

**ROLLS-ROYCE SUBMARINES**  
**GENERAL CONDITIONS OF PURCHASE**  
**GOODS AND SERVICES – CPC**  
**SUBS/GCP-C**  
**Issue 4**

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## **PART 1 - GENERAL**

### **1 INTERPRETATION AND APPLICABILITY OF CONTRACT TERMS**

- 1.1 The definitions and rules of interpretation set out in Schedule 1 (Interpretation) apply to this Agreement and any Contract.
- 1.2 The Parties agree that the terms of this Agreement will apply to the exclusion of any other terms and conditions of business contained or referenced in any acknowledgement or any other form of acceptance by the Supplier (whether written or not), any standard form, quotation, proposal or any other document issued by the Supplier to Rolls-Royce or implied by trade custom, practice or any course of dealings between the Parties unless such terms and conditions are expressly stated in an Order to apply.
- 1.3 The Parties agree that the terms of this Agreement, any applicable Mandatory Step Down Clauses and any Order-Specific Clauses shall be incorporated into any Contract upon the issue by Rolls-Royce of an Order.
- 1.4 The documents are intended to be cumulative and explanatory of one another. In the event of a conflict or inconsistency between the terms, the higher or more stringent obligation shall prevail, save where any Order or an Order-Specific Clauses directly refer to and amend another provision.
- 1.5 If there is a conflict of provisions which cannot be resolved by giving a purposive and common sense interpretation to, the following order of precedence will apply, but only to the extent of such conflict:
- (a) any Order-Specific Clauses that are stated in an Order to derive from a contract with the Authority;
  - (b) any other Order Specific Clauses;
  - (c) any Mandatory Step Down Clauses;
  - (d) these General Conditions;
  - (e) the specification or description of the Deliverables and/or Services as set out, or referred to, in an Order
  - (f) any quality assurance requirements expressly set out in an Order;
  - (g) any other provisions referred to in an Order or this Agreement.

### **2 PURPOSE OF CONTRACT**

- 2.1 The Supplier shall undertake the supply of Deliverables and / or the provision of Services in accordance with this Agreement and any Contract. Without limitation to the generality of the foregoing, the Deliverables and/or Services:
- (a) shall comply with the specifications set out in this clause 2 (Purpose of Contract);
  - (b) shall be delivered or provided for the price as set out at clause 4 (Price and Payment); and,
  - (c) shall be delivered and completed in accordance with clause 6 (Delivery and Vesting).
- 2.2 Deliverables shall be supplied in accordance with the specification or description of the Deliverables as set out or referred to in an Order.
- 2.3 Services shall be supplied
- (a) in accordance with:
    - (i) the specification or description of the Service as set out or referred to in an Order; and
    - (ii) any Specified Service Levels;
  - (b) at the location specified in an Order (where applicable).

### **3 REPRESENTATIONS AND WARRANTIES**

- 3.1 The Supplier represents and warrants to Rolls-Royce that, as at the Effective Date and on an ongoing basis:
- (a) it has the power to enter into and perform and has taken all necessary action to authorise its entry into and performance of this Agreement and any Contract and the transactions contemplated by it;
  - (b) any and all obligations expressed to be assumed by it in this Agreement and any Contract are legal, valid, binding and enforceable obligations;
  - (c) no claim is being assessed and no litigation, arbitration or administrative proceedings are in progress or, to the best of its knowledge, pending or threatened against it or any of its assets which will or might have an adverse effect on its ability to perform its obligations and meet its liabilities under this Agreement and any Contract;
  - (d) it is not the subject of any obligation, compliance with which will, or is likely to, have a material adverse effect on its ability to perform its obligations and meet its liabilities under this Agreement and any Contract;
  - (e) neither it nor any employee or agent of it has given, or offered, agreed or promised to give any financial or other advantage, to or for the benefit of any other person in order to obtain or influence the award of this Agreement and any Contract; and
  - (f) save as disclosed in writing to Rolls-Royce, no one other than a bona fide employee of the Supplier has recommended that Rolls-Royce enter into this Agreement and any Contract or otherwise interceded or negotiated on the Supplier's behalf in

relation to the agreement or negotiation of this Agreement and any Contract.

- (g) it shall take all necessary actions to fully inform itself and shall be deemed to have examined all information and data made available to him with relation to the subject matter of an Order.
- (h) it understands that an Order is being placed in connection with the Head Contract, and shall have reasonable regard to any specific requirements communicated to it by Rolls-Royce.
- (i) it shall diligently and regularly pursue its obligations with a view to complying with the agreed programme in support of the Head Contract.
- (j) it shall promptly and regularly provide Rolls-Royce with such reports and other information pertaining to the Supplier's progress and performance under any Contract. This obligation shall include the provision of facilities to hold progress meetings on the Supplier's or his Subcontractor premises should these be required at reasonable intervals.

3.2 The Supplier represents and warrants to Rolls-Royce that each Deliverable and/ or Service will:

- (a) fully conform and perform in accordance with the requirements of this Agreement and any Contract, including any specification referenced in or attached to an Order and any applicable Law;
- (b) be free from any defects (whether actual or latent) in workmanship and materials;
- (c) where Rolls-Royce is not responsible for the design of the Deliverables, be free from defects (whether actual or latent) in design;
- (d) be carried out with at least the degree of skill and care to be expected of a competent supplier experienced in carrying out, completing and delivering deliverables or services similar in size, scope and complexity to the Deliverables and/ or Services.
- (e) will conform to the specifications, drawings, samples, examples, trials, demonstrations, representations or descriptions furnished under an Order pursuant to this Agreement, and
- (f) be merchantable, be of satisfactory quality, be of good material and workmanship, and be free from defects.

3.3 The Supplier further expressly warrants that it has good title to the Deliverables, including any raw materials and components thereof and that the Deliverables will be free and clear of all liens and security interests and all other encumbrances.

3.4 The representations and warranties in clauses 3.1, 3.2 and 3.3 will:

- (a) survive the expiry of this Agreement and any relevant Contract and the Delivery of the Deliverables and performance of the Services; and
- (b) will be deemed repeated by the Supplier on the Scheduled Delivery Date of each Deliverable and/or Services with reference to the facts and circumstances then existing.

## **PART 2 – PAYMENT & VARIATIONS**

### **4 PRICE AND PAYMENT**

#### **Price**

- 4.1 The Total Order Value and the currency for payment will be set out in an Order.
- 4.2 The Total Order Value is exclusive of value added tax or any other similar tax ("VAT") payable in Rolls-Royce's jurisdiction of incorporation but includes all other taxes, duties and levies. If VAT is chargeable in Rolls-Royce's jurisdiction of incorporation, it will be separately identified on the invoice and will be payable by Rolls-Royce subject to the Supplier's compliance with its obligations in clause 4.4 or 4.6 below, as applicable.
- 4.3 Subject to clause 4.2, the Supplier will be responsible for, and will indemnify Rolls-Royce in full, from and against any and all taxes, duties, fines, penalties and interest thereon, imposed on the Supplier, its personnel or any Affiliate of the Supplier, by the government or other lawful taxing authority of any country for or on account of any payment made to or earned by the Supplier in connection with the supply of Deliverables under this Agreement and any Contract.

