

SCHEDULE 26: DISPUTE RESOLUTION**1. Outline of Dispute Resolution Procedure**

- 1.1 Subject to all the other provisions of this Dispute Resolution Procedure, all Disputes shall proceed as follows:
- (A) any Dispute which is not resolved by the Performance and Finance Working Group will be referred to the Operating Board for resolution;
 - (B) if not resolved by the Operating Board, the Dispute will be referred to the Strategic Board for resolution;
 - (C) if not resolved by the Strategic Board, the Dispute will be referred to an adjudicator appointed in accordance with paragraph 3 (the "Adjudicator") for determination; and
 - (D) if not resolved by adjudication, or if a Party wishes to challenge the Adjudicator's determination, the Dispute may be referred to an arbitrator appointed in accordance with paragraph 6 (the "Arbitrator") for determination.

2. Initial Consideration of Dispute

- 2.1 The Dispute Resolution Procedure shall commence when one Party serves notice (a "Dispute Notice") on the other Party of a Dispute. The Dispute Notice shall include the following details:
- (A) brief details of the issue(s) to be resolved;
 - (B) copies of all documents which that Party considers to be important and to have a direct bearing upon the Dispute; and
 - (C) brief details of the determination, relief, remedy or recourse which that Party seeks.
- 2.2 If, when a Dispute Notice is served under paragraph 2.1, the Operating Board is scheduled to meet within not less than 3 nor more than 10 Business Days after such service, the Dispute shall be referred to and considered at that meeting; otherwise, a meeting of the Operating Board shall be convened within not less than 3 nor more than 10 Business Days after such service, and the Dispute shall be referred to and considered at the meeting so convened.
- 2.3 If the Dispute is not resolved at the meeting of the Operating Board under paragraph 2.2, the Operating Board shall, at that same meeting, refer the Dispute to the Strategic Board for consideration under paragraph 2.4.
- 2.4 If, when a Dispute is referred by the Operating Board to the Strategic Board under paragraph 2.3, the Strategic Board is scheduled to meet within not less than 3 nor more than 10 Business Days after the relevant meeting of the Operating Board, the Dispute shall be referred to and considered at that meeting of the Strategic Board; otherwise, a meeting of the Strategic Board shall be convened within not less than 3 nor more than 10 Business Days after such meeting of the Operating Board, and the Dispute shall be referred to and considered at the meeting so convened.
- 2.5 If the Dispute is not resolved at the meeting of the Strategic Board under paragraph 2.4, either Party may refer the Dispute to be determined by an Adjudicator in accordance with paragraph 3 (*Referral to Adjudicator*).

2.6 For the purposes of this paragraph 2:

- (A) the Parties shall procure that their respective representatives on the Operating Board and the Strategic Board, as applicable, endeavour to negotiate in good faith to resolve any Dispute by agreement (but for the avoidance of doubt nothing in this paragraph 2.6(A) will oblige any Party to accept or refuse any particular terms); and
- (B) any determination of the Operating Board or the Strategic Board shall be made in accordance with the provisions of schedule 12 (*Governance*) of the Agreement and must be recorded in writing with a copy to each Party.

3. **Referral to Adjudicator**

3.1 Subject to paragraph 7 (*General*) of this schedule 26, no Dispute may be referred to an Adjudicator, and no Adjudicator shall have jurisdiction over any Dispute, unless:

- (A) a Dispute Notice in respect of such Dispute has been served under paragraph 2.1, such Dispute has been considered and not resolved by the Operating Board under paragraphs 2.2 and 2.3 and by the Strategic Board under paragraphs 2.3 and 2.4, and such Dispute accordingly is eligible for reference to an Adjudicator under paragraph 2.5; or
- (B) the Parties agree in writing that such Dispute may be referred to an Adjudicator.

3.2 A Dispute may be referred to an Adjudicator for resolution in the following manner:

- (A) one party (the "Claimant") may serve notice (an "Adjudication Notice") on the other party (the "Respondent"), identifying the Dispute by reference to the relevant Dispute Notice, stating that it wishes such Dispute to be resolved by an Adjudicator, and proposing a nominee to serve as the Adjudicator in respect of such Dispute;
- (B) within 3 Business Days of an Adjudication Notice being served, the Parties shall endeavour to agree on the identity of a nominee to serve as the Adjudicator in respect of the Dispute;
- (C) if the parties are unable to agree upon the identity of a person to be nominated as the Adjudicator in respect of the Dispute within the time specified in paragraph 3.2(B), either Party may refer the matter to the Centre for Effective Dispute Resolution (or other equivalent body), which body shall be requested to provide a nominee to serve as the Adjudicator in respect of the Dispute;
- (D) a person whose identity is agreed under paragraph 3.2(B) or provided under paragraph 3.2(C) is referred to below as a "Nominee".

3.3 Subject to paragraphs 3.4 and 3.5 and unless the Parties agree otherwise, no person may be proposed as a Nominee unless such person:

- (A) is a natural person who has appropriate expertise and qualifications (if any) in at least one discipline relevant to the issue(s) which arise from, or may arise during the course of resolving, the relevant Dispute;
- (B) has not less than 7 years' experience in such discipline;
- (C) is, at the time of nomination and appointment, currently employed in such discipline; and
- (D) is independent of the Parties.

3.4 For the purposes of paragraph 3.3:

- (A) where the relevant issues include, or may include, the construction or interpretation of the Agreement, the law is a relevant discipline and the Nominee must satisfy paragraphs 3.3(B), 3.3(C) and 3.3(D) in respect thereof; and
- (B) otherwise, where relevant issues include, or may include, the interpretation, completion, preparation, or calculation of accounts or figures, accountancy is a relevant discipline.

3.5 Once a Nominee is identified in respect of a Dispute, the Claimant shall, as soon as practicable thereafter, send a notice to the Nominee (with a copy to the Respondent) which shall include the following:

- (A) the names of the Parties and details of the Dispute;
- (B) a statement that the information disclosed in the notification is confidential and that it should not be disclosed, copied or revealed, whether the appointment is accepted or not; and
- (C) a request for confirmation within 5 Business Days:
 - (1) that the Nominee is able and willing to act as Adjudicator in accordance with the procedures and requirements set out in this schedule;
 - (2) of the Nominee's proposals as to his fees and expenses; and
 - (3) of the Nominee's proposals as to any other terms upon which the Nominee is willing to act.

3.6 Within 5 Business Days of receipt of the Nominee's response to the notice issued under paragraph 3.5, the Parties shall endeavour to agree the terms of the Nominee's appointment as Adjudicator and to enter into a written agreement (to which each of the Parties and the Nominee shall be party) appointing the Nominee to act as Adjudicator in respect of the Dispute and referring the Dispute to him.

