip
- acad.fmp
- AECOM Structural Report_RAF Wittering A B Stations_Rev0_2022.05.18_ISSUED.pdf
- App B.1 Report Photos_RAF Wittering A B Stations_Rev0_2022.05.18_ISSUED.pdf
- AutoCAD PDF (High Quality Print).pc3
- URS_3.stb

13 UXO

- RAF Wittering UXO EI Mar 19.docx

14 Physical Criteria Survey

- Annexe A - Aerodrome data.pdf
- Annexe B - Runway 07.pdf
- Annexe B - Runway 25.pdf
- Annexe C - Declared distances.pdf
- Annexe D - Runway strip obstacles.pdf
- Annexe D - Runway strips.pdf

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- Annexe E - Apron dimensions.pdf
- Annexe E - Taxiway dimensions.pdf
- Annexe E - Taxiway fillets Radii.pdf
- Annexe E - Taxiway slopes.pdf
- Annexe F - Taxiway Apron obstacles.pdf
- Annexe G - Hold points.pdf
- Annexe H - Airfield paint markings.pdf
- Annexe H - Apron paint markings.pdf
- Annexe K -Criteria Plan.pdf
- Annexe K -Criteria Statement of Requirements.pdf
- Appendix I - Wittering vertical alignment compliance report.xlsx
- declinationData.pdf
- MOD-DIO RAF Wittering Report PCS Jan 2017.doc
- MOD-DIO RAF Wittering Report PCS Jan 2017.pdf
- RAF Wittering - PCS Survey Report Jan 2017.xlsx
- RAF_Wittering PAPI Installation drawing 07-25.pdf
- RAF_Wittering PAPI Installation drawing.dwg
- RAF_Wittering_App_Profiles A0 1-500.pdf
- RAF_Wittering_App_Profiles.dwg
- RAF_Wittering_Detail.dwg
- RAF_Wittering_Detail.pdf
- RAF_Wittering_Distances.dwg
- RAF_Wittering_Distances.pdf
- RAF_Wittering_Lighting.dwg
- RAF_Wittering_Lighting.pdf
- STN EGXT01.pdf
- STN EGXT02.pdf
- STN EGXT03.pdf
- STN EGXT04.pdf
- WITTER SE D7.dc
- WITTERING D4 RH.dc
- WITTERING D4 SE.dc
- wittering d5 rh.dc
- WITTERING D5 SE.dc
- WITTERING PCS D1.jxl
- wittering pcs d2.jxl
- WITTERING PCS D3.jxl

15 Measured Height Survey

- CAP1732 Wittering 2019
- CAP1732 Wittering 2019 - Aerodrome Control - 5000
- CAP1732 Wittering 2019 - Aerodrome Facilities - 2500
- CAP1732 Wittering 2019 - AGA - 10000
- CAP1732 Wittering 2019 - AGA - 2500
- CAP1732 Wittering 2019 - AGA - 50000
- CAP1732 Wittering 2019 - Departure Areas - 50000
- CAP1732 Wittering 2019 - NPIA 0725 - 25000
- CAP1732 Wittering 2019 - OFZ - 5000
- CAP1732 Wittering 2019 - Survey Report
- CAP1732 Wittering 2019 - Type A 0725 - 25000
- CAP1732 Wittering 2019 - VM - 50000
- EGXT AIP AD 2_10 Obstacles 2019
- EGXT_2ETOD19
- EGXT_AD19

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- EGXT_DOBST19
- EGXT_OBST19
- EGXT_OLS19
- EGXT_RDD19
- EGXT_TOFP19
- EGXTAD19
- EGXTAD191
- EGXTOB19
- EGXTOB191
- Metadata_SK90SE
- PF-EGXT-2019-01
- PF-EGXT-2019-01 1
- PF-EGXT-2019-02
- PF-EGXT-2019-03
- PF-EGXT-2019-04
- PF-EGXT-2019-05
- PF-EGXT-2019-06
- PF-EGXT-2019-07
- PF-EGXT-2019-08
- PF-EGXT-2019-09
- PF-EGXT-2019-10
- PF-EGXT-2019-11
- PF-EGXT-2019-12

Documents sent via DSP

- Doc-16 ECR Pt 4 - ICS.docx
- Doc-13 ECR Pt 2 - CP & RDE.docx
- Doc-12 ECR Pt 1 - IPI.docx
- IDOC-0002003891 Wittering TACAN Infringement Report.docx
- 20190801-425611_RES_02_06-O.pdf
- 20190801-425611_RES_01_06-O.pdf
- 20220329-AOS Project Siting Board_Stn_Cdr (1).docx
- 20020407_RAF Wittering - DPO Siting Board Reference Info v1 (1).pdf
- RAF Wittering - TIN ONLY.dwg
- Site Services Base Info - 01-02-2023 (1)\08 THRESHOLD.pdf
- Site Services Base Info - 01-02-2023 (1)\A0 LANDSCAPE Text XREF.dwg
- Site Services Base Info - 01-02-2023 (1)\A1 LANDSCAPE Text XREF.dwg
- Site Services Base Info - 01-02-2023 (1)\ALL SERVICES X-REF.dwg
- Site Services Base Info - 01-02-2023 (1)\Combined Service Xref WITG.dwg
- Site Services Base Info - 01-02-2023 (1)\CRASH GATE.pdf
- Site Services Base Info - 01-02-2023 (1)\C-WITG-FULL-SERV-002.dwg
- Site Services Base Info - 01-02-2023 (1)\C-WITG-FULL-SERV-002.pdf
- Site Services Base Info - 01-02-2023 (1)\C-WITG-FULL-SERV-002.txt
- Site Services Base Info - 01-02-2023 (1)\C-WITG-FULL-SITE-CRASH-001.pdf
- Site Services Base Info - 01-02-2023 (1)\C-WITG-PART-SITE-AIR-001.dwg
- Site Services Base Info - 01-02-2023 (1)\C-WITG-PART-SITE-AIR-001.txt
- Site Services Base Info - 01-02-2023 (1)\RAF Wittering Airfield PCN X-Ref.dwg
- Site Services Base Info - 01-02-2023 (1)\WITG SITE X-Ref.dwg

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ANNEX 7 – The Activity Schedule

The Parties acknowledge and agree that the following document comprises the Activity Schedule as at the Contract Date and is stored as a .pdf file in the folder named “*Activity Schedule*” in (and copies of it can be downloaded by the Parties from) the project (Defence Share/ vRoom) entitled “***RAF WITTERING AOS REFURBISHMENT PROJECT***”, which document has the file title given to it below:

- RAF Wittering AOS DIO AOS_Pricing Tool - LAIL Submission (Rev 1).xlsx

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ANNEX 8 – Construction KPIs

The Parties acknowledge and agree that the following document comprises the Construction KPIs as at the Contract Date and is stored as a .pdf file in the folder named “*Annex 8 – Construction KPIs*” in (and copies of it can be downloaded by the Parties from) the project (Defence Share/ vRoom) entitled “***RAF WITTERING AOS REFURBISHMENT PROJECT***”, which document has the file title given to it below:

- Annex 8 - Construction KPIs.xlsx