#### **Payment**

- 4.4 The Supplier will submit an invoice to Rolls-Royce's Financial Service Centre after the later of:
  - (a) the Scheduled Delivery Date of the relevant Deliverables and/or Services;
  - (b) the Delivery of all the relevant Deliverables, or completion of all the relevant Services; or,
  - (c) the invoicing date(s) set out in an Order.
- 4.5 The Supplier will agree the format of the invoice in advance with Rolls-Royce's Financial Service Centre and will include the relevant Order number on the invoice.
- 4.6 Provided the Deliverables and/or Services have not been rejected by Rolls-Royce in accordance with clause 6 (Delivery and Vesting) or that payment is not otherwise disputed, then payment of the invoice will be due and payable by Rolls-Royce within thirty (30) days

after the receipt of a valid, complete and accurate invoice from the Supplier. If such date is not a normal banking day in the United Kingdom then payment will be made on the following normal banking day in the United Kingdom. Rolls-Royce will electronically transfer payment to the Supplier.

- 4.7 Rolls-Royce will be entitled to set-off any liability owed by it to the Supplier under this Agreement or any Contract against any liability of the Supplier or any of its Affiliates to Rolls-Royce or any of its Affiliates under this Agreement or any Contract or under any other agreement, whether such liability is present or future or liquidated or unliquidated.
- 4.8 If the Supplier does not receive any amount due from Rolls-Royce under this Agreement or any Contract on its due date (as set out in clause 4.7 above), the Supplier will be entitled to charge interest on all valid overdue amounts at a rate of 2.5% per annum above the Base Rate, accruing on a simple basis from the day the amount became overdue and ending on the day payment is received in full by the Supplier.

## **5 VARIATIONS**

- 5.1 In accordance with this clause 5, Rolls-Royce may require the provision of additional or reduced Services and/ or Deliverables under an Order. Further, Rolls-Royce may require (or the Supplier may request permission for) changes to the Deliverables to be provided or Services to be performed under an Order. (Each "a Variation").
- 5.2 If Rolls-Royce requires a Variation it may serve notice on the Supplier :
- (a) setting out the nature of the Variation required in sufficient detail to enable the Supplier to provide a proposed change to the relevant Order including any impact of the timescales for delivery of the Deliverables and/ or Services and any increase or decrease in the Total Order Value (a "Variation Request"), or .
  - (b) Setting out the basis upon which Rolls-Royce intends to change the relevant Order (a "Variation Instruction")
- 5.3 As soon as is reasonably practicable after receipt of a Variation Request (or if the Supplier wishes to request a Variation where Rolls-Royce has not submitted a Variation Request) the Supplier shall submit a Variation Proposal setting out the detail required by the Variation Request or (as the case may be) the basis upon which the Supplier would like Rolls-Royce to change the Order.
- 5.4 Should the party preparing the document so choose, a Variation Request, a Variation Instruction or a Variation Proposal may set out that party's expectations in respect of the timescale in which it hopes the Variation process to be finalised.
- 5.5 The Supplier shall assess and promptly be prepared to respond to each Variation Instruction, limiting its comments to necessary matters of safety, security, design integrity, manufacturability, cost and programme.
- 5.6 As soon as is practicable (and having due regard to any timescales set out in accordance with clause 5.4):
- (a) after Rolls-Royce receives a Variation Proposal, or
  - (b) after the Supplier receives a Variation Instruction

the parties shall discuss the changes to the Deliverables and/ or Services with a view, to agreeing and finalising the Variation.

- 5.7 Rolls-Royce shall either issue a written amendment to the relevant Order reflecting the agreement reached under 5.6, or withdraw the notice it issued under clause 5.2.
- 5.8 For the avoidance of doubt, Rolls-Royce shall in no circumstances be responsible for any costs associated with the preparation of a Variation Proposal, or any Variation which Rolls-Royce elects to withdraw neither shall Rolls-Royce be under any obligation to agree to a Variation Proposal from the Supplier.
- 5.9 Any Deliverables provided or Services performed by the Supplier in breach of the provisions set out in clause 5.1 to 5.7 will be done at the cost and risk of the Supplier without any entitlement to any additional compensation or extension of time.

## **PART 3 – DELIVERY, VESTING, REJECTION, ACCEPTANCE, & DEFECTS**

### **6 DELIVERY AND VESTING**

- 6.1 The Supplier will Deliver the Deliverables on a DDP basis (Incoterms 2010) to the location specified in an Order and with all documentation required by this Agreement and any Contract. Notwithstanding anything contained in the Incoterms 2010, risk of loss or damage to a Deliverable will pass to Rolls-Royce on Delivery and not before.

#### **Delay by the Supplier**

- 6.2 The Supplier will Deliver the Deliverables by the Scheduled Delivery Date.
- 6.3 The Services will be provided to Rolls-Royce:
- (a) from the commencement date (the "Service Commencement Date") specified in an Order:
    - (i) within the Specified Timescales; or
    - (ii) where there are no Specified Timescales in an Order, until the Services have been fully performed in accordance with this Agreement; or
    - (iii) where Services are provided for a stated term or period, until expiration of such term or period

- 6.4 The Supplier will immediately notify Rolls-Royce in writing if it has any reason to believe that it may or will be unable to fulfil or will be delayed in any way from completing its obligations under this Agreement or any Contract, with full details of the reason for such belief, identifying where possible whether it is the fault of the Supplier, a Force Majeure event, or a Relief Event, and identifying any mitigating measures it is taking to manage or reduce the delay.
- 6.5 If the Supplier fails to deliver the Deliverables on or before the Scheduled Delivery Date or fails to perform the Services in accordance with any Specified Timescales then Rolls-Royce will be entitled to recover from the Supplier the liquidated damages set out in an Order or (where no such liquidated damages are specified) 1% of the Total Order Value as liquidated damages for each seven-day period of delay (or any part of such period) subject to a maximum of 10% of the Total Order Value.
- 6.6 In the event that the Supplier incurs the maximum amount of Liquidated Damages specified at clause 6.5 but is continuing to fail to deliver the Deliverables or perform the Services, Rolls-Royce shall be entitled (without prejudice to its other rights and remedies, including without limitation the right to terminate the Agreement or any relevant Contract for the Supplier's default in accordance with clause 20) to recover all further Losses suffered by it as a result of such continuing failure.
- 6.7 Without prejudice to clause 6.5 and 6.6, where
- (a) an Order states that Time Is Of The Essence and the Supplier fails to Deliver the Deliverables or perform the Services on time, or
  - (b) it is apparent that the Supplier's failure to Deliver the Deliverables or perform the Services is inevitable and/or ongoing
- Rolls Royce may treat such failure as a default which is not remediable in accordance with clause 20 (Termination for Default).

#### **Service Levels**

- 6.8 If the Supplier fails to perform the Services in accordance with any Specified Service Levels then Rolls-Royce shall be entitled to recover from the Supplier the liquidated damages set out in the relevant Order for such failure or (where no such liquidated damages are specified) 1% of the Total Order Value as liquidated damages for each thirty-day period in which that the Services are not performed in accordance with the Specified Service Levels, subject to a maximum of 10% of the Total Order Value.
- 6.9 The liquidated damages specified at clauses 6.5 and 6.8 are agreed as a reasonable pre-estimate of the loss which Rolls-Royce is likely to suffer as a result of the specified delay, failure or breach by the Supplier and are not a penalty. Liquidated damages (and the right to terminate this Agreement and any Contract) shall be the Supplier's sole liability for failure to deliver Deliverables on the Scheduled Delivery Date or failure to perform Services within the Specified Timescales (as the case may be).