3.7 If the Parties are unable to agree with the Nominee as to the amount of his remuneration and/or the other terms of his appointment:

- (A) If one Party is willing to agree to what the proposed Adjudicator proposes, but the other is not, then:
 - (1) the Centre for Effective Dispute Resolution shall be asked to appoint a separate person who is in its opinion currently practising and sufficiently experienced in alternative dispute resolution to determine whether the Nominee's proposed terms of appointment are reasonable in the light of normal commercial practice in London;
 - (2) such person shall endeavour to make such determination within 5 Business Days of appointment, shall do so acting as expert and not as arbitrator, and shall do so solely on the basis of one round of written submissions from each of the Parties;
 - (3) if it is thus determined that the Nominee's proposed terms of appointment are so reasonable, the Parties shall enter into a written agreement with the Nominee appointing the Nominee as Adjudicator on those terms;

- (4) if it is thus determined that the Nominee's proposed terms of appointment are not so reasonable, the Nominee shall be deemed unable to act as Adjudicator; and
 - (5) in either case, the determination under this paragraph 3.7(A) shall be final and binding, without (for the avoidance of doubt) any recourse to adjudication under this paragraph 3 or to arbitration under paragraph 6.
 - (B) If neither Party is willing to agree to what the Nominee proposes, the Nominee will be deemed to be unable to act as Adjudicator.
- 3.8 If, using all reasonable means, the Nominee is unable to be contacted or fails to respond to the request under paragraph 3.5 within 5 Business Days, that Nominee will be deemed to be unable to act as Adjudicator.
- 3.9 If a Nominee is or is deemed to be unable or unwilling to act, the Parties shall repeat the procedures set out in this paragraph 3 to identify a further Nominee, and shall do so until either:
- (A) a Nominee is appointed as Adjudicator; or
 - (B) the procedures set out above have been followed in respect of two Nominees and each of them is or is deemed to be unable or unwilling to act.
- 3.10 Once an Adjudicator is appointed in respect of a Dispute neither such appointment nor any determination of that Adjudicator shall be invalid solely on the grounds that:
- (A) the Dispute was ineligible for reference to an Adjudicator under paragraph 3.1;
 - (B) the Adjudicator does not have experience in a discipline relevant or appropriate to the issues raised by the relevant Dispute; and/or
 - (C) the Adjudicator does not satisfy any of the requirements of paragraph 3.3.
4. **Terms of Adjudicator's Appointment**
- 4.1 The terms upon which the Adjudicator is appointed by the Parties shall include the following:
- (A) In the adjudication of a Dispute, the Adjudicator:
 - (1) shall determine all matters in issue between the Parties on the Dispute;
 - (2) may take the initiative in ascertaining matters of fact and law, provided that where the Adjudicator identifies any such matters and before relying on them in making any determination, the Adjudicator shall first place such matters before the Parties and afford them the opportunity to comment thereon;
 - (3) may, where he considers it appropriate, direct any Party to make any payment by way of compensation and/or damages to another Party;
 - (4) may, where he considers it appropriate in his discretion, and having in mind the outcome of the Dispute and the Parties' conduct in respect of the Dispute, direct any Party to pay any amount in respect of any other Party's costs and expenses incurred in relation to the Adjudicator's determination, and/or in respect of the fees and expenses of the Adjudicator and those persons employed by him to assist in the adjudication (the "Adjudicator's Costs"), such amount not in any case to exceed the actual amount incurred;

- (5) may, where he considers it appropriate in his discretion, award interest in respect of any amounts falling within paragraphs 4.1(A)(3) and 4.1(A)(4), both from and from any date prior to the Adjudicator's decision, until payment of the relevant sum is made in full, at such reasonable commercial rate as the Adjudicator thinks fit; and
- (6) shall provide the Parties with a written decision, including reasons for his decision.
- (B) The Adjudicator shall have a duty to act fairly and impartially, giving each Party a reasonable opportunity, in the light of the timetable, of putting its case and dealing with the other Party's case.
- (C) The Adjudicator, his employees and agents (including any such adviser as is referred to in paragraph 4.1(H)) shall not be liable for anything done or omitted in the discharge or purported discharge of the Adjudicator's functions as an adjudicator, unless the act or omission is in bad faith.
- (D) Any direction the Adjudicator may make under paragraph 4.1(A)(4) in respect of the Adjudicator's Costs shall affect only liability as between the Parties. As between the Parties and the Adjudicator or those persons employed by him to assist in the Adjudication, each of the Parties shall be jointly and severally liable for the Adjudication Costs.
- (E) The Adjudicator shall be independent of the Parties and the relationship of the Parties and the Adjudicator shall in no event be construed to be that of principal and agent or master and servant.
- (F) The Adjudicator shall not act as an arbitrator nor as a mediator, conciliator or any similar role. The provisions of the Arbitration Act 1996 shall not apply to the Adjudicator or his determination or method of determination.
- (G) The Adjudicator shall in determining any Dispute observe the provisions of clause 90 (*Disclosure to the Authority*) of the Agreement in relation to disclosure of Information.
- (H) The Adjudicator shall be entitled to appoint such independent legal or technical adviser to provide him with information on technical matters so as to permit him to reach his decision as he shall think fit. All such appointments shall be notified to the Parties in writing and the Adjudicator shall provide to the Parties a copy of any written report or advice provided by any such adviser and a summary of any advice given orally. Notwithstanding the advice of any such adviser the Adjudicator shall reach a decision based on his own judgment.
- (I) Insofar as reasonably required for the purposes of determining the Dispute that has been referred to him, the Adjudicator, his employees and agents (including any such adviser as is referred to in paragraph 4.1(H)) shall be entitled to visit and inspect any premises owned or occupied by the Parties for the purposes of the Agreement and to take any samples or conduct any measurements or technical investigations.
- (J) The Adjudicator shall be entitled to correct slips (including clerical, arithmetical and spelling errors) in his decision within a reasonable time not exceeding 3 Business Days after he has provided his decision to the Parties.
- (K) The Adjudicator is appointed to determine the dispute or disputes between the Parties and his appointment, terms of appointment, decision and determination

may not be relied upon by third parties, to whom he shall owe no duty of care or otherwise.

- (L) The Adjudicator shall comply with the timetable and procedures set out in paragraph 5.

