

Schedule 17

Collateral Warranty

COLLATERAL WARRANTIES

THIS DEED is made the day of

201[♦]

BETWEEN:

- (1) [CONTRACTOR] whose registered office is at [♦] ("Contractor"); and
- (2) THE SECRETARY OF STATE FOR DEFENCE for and on behalf of the Crown and in exercise of all and any powers attaching to his office as Secretary of State of Defence, Defence Equipment and Support, Ministry of Defence, Abbeywood, Bristol BS34 8JH ("Beneficiary").

BACKGROUND:

- A The Beneficiary has entered into an agreement dated [♦] with [♦] ("Employer") in connection with the Works.
- B The Contractor has entered into the Contract with the Employer to carry out the Works.
- C The Contractor has agreed to enter into this deed for the benefit of the Beneficiary.

IT IS AGREED:

1. DEFINITIONS AND INTERPRETATION

- 1.1 In this deed (including the recitals), except where the context otherwise requires, the following words and expressions shall have the following meanings:

"Contract" means the agreement dated [♦] between (1) the Employer and (2) the Contractor;

"Intellectual Property" means all current and future legal and equitable interests in registered or unregistered trademarks, service marks, patents, registered designs, inventions, technical information, know-how or other intellectual property rights of any nature created by the Contractor in connection with the Works; and

"Licence" means the licence relating to [♦]; and

"Works" means [*insert description of relevant Works*].

- 1.2 In this deed unless the context otherwise requires:-

- (a) words importing any gender include every gender;
- (b) words importing the singular number only include the plural number and vice versa;
- (c) words importing persons include firms, companies and corporations and vice versa;

- (d) any reference to any statute (whether or not specifically named) shall include any statutory modification or re-enactment of it for the time being in force and any order, instrument, plan, regulation, permission and direction made or issued under it or under any statute replaced by it or deriving validity from it;
- (e) references to clauses are references to the relevant clause in this deed;
- (f) the words "**include**" and "**including**" are to be construed without limitation;
- (g) where any obligation is undertaken by two or more persons jointly those persons shall be jointly and severally liable in respect of that obligation; and
- (h) the headings to the clauses are for convenience only and shall not affect the interpretation of this deed.

2. CONTRACTOR'S OBLIGATIONS

The Contractor represents, warrants and undertakes to the Beneficiary:

- 2.1 that in performing the Works it has exercised and will continue to exercise all the skill, care and diligence to be reasonably expected of an appropriately qualified and competent contractor which is experienced in carrying out projects of a similar, scope, nature, complexity and size to the Works;
- 2.2 that it has complied with and will comply with each and all of the obligations, duties and undertakings of the Contractor under and pursuant to the Contract;
- 2.3 that on completion the Works will satisfy all performance specifications and requirements contained or referred to in the Contract; and
- 2.4 that the Beneficiary shall be deemed to have relied upon the Contractor's skill and judgment in respect of those matters relating to the Works as lie within the scope of the Contract and that the Contractor owes a duty of care in respect thereof to the Beneficiary (but not more onerous than that owed to the Employer under the Contract).

3. LIABILITY

- 3.1 No approvals, comments, instructions, consents, attendance at meetings relating to the Works or advices from the Beneficiary shall in any way relieve the Contractor from its obligations under this deed.
- 3.2 Notwithstanding anything that may be contained elsewhere in this deed, the Contractor shall have no greater liability (whether in quantum or in scope) to the Beneficiary than it would have had if the Beneficiary had been named as joint employer under the Contract.
- 3.3 No action or proceedings for any breach of this deed shall be commenced against the Contractor after the expiry of 12 years from the date of practical completion of the Works.