#### **Vesting**

- 6.10 Subject to clause 6.11 and clause 7.6:-
- (a) any Deliverable as it is constructed together with its component parts and equipment so far as incorporated therein; and
  - (b) all materials and other things whatsoever which the Supplier shall acquire or allocate for incorporation in any of the Deliverables,

shall vest in and become the absolute property of Rolls-Royce, from the time the construction of the Deliverable begins or the materials or things are acquired or allocated and shall from this point be in the possession of the Supplier for the sole purpose of completing the Deliverables and delivering them when completed as directed by Rolls-Royce, and shall not be within the ownership, control or disposition of the Supplier.

- 6.11 Neither the Supplier, nor a Subcontractor, nor any other person shall have a lien on any Deliverable, material or thing which has vested in Rolls-Royce under clause 6.10 of this clause for any sum due to the Supplier, Subcontractor or other person, and the Supplier shall take all such steps as may be reasonably necessary to ensure that the title of Rolls-Royce, and the exclusion of any such lien, are brought to the notice of all Subcontractors and other persons dealing with any such Deliverables, materials or things.
- 6.12 Without prejudice to the provisions of clause 6.11 above, the Supplier is to ensure that such a mark is to be placed on each Deliverable as soon as the construction begins or materials or things are acquired or allocated (or as soon as practicable), or where this is not possible, a notice shall be displayed and record made in the books of the Supplier as necessary for the purpose of ensuring that all such Deliverables, materials or things are readily identifiable as being the property of Rolls-Royce. The Supplier shall comply with the direction of Rolls-Royce regarding the identification of the Deliverables, materials or things.

### **7 ACCEPTANCE AND REJECTION**

- 7.1 Where an Order (or any other part of a Contract) stipulates that acceptance tests or inspections will apply to the Deliverables or output of the Services, the Deliverables and/or Services will not be deemed accepted until the completion of such acceptance tests or inspections to the satisfaction of Rolls-Royce.
- 7.2 Where an Order (or any other part of a Contract) does not provide for any acceptance tests or inspections, Rolls-Royce will not be deemed to have accepted the Deliverables and/or Services in whole or in part until ninety (90) days has elapsed since Delivery has occurred or performance of the relevant Services has been completed.
- 7.3 If Rolls-Royce does not accept the Deliverables or the Services, Rolls-Royce may, at its sole discretion:
- (a) send the Supplier a written notice that specifies the reasons for Rolls-Royce's non-acceptance and requires the Supplier to take rectifying action (a "Rectification Notice");
  - (b) send the Supplier a written notice rejecting the relevant Deliverables and/or Services (a "Rejection Notice"); or

(c) send the Supplier a Rejection Notice and such further notice as may be appropriate under clause 20 (Termination for Default).

7.4 Upon receipt of a Rectification Notice, the Supplier will, within the timeframes reasonably required by Rolls-Royce (taking into account in particular the impact on Rolls-Royce’s business resulting from the non-acceptance), remedy or resupply the Deliverables, or remedy or re-perform the relevant Services so as to ensure that the reasons for Rolls-Royce’s non-acceptance of the same are adequately addressed. If Rolls-Royce does not accept any remedied or re-performed Deliverables or Services Rolls-Royce may exercise any of its remedies under clause 7.3. If the Supplier fails to attempt to remedy or re-perform the relevant Deliverables or Services then Rolls-Royce may issue a Rejection Notice and/or consider this a Default incapable of being remedied in accordance with clause 20 (Termination for Default).

7.5 Within ten (10) days of receipt of a Rejection Notice, the Supplier will refund to Rolls-Royce all amounts which have been paid by Rolls-Royce under this Contract in respect of the rejected Deliverables or Services.

7.6 Within thirty (30) days of a Rejection Notice or such shorter period as Rolls-Royce may reasonably specify, the Supplier will collect such Deliverable at its own cost. If the Supplier does not collect the Deliverable within thirty (30) days of the Rejection Notice, Rolls-Royce may scrap or dispose of the Deliverable at the Supplier’s cost. Rejected Deliverables shall be at the Supplier’s risk from the date of the Rejection Notice, and shall (unless scrapped or disposed in accordance with this clause 7.6) re-vest in the Supplier when collected.

7.7 Without prejudice to Rolls-Royce other rights and remedies whether in contract or at law, for every occurrence of Concession or Non-conformance identified at the customer, Rolls-Royce has an exercisable right to charge the Supplier an administrative charge as stated in the table below, which Rolls-Royce may deduct from any payments due to the Supplier. These charges are agreed as a reasonable pre-estimate of the administration cost which Rolls-Royce is likely to suffer as a result of the specified quality issue and are not a penalty.

Quality Issue Cost Description	Charge
Per Concession	£750
Non-conformance identified at receipt of inspection	£1250
Non-conformance identified by the customer	£3000

7.8 Acceptance by Rolls-Royce will not release the Supplier from complying with its other obligations under this Agreement or any Contract (including any warranties or representations given or made by the Supplier under this Contract).

**8 BUYER PROPERTY**

8.1 All Buyer Property required by the Supplier to fulfil the requirements of any Contract shall be agreed with Rolls-Royce or the Authority (as the case may be) in writing before the relevant Contract is entered into, and confirmed in the relevant Order.

8.2 All Buyer Property shall remain the property of Rolls-Royce or the Authority (as the case may be) whether paid for by or charged against the Supplier or not, and shall be used in the execution of the relevant Contract and for no other purpose whatsoever, without the prior approval in writing of Rolls-Royce or the Authority (as the case may be). If requested, Rolls-Royce or the Authority (as the case may be) will notify the Supplier, within a reasonable time, of the current value of Buyer Property belonging to it.

8.3 Save as provided below the Supplier shall subject Buyer Property to:

- (i) On receipt, a reasonable visual inspection, and
- (ii) Within fourteen (14) days of receipt (or such longer period as may be specified in an Order) such reasonable additional inspection and testing as may be necessary and practicable to check that Buyer Property is not defective or deficient for the purpose for which it has been provided

Provided that:

- (iii) Where Buyer Property is issued in a 'preserved, identified and packaged' condition they shall not be unpacked earlier than is necessary and for such items the period stated in clause 8.3(ii) above shall commence from the date on which packages are opened.
- (iv) The Supplier shall promptly advise Rolls-Royce or the Authority (as the case may be) if it is unable to carry out its obligations under clause 8.3(ii) above, and thereafter the Supplier shall comply at no additional cost with such alternative arrangements as Rolls Royce or the Authority (as the case may be) may instruct.

8.4 The Supplier shall notify Rolls-Royce or the Authority (as the case may be) as soon as is reasonably practicable of any defects or deficiencies discovered in accordance with 8.3 above.

8.5 Instructions for the return or disposal of defective or deficient Buyer Property shall be issued by Rolls-Royce or the Authority (as the case may be) and such property shall not be at the risk of the Supplier once it has been delivered in accordance with any instructions issued by Rolls-Royce or the Authority (as the case may be).