5. **Adjudication Procedure**

- 5.1 In this paragraph 5, "Appointment Date" means the date on which a Nominee is appointed as Adjudicator in respect of a Dispute.
- 5.2 Not later than 5 Business Days following the Appointment Date, the Adjudicator shall, by giving reasonable notice to each Party, convene a meeting with the Parties, to be held no later than 10 Business Days following the Appointment Date, at which the Adjudicator shall raise any matters upon which the Adjudicator requires clarification and discuss with the Parties any procedural requirements the Adjudicator may have, and at which the Adjudicator may request (orally or in writing) any further information from either of the Parties.
- 5.3 Not later than 10 Business Days following the Appointment Date, each Party may submit written representations to the Adjudicator, together with all supporting documentation and information.
- 5.4 At any time not later than 10 Business Days after the Appointment Date, the Adjudicator may, at his discretion and on reasonable notice:
- (A) request any further information from either of the Parties, either orally or in writing;
 - (B) convene a meeting of such length as the Adjudicator determines for the purpose of hearing witnesses and/or oral submissions on behalf of the Parties; and/or
 - (C) conduct a visit to any premises owned or occupied by the Parties for the purposes of the Agreement or attend to take samples or to undertake any measurements or technical investigations as the Adjudicator determines.
- 5.5 Any communication from the Adjudicator to a Party or *vice versa* shall be copied to both of the Parties. Reasonable notice shall be given to both of the Parties of any meeting or discussion between the Adjudicator and any Party, or of any visit by the Adjudicator to any premises of a Party, and a representative of each Party shall be entitled to attend such meeting, discussion, or visit.
- 5.6 The Adjudicator shall provide a draft of his decision to the Parties not later than 20 Business Days following the Appointment Date.
- 5.7 Each Party may, within 5 Business Days of the issue of the draft decision, submit to the Adjudicator any documentation or other information, submissions or comments (which shall not exceed such quantity as the Adjudicator may reasonably stipulate) on or in respect of the draft decision, and such documentation or other information, submissions or comments shall be copied to the other Party.
- 5.8 The Adjudicator shall issue his final decision on the Dispute to the Parties not sooner than the period under paragraph 5.7 has expired and, subject to that, no later than 30 Business Days following the Appointment Date.
- 5.9 If the Adjudicator fails to issue a final decision by the time required under paragraph 5.8, unless otherwise agreed by the Parties, the Adjudicator shall be deemed to be unwilling to act and, at the request of either Party by notice in writing to the other, the appointment of

such Adjudicator shall cease and the Parties shall seek to appoint a replacement Adjudicator in accordance with paragraph 3.9.

- 5.10 Not later than 20 Business Days following delivery of the Adjudicator's final decision under paragraph 5.8, either Party may serve a written notice on the other Party that it does not accept the determination and that it wishes to refer the matter to arbitration (an "Arbitration Notice").
- 5.11 If no Arbitration Notice is served within the period specified in paragraph 5.10, and in the absence of fraud, bad faith on the part of the Adjudicator, or manifest error on the face of the decision, the Adjudicator's determination shall be final and binding upon the Parties.
- 5.12 The Parties and the Adjudicator shall keep confidential:
- (A) the fact that the adjudication is taking or has taken place, and its outcome; and
 - (B) all documentation, information, data, submissions and comments disclosed or delivered, whether in writing or otherwise, between the Parties, or between the Parties and the Adjudicator, for the purposes of paragraphs 3, 4 and 5 of this schedule;

but nothing in this paragraph 5.12 prevents either Party from submitting such material in any arbitration under paragraph 6.

6. **Referral to Arbitration**

- 6.1 Any Dispute shall be referred to and finally resolved by arbitration in accordance with this paragraph 6. Subject to paragraph 7 of this schedule, no Dispute may be referred to arbitration, and no Arbitrator shall have jurisdiction over any Dispute, unless:
- (A) an Adjudicator's final decision has been issued in respect of such Dispute under paragraph 5.8, and an Arbitration Notice has been validly served in respect of such Dispute under paragraph 5.10;
 - (B) paragraph 3.9(B) applies in respect of such Dispute; or
 - (C) the Parties agree in writing that such Dispute may be referred to arbitration.
- 6.2 Any Dispute in respect of which an Arbitration Notice is validly served, or which falls within paragraphs 6.1(B) or 6.1(C), shall be referred to and finally resolved by arbitration under the Rules of the London Court of International Arbitration (the "LCIA Rules"), which rules are to be deemed to be incorporated by reference herein.
- 6.3 For the purposes of any arbitration under paragraph 6.2, the seat of the arbitration shall be London; the tribunal shall comprise a sole arbitrator to be appointed in accordance with the LCIA Rules; the language of the arbitration shall be English and every order and award shall be in English; and the agreement to arbitrate shall be governed by and construed in accordance with English law.
- 6.4 A Request for Arbitration under the LCIA Rules shall be filed with the LCIA, and served on the other Party:
- (A) where an Arbitration Notice has been served under paragraph 5.10, by the Party which served that Notice, not more than 10 Business Days after service of that Notice;
 - (B) where paragraph 3.9(B) applies, by the Party which served the Adjudication Notice, not more than 10 Business Days after paragraph 3.9(B) becomes applicable; and

- (C) where the Parties have agreed in writing that such Dispute may be referred to arbitration, by either Party, not more than 10 Business Days after such agreement.
- 6.5 A Response to the Request for Arbitration under the LCIA Rules shall be filed with the LCIA, and served on the other Party, not more than 10 Business Days after service of the Request for Arbitration, notwithstanding any longer time period under the LCIA Rules.
- 6.6 Each of the Parties shall state, in the Request for Arbitration or Response to the Request for Arbitration as the case may be, if it considers that the Arbitrator ought to be a member of a specified profession other than that of barrister or solicitor. No person shall be appointed as an Arbitrator unless:
- (A) he is a practising barrister or solicitor of England & Wales; or
- (B) such other profession as the Parties may agree, in their Request for Arbitration and Response to the Request for Arbitration respectively.
- 6.7 In addition to the provisions of the LCIA Rules the Parties agree that:
- (A) the Arbitrator shall have the power to open up, review and revise any opinion, certificate, instruction, determination or decision of whatever nature given or made under this Agreement;
- (B) the Arbitrator may have regard to, but shall not be bound by, the final decision of the Adjudicator; and
- (C) the Arbitrator shall be requested to deliver his final award within 20 Business Days of concluding any hearings which he may have held in connection with the matter and in any event within 4 months of the date of his appointment.
- 6.8 The award of the Arbitrator shall be final and binding on both Parties save in accordance with the Arbitration Act 1996 (to the extent applicable).
- 6.9 The Parties and the Arbitrator shall keep the fact that the arbitration is taking place, and its outcome, confidential.
- 6.10 All documentation, information, data, submissions and comments disclosed or delivered, whether in writing or otherwise by either Party to the Arbitrator or to the other Party either in connection with or in consequence of the appointment of the Arbitrator shall be treated as confidential and the Arbitrator and the Parties shall not disclose any of them (including contents and copies in any form) in connection with any proceedings in any court.
7. **General**
- 7.1 Any of the time limits set out in this schedule may be varied by agreement between the Parties.
- 7.2 Save as may be ordered by an Adjudicator or Arbitrator, each of the Parties shall bear its own costs of an Adjudication or Arbitration (as the case may be).
- 7.3 Subject to the provisions of clause 40 (*Supervening Events*) and paragraph 7.4 of this schedule 26 and unless the DP's right and obligation to provide the Services has already expired or terminated pursuant to the provisions of the Agreement, the Parties shall continue to comply with, and perform, their obligations pursuant to this Agreement notwithstanding that a Dispute has arisen or been referred for determination under any of the procedures described in this Agreement, and regardless of the nature of the Dispute that has arisen.