4. INTELLECTUAL PROPERTY

- 4.1 The Contractor as beneficial owner irrevocably grants to the Beneficiary with effect from the date of this deed (and notwithstanding that the Contract may be completed or terminated) a royalty-free, non-exclusive licence to use all rights, titles and interest in the Intellectual Property for any purpose:
- (a) in connection with the maintenance, repair, reinstatement, renewal or extension of the Works; or
 - (b) in order for the Beneficiary to comply with the obligations on its part under the Licence or to comply with any standard or requirement affecting the Beneficiary.
- 4.2 The licence referred to in clause 4.1 shall carry the right to grant sub-licences in the same terms and shall be transferable to third parties.
- 4.3 All royalties or other sums payable in respect of the supply and use of any Intellectual Property required in connection with the Contract shall be paid by the Contractor and the Contractor shall indemnify the Beneficiary from and against all claims, proceedings, damages, costs and expenses suffered or incurred by the Beneficiary by reason of the Contractor infringing or being held to infringe any intellectual property rights in the course of or in connection with the Contract or the licence granted in clause 4.1.

5. INSURANCE

The Contractor has effected and will maintain professional indemnity insurance in an amount of [£X]¹ for each and every claim or series of claims arising out of the same event or circumstances in any one period of insurance (which period shall not be more than one year) for a period of 12 years from the date of the issue of the certificate of practical completion of the Works subject to such insurance being available in the London insurance market at reasonably competitive rates. As and when reasonably requested to do so by the Beneficiary, the Contractor shall produce for inspection documentary evidence that such insurance is being maintained and that payment has been made in respect of all premiums due under it.

6. NOTICES

Any notices to be given under this deed shall be either delivered personally or sent by first class recorded delivery post. The address for service of the Beneficiary and of the Contractor shall be as stated in this deed or such other address for service as the party to be served may have previously notified in writing to the other party. A notice shall be deemed to have been served as follows:

- 6.1 if personally delivered, at the time of delivery; or
- 6.2 if posted, at the expiration of 48 hours after the envelope containing the same was delivered into the custody of the postal authorities.

¹ Professional indemnity insurance amount to be added.

In proving such service, it shall be sufficient to prove that personal delivery was made or that the envelope containing such notice was properly addressed and delivered into the custody of the postal authorities as a pre-paid first class recorded delivery letter.

7. GENERAL

- 7.1 The Contractor shall have no claim whatsoever against the Beneficiary in respect of any damage, loss or expense howsoever arising out of or in connection with the Contract or any amounts due to the Contractor thereunder.
- 7.2 The Beneficiary may assign the benefit of this deed on a maximum of two occasions without the consent of the Contractor. The benefit of this deed may also be assigned by way of security or charged without the consent of the Contractor to any mortgagee of the Beneficiary or its assignees on any number of occasions.
- 7.3 The parties to this deed do not intend that any term of this deed should be enforceable, by virtue of the Contracts (Rights of Third Parties) Act 1999, by any person who is not a party to this deed.
- 7.4 If for any reason any clause in this deed shall be found to be ineffective inoperable or unenforceable, it shall be severed and deemed to be deleted from this deed and in such event the remaining provisions of this deed shall continue to have full force and effect.
- 7.5 [The Contractor hereby authorises and nominates the following agent to accept service of any proceedings under this deed on its behalf:
- [INSERT NAME AND ADDRESS OF PROCESS AGENT FOR SERVICE OF NOTICES IN ENGLAND].]***
- 7.6 This deed shall be governed by and construed in accordance with the law of England and any dispute or difference concerned with its terms shall be referred to the non-exclusive jurisdiction of the courts of England.

IN WITNESS whereof the parties have caused this agreement to be executed (as a deed in the case of the Contractor) on the date first before written.

Executed as a deed by [**CONTRACTOR**]:)
)

Signature _____

Name (block capitals) _____

Director

Signature _____

Name (block capitals) _____

Secretary/Director

Signed for and on behalf of)
THE SECRETARY OF STATE FOR)
DEFENCE by:)

Signature _____

Name (block capitals) _____

**Authorised
signatory**