- 8.6 The Supplier is fully responsible for the safe keeping and due return (whether or not incorporated into any Deliverables) and any loss of, or damage to, any Buyer Property whilst it is in their custody. The Supplier will at all times maintain Buyer Property in good condition, keep it insured with a reputable insurance company (with all Losses payable to Rolls-Royce or the Authority (as the case may be) and ensure that it is clearly identified as belonging to Rolls-Royce or the Authority (as the case may be). The Supplier will maintain comprehensive records of Buyer Property and will keep any logbooks, records (including maintenance or use records) and any other documents relating to Buyer Property, fully up to date.
- 8.7 The Supplier will provide Rolls-Royce or the Authority (as the case may be) with a list and the location of all Buyer Property promptly:
- (a) within 30 days of each anniversary of the Effective Date;
  - (b) on the request of Rolls-Royce or the Authority (as the case may be);
  - (c) on the termination of this Agreement or any Contract; and/or
  - (d) when all of the Deliverables and/or Services have either been cancelled or delivered.
- 8.8 The Supplier will immediately follow any instructions of Rolls-Royce or the Authority (as the case may be) to return to Rolls-Royce or the Authority (as the case may be) any Buyer Property.
- 8.9 Neither the Supplier, nor any Subcontractor, nor any other person, shall have a lien on Buyer Property, whether paid for by or charged against the Supplier or not, for any sum due to the Supplier, Subcontractor or other person, and the Supplier shall take all such steps as may be reasonably necessary to ensure that the title of Rolls-Royce or the Authority (as the case may be), and the exclusion of any such lien, are brought to the notice of all Subcontractors and other persons dealing with any Buyer Property.

## **9 QUALITY**

- 9.1 The Supplier will comply in full with any requirements set out at Rolls-Royce's website for suppliers (<https://suppliers.rolls-royce.com>), as updated from time to time by Rolls-Royce including the requirements of GS3001 and flow down the applicable requirements and expectations of Rolls-Royce to their sub-tier/subcontract suppliers, unless such requirements clearly state that they are not applicable to the type or nature of the Services and/ or Deliverables being supplied by the Supplier under this Agreement and any Contract.
- 9.2 Unless otherwise specified in an Order, the Supplier will ensure that any Deliverables are new and unused on Delivery.

## **10 REMEDY FOR DEFECTS AND NON-CONFORMANCES**

- 10.1 If any Defect or Non-Conformance is identified by the Supplier, the Supplier will immediately report such Defect or Non-Conformance to Rolls-Royce when he becomes aware (or ought to have become aware) of such Defect or Non-Conformance

### **Defects**

- 10.2 If after any Deliverable has been accepted, it has or develops a Defect within the Warranty Period then Rolls-Royce may require the Supplier, on written notice and at the sole discretion of Rolls-Royce to:
- (a) collect, repair or replace and re-Deliver the Deliverable at the Supplier's sole cost (such costs to include any transportation costs, any costs related to the removal or re-installation of the Deliverable from any higher-assembly item or any other costs that Rolls-Royce incurs that it would not have incurred but for the Defect):
    - (i) within thirty (30) days of Rolls-Royce's written notice; and
    - (ii) where Rolls-Royce's written notice states that, for urgent operational reasons, a shorter timescale is required, the Supplier will use its best endeavours to collect, repair or replace and re-Deliver the Deliverable within the timescale stated in Rolls-Royce's written notice;
  - (b) promptly refund the amount paid for the Deliverable to Rolls-Royce in full;
  - (c) promptly refund such lesser amount as Rolls-Royce may agree is appropriate to reflect the extent and impact of the Defect; or,
  - (d) indemnify Rolls-Royce in full for any costs Rolls-Royce incurs over and above those which Rolls-Royce would have been obliged to pay the Supplier under this Agreement in repairing or obtaining the Deliverable (or any equivalent item) from a third party, such costs to be paid within fourteen (14) days of Rolls-Royce sending an invoice to the Supplier.
- 10.3 If Rolls-Royce notifies the Supplier that it intends to exercise its rights under clauses 10.2(b) or 10.2(c) or to obtain a replacement Deliverable under clause 10.2(d) (save as provided below), the Supplier will collect the Deliverable, at the Supplier's sole cost, from Rolls-Royce within thirty (30) days of such a notification and risk in the Deliverable will pass to the Supplier on collection. If it is not safe or practicable for the Deliverable to be returned to the Supplier, or if the Supplier does not collect the Deliverable within thirty (30) days of such notification, Rolls-Royce will be entitled to scrap or dispose of the Deliverable at the Supplier's cost.
- 10.4 If Rolls-Royce exercises its rights under clause 10.2(a), risk in the Deliverable will pass to the Supplier on collection and pass back to Rolls-Royce on re-Delivery.

### **Non-Conformances**

- 10.5 If Rolls-Royce discovers within the Warranty Period that a Service is subject to a Non-Conformance, Rolls-Royce may require the Supplier, on written notice and at the sole discretion of Rolls-Royce to:
- (a) re-perform the Services or remedy the Non-Conformance at the location specified by Rolls-Royce;

- (b) promptly refund such amount as Rolls-Royce may agree is appropriate to reflect the extent and impact of the Non-Conformance;
  - (c) permit Rolls-Royce to rectify or procure the rectification of such Non-Conformance at the Supplier's cost (which the Supplier will reimburse to Rolls-Royce within fourteen (14) days of Rolls-Royce invoicing the Supplier); or
  - (d) permit Rolls-Royce to re-perform or procure the re-performance of the Services at the Supplier's cost (which the Supplier will reimburse to Rolls-Royce within fourteen (14) days of Rolls-Royce invoicing the Supplier for those costs).
  - (e) perform such tests as Rolls-Royce may require, to ensure that such rework or making good complies with the requirements of the relevant Order.
- 10.6 The representations and warranties set out at clause 3.2 will apply in full to any Deliverable repaired or replaced or Service re-performed under this clause 10 (Remedy for Defects and Non-Conformances).
- 10.7 Pursuant to clause 37 (Third Party Rights), Rolls-Royce shall be permitted to extend the benefit of this warranty to its customer under the Head Contract, and/or to the Authority.
- 11 WARRANTY PERIOD**
- 11.1 Without prejudice to Rolls-Royce' other rights and remedies, the warranty period in respect of Defects or Non Conformances shall be twenty-four (24) months from acceptance unless otherwise stated in an Order (the "Warranty Period").

## **PART 4 – SUPPLIER OBLIGATIONS**

### **12 WORKFORCE MATTERS**

- 12.1 The Supplier shall ensure that all Staff:
- (a) are suitably experienced, qualified, skilled and trained to the level expected of a specialist professional providing deliverables or services similar to the Services and/or Deliverables to customers of the same nature as Rolls-Royce or its Affiliates and shall ensure that such Staff shall act at all times in a professional manner;
  - (b) comply with all security and other procedures and other regulations (including health, safety and site policies) in force at any relevant Rolls-Royce or Permitted User premises; and
  - (c) comply with all relevant statutes, statutory provisions and other Law.
- 12.2 **Safecontractor**
- (a) To the extent that the Supplier or its Subcontractors are undertaking work activities on a Rolls-Royce controlled site or area, they are required to be Safecontractor accredited before commencing any work on-site. Safecontractor is a private sector health and safety accreditation scheme. For more information about Safecontractor visit [www.safecontractor.com](http://www.safecontractor.com)
  - (b) For the purpose of this clause 12.2 only, a Supplier / Subcontractor is defined as a recognised company or individual, not owned or employed directly by Rolls-Royce that has been engaged to:
    - (i) Undertake a maintenance, construction, installation or modification related activity associated with fixed assets and/or physical infrastructure that has the potential to expose ongoing operations, Rolls-Royce personnel and/or contractors to health, safety & environmental risks, whilst working on Rolls-Royce premises, or work on behalf of Rolls-Royce on a customer's premises; and/or
    - (ii) Deliver a direct or support activity relating to ongoing manufacturing, test, assembly, operations.
  - (c) Any costs associated with obtaining Safecontractor accreditation shall be the liability of the Supplier.