- 7.4 The procedure set out in this schedule shall continue notwithstanding any failure by a Party to take part in any way, including where a Party fails to make submissions or to issue a response within the required times (as applicable). The Adjudicator or Arbitrator (as appropriate) shall be entitled to disregard any information received after the required time if in the opinion of the Adjudicator or Arbitrator (as appropriate) it is just and fair to do so, unless provided in response to a request by the Adjudicator or Arbitrator (as appropriate), or unless the other Party agrees that such information should not be disregarded.
- 7.5 This schedule 26 shall survive the expiry or termination (as applicable) of the Agreement, save that the Parties shall be entitled to refer Disputes to the Adjudicator or the Arbitrator (as applicable) without prior recourse to the Operating Board or the Strategic Board, and accordingly after the Expiry Date or Termination Date (as applicable) the following paragraphs of this schedule shall be deemed to be amended as follows:
- (A) paragraphs 1.1(A) and 1.1(B) shall no longer apply;
 - (B) the words "if not resolved by the Strategic Board" shall be deleted in paragraph 1.1(C) so that the paragraph begins "The Dispute..."; and
 - (C) paragraphs 2.2 to 3.1 (inclusive) shall be deleted.

SCHEDULE 27: COMMERCIALLY SENSITIVE INFORMATION

Commercially Sensitive Information means the following information in relation to the DP and the Key Subcontractors (other than SupplyCo):

- (A) price rates, costs, margin, profit, IRR, EBIT, risk contingency, dividends and interest (whether baseline, projected or actual) contained in either the Agreement or a Key Subcontract, the DP Financial Model itself or contained in any other financial information provided to the Authority by the DP (save to the extent that such information is provided by the Authority);
- (B) the structure of the DP Financial Model (save to the extent that such information is provided by the Authority); and
- (C) any limits of liability or financial caps (or any liabilities which are uncapped or which are expressed to fall outside the scope of any limits of liability or financial caps) in this Agreement or a Key Subcontract.

SCHEDULE 28: CONFIDENTIALITY UNDERTAKINGS

1 BACKGROUND

- 1.1 This schedule 28 sets out the agreed form confidentiality undertaking to be entered into between the DP and a Subcontractor as required by clause 47.2(B)(1)(b) (*Licences Granted by the Authority*) of this Agreement.

THIS CONFIDENTIALITY UNDERTAKING is made on the day of 2014

- (1) **[SUBCONTRACTOR]** (company no. [•]) whose registered office is at [•] ("Subcontractor"); and
- (2) **LEIDOS EUROPE, LIMITED** (company no. 9351724) whose registered office is at Denny End Road, Waterbeach, Unit G8, Stirling House, Cambridge, United Kingdom CB25 9QE (the "DP").

- (A) The DP has contracted with the Authority to provide services to the Authority in an agreement dated [•] (the “DP Agreement”).
- (B) The Subcontractor has agreed to provide certain services to the DP as a subcontractor under an agreement between the DP and the Subcontractor dated [•] (the “Subcontract”).
- (C) The DP Agreement places an obligation of confidentiality on the DP.
- (D) Under the DP Agreement, the DP is obliged to obtain confidentiality undertakings from its subcontractors on no less onerous terms than those placed on it under the DP Agreement.

1 Definitions and interpretation

1.1 In this Confidentiality Undertaking, unless the context otherwise requires, terms and expressions shall have the following meanings:

- (A) “Affiliates” means in relation to any person any Holding Company or Subsidiary of that person or any Subsidiary of such Holding Company;
- (B) “Authority” means the Secretary of State for Defence;
- (C) “Authority Confidential Information” means all Confidential Information owned by, licensed to or otherwise made available to the Authority (and which is capable of being disclosed by the Authority) which is disclosed to the DP by or on behalf of the Authority, including (without limitation):
 - (a) the details of any Legacy Contracts and other contracts with Third Party suppliers of goods;
 - (b) any IPR and/or information contained within any goods or materials supplied to the Authority by a Third Party together with all IPR and/or information derived from the above; and
 - (c) any official secrets or matters which would affect national security;

- (D) "Confidential Information" means all information (however recorded, preserved or disclosed) which is or may reasonably be supposed to be commercially confidential including (without limitation):
- (1) the terms of the DP Agreement and any other agreement connected to the Project;
 - (2) the terms of this Confidentiality Undertaking;
 - (3) any information that would be regarded as confidential by a reasonable business person relating to:
 - (a) the business, affairs, customers, clients, suppliers, plans, intentions, or market opportunities of the disclosing party or of the disclosing party's group or its suppliers; and
 - (b) the operations, processes, product information, Know How, designs, trade secrets or software of the disclosing party or of the disclosing party's group or its suppliers;
 - (4) any information or analysis derived from such Confidential Information;
- (E) "Confidentiality Undertaking" means this deed;
- (F) "DP Agreement" has the meaning given to it in Recital A;
- (G) "Holding Company" has the meaning given in s1159 Companies Act 2006 (and for the purposes of the membership requirement in s1159(1)(b) and s1159(1)(c) a company shall be treated as a member of another company even if its shares in that other company are registered (i) in the name of its nominee, or (ii) in the name of a person (or the nominee of that person) who is holding the shares as security);
- (H) "Intellectual Property Rights" or "IPR" means patents, utility models, rights to inventions, copyright and related rights, moral rights, trade marks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, Confidential Information (including Know How and trade secrets) and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world;
- (I) "Know How" means all technical, development, and other information in connection with or relating to the provision of goods and/or services in connection with the Project (including, without limitation, in connection with any Third Party goods and/or materials received by the Authority as part of the Project) and any documentary evidence thereof, provided such information is not in the public domain;
- (J) "Law" means any enactment, statute, directive, regulation or rule or any other law, proclamation, decree, bye-law (including, for the avoidance of doubt, any military bye-law), decision, notice, order, rule (including, without limitation, any rule and any binding decision of any court), statutory instrument or other delegated or

subordinate legislation and any directions, codes of practice or guidance issued pursuant to any legislation and/or, in any such case, the equivalent thereof (howsoever described) applicable from time to time in any jurisdiction in which or through which the Subcontractor Services are to be performed; including any Act of Parliament or subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, exercise of the Royal Prerogative and enforceable community right within the meaning of Section 2 of the European Communities Act 1972, in each case in the United Kingdom; and any other international treaty or convention to which the United Kingdom is a signatory;

- (K) "Legacy Contract" means an existing contract between the Authority and a Third Party contractor;
- (L) "Project" means the DP Agreement, the subject-matter of the DP Agreement and any actions carried out under or in accordance with or in connection with the DP Agreement;
- (M) "Security Requirements" means those security requirements notified to the Subcontractor by the DP from time to time in writing;
- (N) "Subcontract" has the meaning given to it in Recital (B);
- (O) "Subcontractor Services" means the services provided by the Subcontractor under the Subcontract, including the provision of goods;
- (P) "Subsidiary" has the meaning given in s1159 Companies Act 2006 (and for the purposes of the membership requirement in s1159(1)(b) and s1159(1)(c) a company shall be treated as a member of another company even if its shares in that other company are registered (i) in the name of its nominee, or (ii) in the name of a person (or the nominee of that person) who is holding the shares as security); and
- (Q) "Third Party" means any person who is not the Authority or the DP or an officer, employee or agent of the Authority or DP.

1.2 In this Confidentiality Undertaking, unless the context otherwise requires:

- (A) the singular shall include the plural and vice versa and one gender shall include the other;
- (B) a reference to any Law shall include a reference to that Law as amended, extended, consolidated or re-enacted from time to time;
- (C) any phrase introduced by the words 'including', 'includes', 'in particular', 'for example' or similar shall be construed as illustrative and without limitation to the generality of the related general words;
- (D) other grammatical forms of defined words or expressions have their corresponding meaning; and
- (E) references to clauses shall, unless otherwise expressly provided, mean references to clauses in this Confidentiality Undertaking.

2. **Confidentiality**

2.1 The Subcontractor shall:

- (A) treat all Authority Confidential Information as confidential and keep it in secure custody (as is appropriate depending upon the form in which such materials are stored and the nature of the Authority Confidential Information contained in those materials);
- (B) not disclose the whole or part of any Authority Confidential Information to any person without the DP's prior written consent (who shall in turn obtain the prior written consent of the Authority), and always subject to obligations of confidentiality which are equivalent to those in this Confidentiality Undertaking;
- (C) not disclose, copy, reproduce, publish or distribute the whole or part of any Authority Confidential Information to any of its officers, employees, agents or consultants who are directly involved in the provision of the Subcontractor Services and who need to know the information, without first ensuring that such individuals are aware of and are contractually required to comply with these obligations of confidentiality (both during and after their employment or engagement) prior to commencing any work in connection with the provision of the Subcontractor Services. In the event that the DP or the Authority becomes aware of a breach or suspected breach of such contractual obligations of confidence, the Subcontractor undertakes immediately to enforce any such contractual obligations of confidence upon the DP's written request at the Subcontractor's cost. The Subcontractor acknowledges and agrees that the DP may at any time audit the Subcontractor's compliance with this clause 2.1(C) and shall provide the DP with reasonable access to the Subcontractor's premises, personnel and documents during normal business hours in order to conduct such audit. The terms of this clause 2.1(C) shall survive termination or expiry of any contractual relationship between the DP and the Subcontractor;
- (D) immediately notify the DP if it suspects or becomes aware of any unauthorised access, copying, use or disclosure in any form of any Authority Confidential Information;
- (E) at the DP's reasonable request, assist the DP, at its own expense, in taking action to remedy any unauthorised access, copying, use or disclosure of Authority Confidential Information; and
- (F) not use or copy any Authority Confidential Information disclosed to the Subcontractor for any purpose other than to enable the performance of the Subcontractor Services.

3. **Exclusions**

3.1 Clause 2 shall not apply to the extent that:

- (A) disclosure is a requirement of Law placed upon the Subcontractor, including any order of a court of a competent jurisdiction, the rules of any stock exchange or governmental or regulatory authority having the force of Law, and any requirements for disclosure under the Freedom of Information Act 2000 or the Environmental Information Regulations 2004;

- (B) the information was lawfully in the possession of the Subcontractor without being subject to an obligation of confidentiality prior to its disclosure by the DP;
- (C) the information was obtained from a Third Party without being subject to an obligation of confidentiality;
- (D) the information was already in the public domain at the time of disclosure otherwise than by a breach of this Confidentiality Undertaking; or
- (E) the information is independently developed without access to the Authority Confidential Information.

3.2 If the Subcontractor is required by law to make a disclosure of any Authority Confidential Information, the Subcontractor shall as soon as practicable (and strictly to the extent permitted by Law):

- (A) notify the DP of the full circumstances of the required disclosure including the relevant Law and/or regulatory body requiring such disclosure and the Authority Confidential Information to which such disclosure would apply;
- (B) supply to the DP a reasonable legal opinion indicating that disclosure is necessary (which may include a note of advice from an in house legal adviser of the Subcontractor or advice from the Subcontractor's solicitors);
- (C) consult with the DP as to the possible steps to avoid or limit disclosure and take those steps, provided that they do not result in adverse consequences to the Authority (as communicated to the DP by the Authority) or the DP (taking into account the principle that the DP may have required the Subcontractor to take advantage of the maximum time available before making disclosure);
- (D) to the extent reasonably possible, seek confidentiality undertakings from the body which is to receive the Authority Confidential Information; and
- (E) agree with the DP in advance the particulars of the Authority Confidential Information to be disclosed including, in the case of any stock exchange announcement, the relevant wording (provided that compliance with the provisions of this clause 3.2 shall not have required the Subcontractor to place itself in breach of any Law).

3.3 The Subcontractor shall (and shall ensure that its Affiliates or any other relevant Third Party shall):

- (A) implement security practices against any unauthorised copying, use, disclosure (whether that disclosure is oral, in writing or in any other form), access and damage or destruction of Authority Confidential Information including the implementation of and compliance with those security requirements relating to the Authority Confidential Information as set out in the Security Requirements or as otherwise notified by the Authority from time to time;
- (B) ensure that all copies of Authority Confidential Information generated by it shall retain any original marking in accordance with the security marking classification set out in the Security Requirements or as otherwise notified by the Authority to DP, from time to time; and

- (C) ensure that the Authority Confidential Information can be separately identified from the Subcontractor's own information for the purposes of the Authority's audit rights under the DP Agreement and any equivalent audit right under the Subcontract, and the Subcontractor's obligations to return and destroy such information on termination or expiry of the DP Agreement in accordance with clause 4.

4. **Return of Authority Confidential Information on Termination or Expiry**

- 4.1 Subject to clause 4.2 and without limiting the Subcontractor's other obligations under this Confidentiality Undertaking, if directed to do so by the DP at any time and in any event promptly following termination or expiry of the Subcontract and/or DP Agreement, the Subcontractor shall promptly:

- (A) provide to the DP, in order for the DP to return to the Authority, destroy and/or irretrievably delete (at the Authority's election):

- (1) all Authority Confidential Information which it received in connection with the Subcontract;
- (2) all records (in any medium whatsoever) containing the Authority Confidential Information related to the provision of the Subcontractor Services;
- (3) all documentation (in any medium whatsoever) relating to any other Authority Confidential Information,

and

- (B) shall certify to the DP on oath that it does not retain any such Authority Confidential Information.

- 4.2 Clause 4.1 shall not apply to any copies of Authority Confidential Information which:

- (A) are necessary for the Subcontractor to assist the DP in connection with its continuing obligations under the DP Agreement following the termination or expiry of the DP Agreement; or
- (B) the Subcontractor is required to keep by Law,

for as long as the exceptions set out in clauses 4.2(A) and 4.2(B) above continue to be applicable.