#### **Removal of Staff and Employment Obligations**

- 12.3 If Rolls-Royce, its Affiliates, or any Permitted User, reasonably believes that any member of Staff is sub-standard or otherwise unsuitable to perform their obligations in connection with the Deliverables or the Services, Rolls-Royce may, in its absolute discretion, give notice requiring the Supplier to remove any such member of Staff from the provision of the Deliverables or the Services. The Supplier shall (at its own cost) promptly arrange for the removal of such Staff from the performance of the Deliverables or the Services and shall replace them with personnel acceptable to Rolls-Royce and, as applicable, its Affiliates and/or the Permitted User.
- 12.4 Staff will at all times remain employed or engaged by the Supplier and the Supplier shall meet all employment costs and liabilities in respect of Staff.

#### **TUPE**

- 12.5 No Supplier Personnel are or will be deemed to be employees of Rolls-Royce or any Permitted User and the Supplier will be solely responsible for payment of all salaries, benefits, insurance, pension and entire compensation of the Supplier Personnel and will indemnify Rolls-Royce and any Permitted User against any liabilities in respect of the same. The Services provided by the Supplier Personnel will be solely under the supervision, management and control of the Supplier.
- 12.6 It is the understanding of the Parties (although neither gives any warranty to this effect) that TUPE will not apply to the arrangements made under the Contract or upon the Supplier ceasing to provide the Services (or any part of the Services) or following the termination

of the whole or part of the Contract. The Supplier will indemnify, keep indemnified and hold harmless Rolls-Royce, any Permitted User, Affiliates and any Successor Supplier against all costs and Losses which arise out of or are connected with:

- (a) the employment or the termination of employment of any Relevant Person by the Supplier, Rolls-Royce, any Permitted User, Affiliates or any Successor Supplier, howsoever and whensoever arising (including, for the avoidance of doubt, any contractual or statutory termination or redundancy costs and salaries or wages, accrued holiday pay, expenses, pension benefits, life assurance, health or medical expenses insurance and all other emoluments and any PAYE tax deductions, national insurance contributions, severance payments and attorney fees, court fees and other costs relating thereto);
- (b) any act or omission by any employer or engager of any Relevant Person (including, without limitation, in relation to negligence claims or discrimination);
- (c) any obligations which the Parties may have under TUPE in relation to any Relevant Person (including without limitation regulation 13, 14 and 15 of TUPE); and
- (d) any costs resulting from and in relation to defending or responding to any claims or allegations raised regarding any of the items mentioned above.

12.7 The Supplier agrees that it will not at any time contend for any purpose whatsoever that TUPE applies upon the cessation of the Contract or the Services or any part of the Services.

12.8 For the avoidance of doubt, if any Relevant Person claims that their contract of employment has transferred (or should have) as a result of TUPE on the termination of the Contract or the Services (or any part of the Services), Rolls-Royce, the Affiliate, Permitted User or the Successor Supplier may, if seeking to rely on any of the above indemnities and on becoming aware of such a transfer (or alleged transfer), terminate such contract of employment, provided always that:

- (a) promptly upon becoming aware of any such transfer (whether alleged or otherwise) they notify the Supplier in writing of the matter and state whether or not they wish to employ or terminate the employment of such employee (Notification); and
- (b) (unless they do wish to employ or engage such an employee themselves and the employee accepts such an offer, in accordance with clause 12.8 (c) below) before terminating the employment of any such employee, they give the Supplier fourteen (14) days (from the date of Notification) within which to offer employment to and re-engage any such employee; and
- (c) any such termination takes place or notice to terminate is served and employment is terminated within ninety (90) days of the Notification (unless any such employee is entitled to a longer period of notice in which case such longer period will apply),

and upon any such termination the indemnity relied upon will apply for the benefit of Rolls-Royce, any Affiliate or any Permitted User or Successor Supplier (as applicable) that terminates the employment.

12.9 Should Rolls-Royce, any Affiliate or any Permitted User or a Successor Supplier wish to employ or engage an employee whose employment they may otherwise be entitled to terminate (as contemplated under clause 12.8 above), then if termination is not effected in accordance with clause 12.8, upon the formal commencement of such employment the above indemnities at clause 12.6 will no longer apply in respect of the relevant employee, save to the extent any such indemnities relate to any act, omission or entitlement (or alleged act, omission or entitlement) which arose or accrued prior to or upon the transfer date (or alleged transfer date) including, without limitation, all remuneration of any kind due to the employee and any negligence claims or unlawful discrimination.

12.10 The Parties agree that the Contracts (Rights of Third Parties) Act 1999 will apply to this section to the extent necessary to ensure that any Successor Supplier will have the right to enforce the obligations owed to, and indemnities given to, the Successor Supplier by the Supplier in its own right pursuant to section 1(1) of the Contracts (Rights of Third Parties) Act 1999 (and also the relevant Permitted User may in its discretion assign (either in whole, or in respect of specific employees) the benefit of the indemnities in this section to any such Successor Supplier).

12.11 The Supplier agrees that, in respect of any employees of Rolls-Royce, its Affiliates, or any Permitted User involved in connection with this Agreement and any Contract, the Supplier shall not, during the term of this Agreement and for a period of twelve (12) months after the expiry or termination of this Agreement, directly entice such person away from Rolls-Royce, its Affiliates, or any Permitted User (as applicable) with the intent itself of employing or otherwise engaging such person. This clause 12.11 shall not apply in respect of any personnel who can be shown to have responded to a bona fide published recruitment advertisement without any inducement or encouragement from the Supplier (other than through the advertisement itself).

#### **General**

12.12 The Supplier will, and will ensure that its Subcontractors will comply with all relevant statutes, statutory provisions and other Law.

### **13 SUBCONTRACTING**

13.1 The Supplier may subcontract any of its obligation under this Agreement and any Contract in accordance with this clause 13, provided:

- (a) such subcontracting would not conflict with any of its obligations under this Agreement and any Contract or a relevant Law or Regulatory Requirement;
- (b) the Supplier shall not be relieved of any liability under this Agreement and the relevant Contract and shall at all times remain liable to Rolls-Royce for the proper performance of all of its duties and obligations as if they had not been subcontracted.