5. **Remedies for Breach of Confidentiality**

The Subcontractor acknowledges and agrees that damages may not be an adequate remedy for any breach of this Confidentiality Undertaking by the Subcontractor and the DP (and/or the Authority) may be entitled to remedies of an injunction, specific performance and any other appropriate equitable relief for any breach of this Confidentiality Undertaking.

6. **General**

- 6.1 The undertakings given in this Confidentiality Undertaking shall continue for as long as any information disclosed to the Subcontractor remains confidential.
- 6.2 The Subcontractor may not assign this Confidentiality Undertaking.

- 6.3 A person who is not a party to this Confidentiality Undertaking may not enforce any of its terms under the Contracts (Rights of Third Parties) Act 1999. Notwithstanding the foregoing, the parties expressly acknowledge and agree that the Authority may enforce any term of this Confidentiality Undertaking in connection with the Authority Confidential Information as if it were a party to it.
- 6.4 All additions or modifications to this Confidentiality Undertaking must be made in writing and must be signed by both parties.
- 6.5 The Subcontractor shall, at its own cost, perform (or procure the performance of) all further acts and things and execute and deliver (or procure the execution or delivery of) all further documents required by Law or which the DP (or the Authority) requests in order to give effect to the terms of this Confidentiality Undertaking.
- 6.6 Any notice under this Confidentiality Undertaking shall be in writing and shall be delivered by post to the address of the party in question set out at the beginning of this Confidentiality Undertaking or such other address as the parties may notify one another from time to time.
- 6.7 This Confidentiality Undertaking shall be governed by and shall be interpreted in accordance with the laws of England and the parties undertake to submit to the exclusive jurisdiction of the courts of England and Wales.

AS WITNESS the hands of the parties or their respective duly authorised representatives the day and year first above written

DATED

DATED

Software Escrow Agreement

between

The Secretary of State for Defence

as
the Authority

Leidos Europe, Limited

as the DP

and

[•]

as Escrow Agent

relating to

the deposit of source code in escrow by the DP

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THIS AGREEMENT is dated

and made

BETWEEN:

- (1) **THE SECRETARY OF STATE FOR DEFENCE**, (the "Authority"); and
- (2) **LEIDOS EUROPE, LIMITED** a company registered in England with number 9351724 whose registered office is at Denny End Road, Waterbeach, Unit G8, Stirling House, Cambridge, United Kingdom CB25 9QE (the "DP"); and
- (3) [•] a company registered in England with number [•] whose registered office is at [•] (the "Escrow Agent").

BACKGROUND:

- (A) The Authority and the DP have entered into the Services Agreement.
- (B) Under the terms of the Services Agreement the DP is required to deposit the source code for certain software in escrow to be released to the Authority should certain circumstances arise. Accordingly the DP and the Authority have agreed to promptly enter into this agreement upon execution of the Services Agreement.

IN CONSIDERATION OF THE MUTUAL UNDERTAKINGS AND OBLIGATIONS CONTAINED IN THIS AGREEMENT, THE PARTIES AGREE THAT:

1. Definitions and Interpretation

1.1 In this Agreement the following terms shall have the following meanings:

"Affiliate" means in relation to any person any Holding Company or Subsidiary of that person or any Subsidiary of such Holding Company.

"Agreement" means the terms and conditions of this escrow agreement set out below, including the schedules hereto.

"Business Day" means a day (other than a Saturday or Sunday) on which banks are open for domestic business in the city of London.

"Confidential Information" means all technical and/or commercial information not in the public domain and which is designated in writing as confidential by any party together with all other information of any party which may reasonably be regarded as confidential information.

"Full Verification" means the tests and processes forming the Escrow Agent's full verification service and/or such other tests and processes as may be agreed between the parties for the verification of the Material.

"Guarantor" has the meaning given to it in the Services Agreement.

"Holding Company" has the meaning given in section 1159 of the Companies Act 2006 (and for the purposes of the membership requirement in section 1159(1)(b) and section 1159(1)(c) a company shall be treated as a member of another company even if its shares in that other company are registered (i) in the name of its nominee, or (ii) in the name of a person (or the nominee of that person) who is holding the shares as security).

"Independent Expert" means a suitably qualified and independent solicitor or barrister.

"Insolvency Event" means the occurrence of any of the following events (or any event analogous to any of the following events in a jurisdiction other than England and Wales) in relation to an entity:

- (A) passing a resolution for its winding up or a court of competent jurisdiction making an order for the entity to be wound up or dissolved or the entity being otherwise dissolved;
- (B) the appointment of a liquidator, administrator, administrative receiver or, the making of an administration order in relation to the entity or an encumbrancer, manager or receiver taking possession of or selling all or a material part of the entity's undertaking, assets, rights or revenue the subject of the charge;
- (C) any proposal is made for a voluntary arrangement, a composition of debts or a scheme of arrangement to be approved whether under the Insolvency Act 1986 or the Companies Act 1985 or otherwise with all or a substantial majority of its creditors;
- (D) being unable or admitting its inability to pay its debts as they fall due or being capable of being deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 (but with the phrase "it is proved to the satisfaction of the court that" removed from subsection 123(2) of the Insolvency Act 1986);
- (E) enforcement of any security over all or a material part of the assets of the entity;
- (F) any expropriation, attachment, sequestration, distress or execution affecting all or any material part of any asset or assets of the entity which is not discharged within (fourteen) 14 days;
- (G) any event which, in the Authority's reasonable opinion, is likely to give rise to any of the above events in paragraphs (A) to (F), including breach of cover ratio;
- (H) entering into a compromise or arrangement with its creditors; or
- (I) except where applicable, in respect of any resolution by the relevant entity or a court order that such entity be wound up for the purpose of a solvent reconstruction or amalgamation.

"Integrity Testing" means those tests and processes forming the Escrow Agent's integrity testing service, in so far as they can be applied to the Material.

"Intellectual Property Rights" means any copyright, patents, design patents, registered designs, design rights, utility models, trade marks, service marks, trade secrets, know how, database rights, moral rights, confidential information, trade or business names, domain names and any other rights of a similar nature including industrial and proprietary rights and other similar protected rights in any country or jurisdiction together with all registrations, applications to register and rights to apply for registration of any of the aforementioned rights and any licences of or in respect of such rights.

"Material" means the Source Code of the Package and such other material and documentation (including updates and upgrades thereto and new versions thereof) as are necessary to be delivered or deposited to comply with the terms of the Services Agreement.

"Order Form" means the order form setting out the details of the order placed with Escrow Agent for setting up this Agreement.

"Package" means the software package together with any updates and upgrades thereto and new versions thereof to be deposited hereunder as agreed to by the Authority and the DP under the Services Agreement details of which are set out in schedule 1.