13.2 The Supplier shall include in each subcontract (and shall ensure that any subcontractor to whom it further sub-contracts shall include in any such sub-sub-contract) the Mandatory Step Down clauses and the following General Conditions:

- (a) Clause 8 – Buyer Property
- (b) Clauses 22.1 to 22.4 - Corrupt Gifts and Payments of Commission
- (c) Clause 24 – Confidentiality

#### **14 INDEMNITY**

14.1 The Supplier will indemnify Rolls-Royce in full against all Losses that are incurred by Rolls-Royce as a result of the Supplier's breach of any term of this Contract or as a result of any tortious (including negligent) acts or omissions of the Supplier (or any permitted Subcontractor) in connection with the performance of this Contract

#### **15 INSURANCE**

15.1 The Supplier shall at its own cost effect and maintain for duration of this Agreement (or any other period stated in an Order pursuant to this Agreement) the following insurances:

- (a) employers' liability insurance for the sum of not less than £10,000,000 ( ten million pounds sterling) or as otherwise required by law and motor insurance cover as required by law;
- (b) public liability insurance to cover injury, death, damage and or loss to Rolls-Royce and or third parties for the sum of not less than £10,000,000 (ten million pounds sterling) per annum;
- (c) product liability insurance for the sum of not less than £10,000,000 (ten million pounds sterling) per annum,
- (d) professional indemnity insurance for the sum of not less than £10,000,000 (ten million sterling) per annum and;
- (e) those insurances which the Supplier is required to effect by law (at any time) and those insurances which a prudent Supplier would effect for undertaking the obligations and accepting the liabilities imposed on it in this Agreement and any Contract..

15.2 Whenever so required and requested by Rolls-Royce, the Supplier shall provide within three (3) Working Days of such request an insurance broker's letter confirming that it holds such policies.

15.3 The Supplier agrees to advise Rolls-Royce of any claims made against any of the insurance policies in clause 15.1 (including without limitation those arising out of the work undertaken under this Agreement and any Contract.)

15.4 The Supplier warrants that nothing has or will be done or be omitted to be done which may result in the insurance policies set out above being or becoming void, voidable or unenforceable.

15.5 The stipulations contained in this clause 15 (Insurance) shall not be deemed to and shall not in any way limit or affect the general liability or responsibility of the Supplier under the provisions of this Agreement and any Contract.

15.6 The Supplier shall obtain and maintain all insurances specified in clause 15.1 along with any additional insurance requirements detailed in an Order.

15.7 The Supplier will ensure that Rolls-Royce is either named as an additional insured party or provided with an indemnity to principal under each the above named policies.

#### **16 SUPPLY OF INFORMATION AND RIGHTS OF INSPECTION**

16.1 Rolls-Royce may, at its absolute discretion and at any time before the termination or completion of this Agreement or any Contract or the Delivery, performance or cancellation of all of the Deliverables and/or Services, inspect, or nominate a customer of Rolls-Royce, a regulatory body or an independent third party to inspect:

- (a) the Supplier's premises where any work related to this Agreement and any Contract is, was or will be carried out, including any tooling or equipment used in connection with the supply of the Deliverables or performance of the Services;
- (b) any processes, procedures, policies, systems or plans used by the Supplier in connection with the supply of the Deliverables and/or performance of the Services;
- (c) any materials used, or to be used, by the Supplier in connection with the supply of the Deliverables and/or performance of the Services;
- (d) the Deliverables themselves, regardless of what stage they are at in the manufacturing, assembly or supply process; and
- (e) any financial information of the Supplier, including any annual report, interim accounts or monthly management accounts,

and the Supplier will co-operate to the fullest possible extent with Rolls-Royce (including the provision of reasonable facilities for such inspections) to ensure that Rolls-Royce or, as applicable, a customer of Rolls-Royce, a regulatory body or an independent third party is able to conduct and complete such inspections promptly and to Rolls-Royce's satisfaction.

16.2 Rolls-Royce will usually give the Supplier reasonable written notice of its intention to exercise its rights under clause 16.1, however Rolls-Royce retains, at its sole discretion, the right to conduct inspections without prior notice to the Supplier.

16.3 The Supplier will ensure that Rolls-Royce is able to exercise all its rights set out in clause 16.1 and clause 16.2 against a Supplier or Subcontractor of the Supplier and throughout the supply chain in connection with this Agreement.

16.4 If any inspection is required by Rolls-Royce under clause 16.1 as a result of reasonable concerns relating to the Supplier's ability to perform its obligations in accordance with this Agreement and any Contract, the Supplier will be responsible for the costs of the inspection.

- 16.5 In addition to the foregoing, if Rolls-Royce has reasonable grounds for believing the Supplier may be unable to perform its obligations under this Agreement and any Contract, Rolls-Royce may require the Supplier to provide written evidence, to Rolls-Royce's satisfaction, that the Supplier is able to fulfil its obligations under this Agreement and any Contract, within thirty (30) days of Rolls-Royce's request.
- 16.6 If the Supplier comes under, or believes it is about to come under, the Control directly or indirectly of an entity who does not Control the Supplier at the Effective Date, then subject to confidentiality obligations imposed by Law, the Supplier will immediately notify Rolls-Royce with full details of such an entity.
- 16.7 Any inspections carried out by Rolls-Royce, a customer of Rolls-Royce, a regulatory body or an independent third party in accordance with this clause will not imply an acceptance of the Deliverables and/or Services or any waiver of the Supplier's obligations under this Agreement and any Contract.
- 16.8 The Supplier will, on request, promptly provide Rolls-Royce with any point of origin certifications in relation to any Deliverable or part of any Deliverable.
- 16.9 The Supplier shall provide to Rolls-Royce such reasonable working accommodation for representatives as Rolls-Royce may require. Accommodation provided shall be adequately furnished (including telephone facilities), lighted, heated and ventilated.
- 16.10 The Supplier will immediately follow any instructions of Rolls-Royce to return to Rolls-Royce any information or data belonging to Rolls-Royce.
- 16.11 In respect of any Contract or Subcontract the estimated value of which exceeds £500,000 (five hundred thousand pounds sterling), the Supplier shall provide details of its incurred costs for certification and validation by the Authority's Cost Assurance and Analysis Service (CAAS) in accordance with its standard certification procedures from time to time.

## **PART 5 – EXTENSION OF TIME AND TERMINATION**

### **17 RELIEF EVENTS**

- 17.1 If an event occurs as a direct result of an action or omission by Rolls-Royce which delays, prevents or adversely affects, or is likely to delay, prevent or adversely affect, the Supplier from performing any of its obligations under this Agreement or any Contract (a "Relief Event"), the Supplier shall as soon as reasonably practicable give notice to Rolls-Royce of the matters constituting the Relief Event, such notice to include:
- (a) Details of the Relief Event; and
  - (b) Details of the effects (if any) of the Relief Event on the Supplier's performance of its obligations under this Agreement and any relevant Contract including without limitation:
    - (i) Any impact on the Scheduled Delivery Date or the Specified Timescales;
    - (ii) Any increase in Total Order Value as result of the Relief Event; and,
    - (iii) Any impact on the ability of the Parties to meet their respective obligations under this Agreement and any relevant Contract.
- 17.2 Where the actual effect is not ascertainable at the time of Supplier's notice, it shall give its reasonable opinion of the likely effect (if any) on the same, and shall provide such further information as Rolls-Royce may request.
- 17.3 In the event of the occurrence of any Relief Event the parties shall effect a Variation in accordance with clause 5 (Variations), taking account of the obligations of the Parties under clause 17.4.
- 17.4 Each Party shall take reasonable steps to mitigate the effect of Relief Event on the performance of its obligations under this Agreement and any Contract including acting co-operatively to consider and address the impact (if any) of adopting mitigation strategies, including the costs and liabilities incurred by Rolls-Royce as a result of Relief Event.
- 17.5 Rolls-Royce shall not be entitled to bring a claim against the Supplier for a breach of its obligations under this Agreement or any Contract as a result of a Relief Event
- 17.6 The Supplier shall not incur any liability to Rolls-Royce for any losses or damage incurred by Rolls-Royce as a result of a Relief Event to the extent the Supplier is prevented, hindered or delayed or incurs any additional costs from carrying out its obligations under this Agreement and any Contract as a result of such Relief Event, save to the extent that such losses or damage or additional costs are incurred as a result of a breach by the Supplier of any of its obligations under clause 17.4.
- 17.7 If the Supplier fails to comply with its obligations under this clause 17 (Relief Events) then no relief in respect of the Relief Event shall be available to it until it complies with this clause 17 (Relief Events) and the obligations of each Party shall continue in force until such compliance.
- 17.8 The Supplier shall not be entitled to terminate this Agreement or any Contract as a consequence of any Relief Event.
- 17.9 Rolls-Royce shall have the right to terminate the Agreement or any Contract in accordance with clause 19 (Termination for Convenience) whether or not a Relief Event has occurred.
- 17.10 The Supplier acknowledges and agrees that its rights under this clause 17 (Relief Events) are its sole rights against Rolls-Royce under

or in relation to this Agreement or any Contract in respect of any Relief Event.

### **Rate of Progress**

- 17.11 Without prejudice to any other rights or remedies of Rolls-Royce, if at any time Rolls-Royce believes, that
- (a) the progress of the Deliverables or Services is (or is projected to be) insufficient to achieve the Scheduled Delivery Date or the Specified Timescales, and/or
  - (b) progress of the Deliverables or Services is (or will be) delayed (where such delay in progress is not solely as a consequence of a Relief Event),

then Rolls-Royce may request that the Supplier submits a detailed proposal (including a programme, supporting documentation and such other information as Rolls-Royce may reasonably require) describing the revised methods which the Supplier proposes to adopt in order to expedite progress of the Deliverables or Services. The proposal shall demonstrate to Rolls-Royce's satisfaction how (and through its implementation) the Contractor shall be able to complete the Deliverables by the Scheduled Delivery Date or the Services within the specified timescales.

- 17.12 Unless Rolls-Royce confirms otherwise, the Supplier shall adopt the revised methods referred to in clause 17.11, which may require increases in working hours and/or in numbers of personnel or the taking of other such steps, at the sole cost of the Supplier (with no extension of time or any addition to the Total Order Value). If such revised methods cause Rolls-Royce to incur additional cost and/or suffer any losses, the Supplier shall pay such costs (and/or the amounts of such losses) to Rolls-Royce as a debt or Rolls-Royce may otherwise set-off such amounts from monies otherwise due (in addition to any liquidated damages for delay).
- 17.13 If the circumstances in clauses 17.11 and 17.12 apply in part as a result of a Relief Event and in part from other causes, clauses 17.11 and 17.12 shall apply to the extent of the delay attributable to such other causes.

### **Suspension And Delay By Rolls-Royce**

- 17.14 Rolls-Royce may, at its sole discretion, require the Supplier to delay Delivery of any Deliverables or suspend all or part of the performance of the Services under this Agreement or any Contract for a continuous period of up to six months. Where such suspension is for a reason other than a breach or failure by the Supplier, the Supplier may submit a Variation Proposal in accordance with clause 5 (Variations).

## **18 FORCE MAJEURE**

- 18.1 Subject to the affected Party's compliance with clauses 18.2 and 18.3, the time specified for the performance by a Party of any obligation of that Party in this Agreement and any affected Contract will be extended by a period equal to the period for which such performance is prevented by a Force Majeure Event.
- 18.2 The affected Party will use all reasonable endeavours to mitigate the effect of a Force Majeure Event.
- 18.3 If a Force Majeure Event occurs that will or may prevent the timely performance of a Party's obligations under this Agreement and/or any Contract, the affected Party will notify the other Party as soon as possible and in any event within five (5) days of the start of the Force Majeure Event, providing:
- (a) full details of the Force Majeure Event;
  - (b) its anticipated effect; and
  - (c) the affected Party's proposed measures to mitigate its effect.

- 18.4 If Rolls-Royce receives a notification from the Supplier under clause 18.3 or if Rolls-Royce reasonably believes that a Force Majeure Event has occurred that will or may prevent the timely performance of the Supplier's obligations under this Agreement and/or any Contract, Rolls-Royce may immediately, on written notice to the Supplier, cancel its order under this Agreement and any affected Contract in respect of some or all of the Deliverables and/or Services. In the event of such a cancellation the Supplier will repay to Rolls-Royce any amount paid by Rolls-Royce in respect of the cancelled Deliverables before their cancellation and neither Party will have any other liability to the other in respect of such cancellation.

## **19 TERMINATION FOR CONVENIENCE**

- 19.1 Rolls-Royce shall have power to determine this Agreement and/or any Contract in whole or in part at any time by giving to the Supplier Notice (a "Termination Notice") specifying the date of termination of this Contract (being a date not less than twenty (20) Working Days from the date of such Termination Notice) (the "End Date") and upon the End Date this Agreement and any relevant Contract shall be determined without prejudice to the rights of the Parties accrued to the date of determination but subject to the operation of the following provisions of this clause.
- 19.2 In the event of a Termination Notice being given for convenience in accordance with this clause 19 (Termination for Convenience), Rolls-Royce shall at any time before the End Date, be entitled to exercise and shall, as soon as may be reasonably practicable within that period, exercise such of the following powers as it considers expedient:
- (a) to direct the Supplier, where any part of the Deliverables and/or Services has not been commenced, to refrain from commencing such part;
  - (b) to require the Supplier to deliver to Rolls-Royce all work-in-progress; and any material purchased by the Supplier, in connection with the cancelled Deliverables and/or Services;

- (c) to direct the Supplier to complete (or to commence and complete as the case may be) in accordance with this Agreement and any relevant Contract all or any part of the Deliverables and/or Services and to complete such Deliverables and/or Services at such time or times as may be mutually agreed on, or, in the absence of agreement, at the time or times provided by this Agreement or any Contract;
- (d) to require the Supplier to repay to Rolls-Royce any payment made in respect of the cancelled Deliverables and/or Services in advance of their Delivery and/or performance;
- (e) to direct that the Supplier shall, as soon as may be reasonably practicable after the receipt of such Termination Notice:
  - (i) take such steps as will ensure that the performance of the Deliverables and/or Services is reduced as rapidly as possible;
  - (ii) determine on the best possible terms any subcontracts subject to any direction given under this clause 19.2 as far as may be possible,

in each case the Supplier shall be entitled to payment for performance of its obligations up to the End Date under this clause 19.2 in accordance with the pricing and payment provisions of an Order.

19.3 The Supplier's entitlement to payment pursuant to a Termination Notice shall be limited to:

- (a) any costs of any work-in-progress that the Supplier can prove it has reasonably and properly incurred in respect of the cancelled Deliverables and/or Services up to the date on which Rolls-Royce notified the Supplier of its intention to cancel the Deliverables and/or Services; and
- (b) any costs incurred by the Supplier (which the Supplier has not recovered under sub-clause (a) or through any other payment already made) which Supplier can prove it reasonably and properly incurred as a direct result of Rolls-Royce exercising its power under clause 19.2(c).