"Parent Company" means the ultimate Holding Company of the DP.

"Release Purposes" means any purpose required to provide or receive the Services or any analogous services that replace the Services pursuant to and as permitted by the Services Agreement.

"Rectification Plan Process" means the rectification plan process described in schedule 18 of the Services Agreement.

"Services" means the services to be provided by the DP and all the obligations to be performed by the DP under the Services Agreement, and anything necessary to comply with them, and any services to be provided and obligations to be performed by the DP in accordance with any changes as set out under the Services Agreement.

"Services Agreement" means the services agreement between the Authority and the DP dated on or around the date of this Agreement and under which the DP was granted a licence to use the Intellectual Property Rights in the Material owned by the Authority.

"Source Code" means computer programing code of the Material in human readable form.

"Subsidiary" has the meaning given in section 1159 of the Companies Act 2006 (and for the purposes of the membership requirement in section 1159(1)(b) and section 1159(1)(c) a company shall be treated as a member of another company even if its shares in that other company are registered: (i) in the name of its nominee, or (ii) in the name of a person (or the nominee of that person) who is holding the shares as security).

"Third Party Material" means Source Code in the Material which is not the confidential information and Intellectual Property Rights of the Authority or the DP.

1.2 This Agreement shall be interpreted in accordance with the following:

- (A) headings are for ease of reference only and shall not be taken into consideration in the interpretation of this Agreement;
- (B) all references to clauses and schedules are references to clauses and schedules of this Agreement; and
- (C) all references to a party or parties are references to a party or parties to this Agreement.

2. **DP's Duties and Warranties**

2.1 The DP shall:

- (A) deliver a copy of the Material to the Escrow Agent within 10 Business Days of the date of this Agreement if any such Material is then in existence, and if not, then within 10 Business Days of the Material first coming into existence;

- (B) notify the Escrow Agent of any change to the Package that necessitates a replacement deposit of the Material;
- (C) deliver a further copy of the Material to the Escrow Agent each time that there is a material change to the Package;
- (D) ensure that each copy of the Material deposited with the Escrow Agent comprises the Source Code of the latest version of the Package being used in the provision of any of the Services;
- (E) deliver to the Escrow Agent a replacement copy of the Material within 30 days after the anniversary of the last delivery of the Material to ensure that the integrity of the Material media is maintained;
- (F) deliver a replacement copy of the Material to the Escrow Agent within 14 days of a notice being given to it by the Escrow Agent under the provisions of clause 4.1(C);
- (G) deliver with each deposit of the Material the following information:
 - (1) details of the deposit including the full name of the Package (i.e. the original name as set out under schedule 1 together with any new names given to the Package by the Authority or the DP), version details, media type, backup command/software used, compression used, archive hardware and operating system details; and
 - (2) password/encryption details required to access the Material;
- (H) deliver with each deposit of the Material the following technical information (where applicable):
 - (1) documentation describing the procedures for building, compiling and installing the software, including names and versions of the development tools;
 - (2) software design information (e.g. module names and functionality); and
 - (3) name and contact details of employees with knowledge of how to maintain and support the Material;
- (I) if required by the Authority, deposit a backup copy of the object code of any third party software required to access, install, build or compile or otherwise use the Material.

2.2 The DP warrants to the Escrow Agent and the Authority at the time of each deposit of the Material with the Escrow Agent that:

- (A) other than any third party object code referred to in clause 2.1(I) or any Third Party Material, the Intellectual Property Rights in the Material are either owned by the Authority or the DP pursuant to clauses 47 and 48 of the DP Contract;
- (B) in respect of any Third Party Material, it has been granted valid and on-going rights under licence by the third party owner(s) thereof to deal with such Third Party Material in the manner anticipated under this Agreement and that the DP has the express authority of such third party owner(s) to deposit the Third Party Material

under this Agreement as evidenced by a signed letter of authorisation in the form required by the Escrow Agent;

- (C) in entering into this Agreement and performing its obligations under it, it is not in breach of any of its on-going express or implied obligations to any third party(s);
- (D) the Material deposited under clause 2.1 contains all information in human-readable form (except for any third party object code deposited pursuant to clause 2.1(I)) and is on suitable media to enable a reasonably skilled programmer or analyst to understand, maintain, modify and correct the Material; and
- (E) in respect of any third party object code that the DP, at its option, or, at the request of the Authority, deposits with the Escrow Agent in conjunction with the Material pursuant to clause 2.1(I), it has the full right and authority to do so.

3. **Authority's Responsibilities and Undertakings**

3.1 In the event that the Material is released under clause 6.1, the Authority shall:

- (A) keep the Material confidential at all times;
- (B) use the Material only for the Release Purposes;
- (C) not disclose the Material to any person save such of the Authority's employees or contractors who need to know the same for such purposes. In the event that Material is disclosed to its employees or contractors, the Authority shall ensure that they are bound by the same confidentiality obligations as are contained in this clause 3.1;
- (D) hold all media containing the Material in a safe and secure environment when not in use; and
- (E) forthwith destroy the Material should the Authority cease to be entitled to use any of the Material under the terms of this Agreement or otherwise.

3.2 In the event that the Material is released under clause 6.3, it shall be the responsibility of the DP to obtain the necessary licences to utilise the object code of any Third Party Material deposited by the DP pursuant to clause 2.1(I).

4. **The Escrow Agent's Duties**

4.1 The Escrow Agent shall:

- (A) at all times during the term of this Agreement, retain the latest deposit of the Material in a safe and secure environment;
- (B) inform the Authority and the DP of the receipt of any deposit of the Material by sending to both parties a copy of the Integrity Testing report or Full Verification report (as the case may be) generated from the testing processes carried out under clause 10; and
- (C) notify the Authority and the DP if it becomes aware at any time during the term of this Agreement that the copy of the Material held by it has been lost, damaged or destroyed so that a replacement may be obtained.

- 4.2 In the event of failure by the DP to deposit any Material with the Escrow Agent, the Escrow Agent shall not be responsible for procuring such deposit and may decide to notify the Authority of the DP's failure to deposit any Material.
- 4.3 The Escrow Agent may appoint agents, contractors or sub-contractors as it deems fit to carry out the Integrity Testing and Full Verification processes. The Escrow Agent shall ensure that any such agents, contractors and sub-contractors are bound by the same confidentiality obligations as are contained in clause 8.
- 4.4 The Escrow Agent has the right to make such copies of the Material as may be necessary solely for the purposes of this Agreement.

5. **Payment**

- 5.1 The DP shall pay the Escrow Agent's standard fees and charges as published from time to time or as otherwise agreed, in the proportions set out in schedule 2. The Escrow Agent's fees as published are exclusive of value added tax.
- 5.2 The Escrow Agent shall be entitled to review and vary its standard fees and charges for its services under this Agreement from time to time but no more than once a year and only upon 45 days written notice to all the other parties.
- 5.3 All invoices are payable within 30 days from the date of invoice. The Escrow Agent reserves the right to charge interest in respect of the late payment of any sum due under this Agreement (both before and after judgment) at the rate of 2% per annum over the prevailing base rate of HSBC Bank Plc accruing on a daily basis from the due date therefor until full payment.

6. **Release Events**

- 6.1 Subject to: (i) the remaining provisions of this clause 6.1; and (ii) the receipt by the Escrow Agent of any release fee and any other fees and interest (if any) outstanding under this Agreement, the Escrow Agent will release the Material to a duly authorised officer of the Authority if any of the following events ("Release Event(s)") occur:
- (A) an Insolvency Event affecting the DP, the Parent Company, the Guarantor, SupplyCo and/or any Affiliate and/or Subcontractor whose software is deposited with the Escrow Agent;
 - (B) the DP, the Parent Company, the Guarantor, SupplyCo, any Affiliate and/or Subcontractor whose software is deposited with the Escrow Agent ceases to carry on its business or the part of its business which relates to the Material;
 - (C) the DP assigns its rights in respect of the Intellectual Property Rights in the Material to a third party ("Assignee") and the Assignee fails, within (10) Business Days of all parties' knowledge of such assignment, to continue escrow protection for the benefit of the Authority by failing to enter into either:
 - (1) a novation agreement with the Authority and the Escrow Agent for the assumption of the DP's rights and obligations under this Agreement by the Assignee; or
 - (2) a new escrow agreement with the Authority for the Material which offers the Authority substantially similar protection to that provided by this Agreement without significantly increasing the overall cost to the Authority,

provided that if the Assignee offers to enter into a novation or new escrow agreement within (10) Business Days of all parties' knowledge of the assignment and the Authority fails to accept the Assignee's offer within 30 days of such offer being notified to the Authority, there shall be no Release Event under this clause;

- (D) the DP or, where relevant, its agent, or associated company is in material breach of its obligations as to maintenance or modification of the Material under the Services Agreement or any maintenance agreement entered into in connection with the Material and has failed to remedy such material breach in accordance with the Rectification Plan Process; and
 - (E) the DP Contract is terminated for any reason and the DP is not continuing to provide all of the Services pursuant to clause 47.4(E) of the Services Agreement.
- 6.2 The Authority must notify the Escrow Agent of the Release Event specified in clause 6.1 by delivering to the Escrow Agent a statutory or notarised declaration ("Declaration") made by an officer of the Authority declaring that such Release Event has occurred, setting out the facts and circumstances of the Release Event, that the Services Agreement, if relevant, for the Material was still valid and effective up to the occurrence of such Release Event and exhibiting such documentary evidence in support of the Declaration as the Escrow Agent shall reasonably require.
- 6.3 Upon receipt of a Declaration from the Authority claiming that a Release Event has occurred:
- (A) the Escrow Agent shall submit a copy of the Declaration to the DP by courier or other form of guaranteed delivery; and
 - (B) unless within 14 days after the date of despatch of the Declaration by the Escrow Agent, the Escrow Agent receives a counter-notice signed by a duly authorised officer of the DP stating that in their view no such Release Event has occurred or, if appropriate, that the event or circumstances giving rise to the Release Event has been rectified as shown by documentation in support thereof,
- the Escrow Agent will release the Material to the Authority for its use for the Release Purposes.
- 6.4 Upon receipt of the counter-notice from the DP under clause 6.3(B), the Escrow Agent shall send a copy of the counter-notice and any supporting evidence to the Authority by courier or other form of guaranteed delivery.
- 6.5 Upon receipt by the Authority of the counter-notice from the Escrow Agent or, in any event, within 90 days of despatch of the counter-notice by the Escrow Agent, the Authority may give notice to the Escrow Agent that they wish to invoke the dispute resolution procedure under clause 7.
- 6.6 If, within 90 days of despatch of the counter-notice by the Escrow Agent to the Authority, the Escrow Agent has not been informed by the Authority that they wish the dispute resolution procedure under clause 7 to apply, the Declaration submitted by the Authority will be deemed to be no longer valid and the Authority shall be deemed to have waived their right to release of the Material for the particular reason or event specified in the original Declaration.
- 6.7 For the avoidance of doubt, where a Release Event has occurred under clauses 6.1(A), 6.1(B) and 6.1(D), a subsequent assignment of the Intellectual Property Rights in the

Material shall not prejudice the Authority's right to release of the Material for its use for the Release Purposes.

7. Disputes

- 7.1 The Escrow Agent shall notify the DP of the Authority's request for dispute resolution. Unless the Authority or the DP objects, the Escrow Agent's Chief Executive Officer for the time being will appoint an Independent Expert to resolve the dispute. If the Authority or the DP objects to this appointment, they shall endeavour to appoint a mutually acceptable Independent Expert within 7 days of registering their objection. If they fail to appoint an Independent Expert within this 7 day period, the Escrow Agent shall request that the President of The Law Society of England and Wales appoints an Independent Expert to resolve the dispute. Any appointment of an Independent Expert under this clause shall be binding upon the parties.
- 7.2 Within 5 working days of the appointment of the Independent Expert, the Authority and the DP shall each provide full written submissions to the Independent Expert together with all relevant documentary evidence in their possession in support of their claim.
- 7.3 The Independent Expert shall be requested to give a decision on the matter within 14 days of the date of referral or as soon as practicable thereafter and to send a copy of that decision to the Authority, the DP and the Escrow Agent. The Independent Expert's decision shall be final and binding on all parties and shall not be subject to appeal to a court in legal proceedings except in the case of manifest error.
- 7.4 If the Independent Expert's decision is in favour of the Authority, the Escrow Agent is hereby authorised to release and deliver the Material to the Authority within 5 working days of the decision being notified by the Independent Expert to the parties.
- 7.5 The parties hereby agree that the costs and expenses of the Independent Expert shall be borne by the party against whom the decision of the Independent Expert is given.

8. Confidentiality

- 8.1 The Material shall remain at all times confidential and the intellectual property of its owner.
- 8.2 In the event that the Escrow Agent releases the Material to the Authority, the Authority shall be permitted to use the Material only for the Release Purposes.
- 8.3 The Escrow Agent agrees to keep all Confidential Information relating to the Material that comes into its possession or to its knowledge under this Agreement in strictest confidence and secrecy, the Escrow Agent further agrees not to make use of such information and/or documentation other than for the purposes of this Agreement and, unless the parties should agree otherwise in writing, will not disclose or release it other than in accordance with the terms of this Agreement.

9. Intellectual Property Rights

- 9.1 The release of the Material to the Authority will not act as an assignment of any Intellectual Property Rights that the DP or any third party possesses in the Material.
- 9.2 The Intellectual Property Rights in any Integrity Testing report and any Full Verification report shall remain vested in the Escrow Agent. The Authority and the DP shall each be granted a non-exclusive right and licence to use such report for the purposes of this Agreement and their own internal purposes only.