19.4 The total amount payable to the Supplier by Rolls-Royce under this clause shall be in full satisfaction of all claims arising out of such cancellation, and will in no circumstances exceed the portion of the Total Order Value attributable to the cancelled Deliverables and/or Services.

19.5 The Supplier must submit its full claim under this clause 19 to Rolls-Royce within thirty (30) days of the End Date. If the Supplier fails to submit its full claim under clause 19 (Termination for Convenience) within such thirty (30) day period, the Supplier's right to make such a claim will lapse and Rolls-Royce will have no further liability to the Supplier arising out of the termination for convenience.

19.6 For the avoidance of doubt, the Supplier shall be obliged to use all reasonable endeavours to mitigate the costs which it claims in the event of termination under this clause 19 (Termination for Convenience).

## 20 TERMINATION FOR DEFAULT

20.1 Rolls-Royce may terminate this Agreement and/or any Contract in whole or in part immediately on written notice to the Supplier:

- (a) if the Supplier suffers an Insolvency Event;
- (b) if the Supplier breaches clauses 22.1 to 22.2 below;
- (c) if the supplier breaches clauses 22 (Corrupt Gifts and Payments of Commission) or 31 (Ethics & Equality);
- (d) if the Supplier becomes an Affiliate of a Competitor;
- (e) if the Supplier breaches clauses 6.1 to 6.4, 16.1, 28.5, 29, or if any representation or warranty made by the Supplier in clause 3.1 is breached, or is or becomes incorrect;
- (f) if, in respect of any other agreement between Rolls-Royce or any Affiliate of Rolls-Royce and the Supplier or an Affiliate of the Supplier, Rolls-Royce or an Affiliate of Rolls-Royce has a right to terminate such agreement following a breach by the Supplier or an Affiliate of the Supplier of such agreement;
- (g) if the Supplier breaches any other condition of this Agreement or any Contract and (in the case of a breach that is remediable) does not remedy such breach within thirty (30) days of receiving from Rolls-Royce written notice of the breach and a request to remedy the breach; or
- (h) if any Secret Matter is disclosed by the Supplier, any Subcontractor or Affiliate, Staff or consultant of any of them to any person where such disclosure poses a threat to national security.

## 21 CONSEQUENCES OF TERMINATION

21.1 On termination of this Agreement or any Contract, the Supplier will, if required by Rolls-Royce to do so, promptly provide Rolls-Royce with, and licence Rolls-Royce (and any third party engaged by Rolls-Royce to complete the Deliverables and/or Services) to use, or ensure that Rolls-Royce is promptly provided with and Rolls-Royce (and any third party engaged by Rolls-Royce to complete the Deliverables and/or Services) is (or are) licensed to use, all such designs, documentation and information as may be necessary to enable Rolls-Royce to complete the Deliverables and/or Services itself, or have a third party complete the Deliverables and/or Services. Subject to clause 26 (Intellectual Property Rights), Rolls-Royce will have no right to use such designs, documentation and information provided under this clause 21.1 for any purpose other than completing the Deliverables or having a third party complete the Deliverables and/or Services.

## **22 CORRUPT GIFTS AND PAYMENTS OF COMMISSION**

22.1 The Supplier shall not do, and warrants that in entering this Agreement and any Contract it has not done any of the following (hereafter referred to as “Prohibited Acts”):

- (a) offer, promise or give to give to any Crown servant any gift or financial or other advantage of any kind as an inducement or reward;
  - (i) for doing or not doing (or for having done or not having done) any act in relation to the obtaining or execution of this or any other contract with the Crown; or
  - (ii) for showing or not showing favour or disfavour to any person in relation to this or any other Contract with the Crown.
- (b) enter into this or any other Contract with the Crown in connection with which commission has been paid or has been agreed to be paid by it or on its behalf, or to its knowledge, unless before this 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 the Authority.

22.2 If the Supplier, its employees, agents or any subcontractor (or anyone acting on its behalf or any of its or their employees) does any of the Prohibited Acts or commits any offence under the Prevention of Corruption Acts 1889 -1916 or under sub sections 108 -109 of the Anti-Terrorism, Crime and Security Act 2001 before those Acts or sub sections are revoked, or an offence under the Bribery Act 2010 with or without the knowledge or authority of Rolls-Royce in relation to this Contract or any other contract with the Crown, Rolls-Royce and the Authority shall be entitled:

- (a) To terminate this Agreement and any Contract and recover from the Supplier the amount of any loss resulting from the termination.
- (b) to recover from the Supplier the amount or value of any such gift, consideration or commission; and
- (c) to recover from the Supplier any other loss sustained in consequence of any breach of this clause 22.2, where this Agreement has not been terminated.

22.3 In exercising its rights or remedies under clause 22.2, Rolls-Royce shall:

- (a) 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;
- (b) give all due consideration, where appropriate, to action other than termination of this Agreement or any Contract, including (without being limited to):
  - (i) requiring the Supplier to procure the termination of a subcontract where the prohibited act is that of a Supplier or anyone acting on its or their behalf;
  - (ii) requiring the Supplier to procure the dismissal of an employee (whether its own or that of a Supplier or anyone acting on its behalf) where the prohibited act is that of such employee.

22.4 Recovery action taken against any person in Her Majesty's service shall be without prejudice to any recovery action taken against the Supplier pursuant to clause 22.3.

22.5 The Supplier shall notify Rolls-Royce in writing as soon as it becomes aware of the occurrence of any Prohibited Act or offence under the Bribery Act 2010.

22.6 Each Party undertakes to the other Party that neither it nor its Affiliates, directors, officers, employees, or other persons authorised to act on its behalf, in respect of this Agreement will:

- (a) undertake any action or activity; or
- (b) refrain from any action or activity;

where doing so is or was intended directly or indirectly to facilitate any offence of tax evasion.

22.7 Each Party represents, warrants and undertakes to the other Party that neither it nor its Affiliates, directors, officers, employees, or other persons authorised to act on its behalf, in respect of this Agreement, has:

- (a) (A) undertaken any action or activity; or
- (b) (B) refrained from any action or activity;

where doing so is or was intended directly or indirectly to facilitate any offence of tax evasion.

## **23 TERMINATION FOR DEFAULT BY ROLLS-ROYCE**

23.1 The Supplier may terminate this Agreement in the following circumstances only and any right the Supplier may otherwise have to terminate or cancel this Agreement at common law (including by acceptance of repudiation by Rolls-Royce) is hereby excluded:

- (a) if Rolls-Royce suffers an Insolvency Event; or
- (b) if Rolls-Royce is in breach of any obligation to make any payment under this Agreement or any Contract and such breach continues for a period of 90 days from the date that Rolls-Royce received a written notice from the Supplier notifying Rolls-



Royce that the payment was overdue, provided that the amount of the payment is not in dispute between the Parties.

23.2 On termination or completion of this Agreement or any Contractor whatever reason the Supplier shall provide all assistance as Rolls-Royce may reasonably require in order to ensure an orderly transition of the Deliverables and/or the performance of the Services to Rolls-Royce or any Successor Supplier.

## **PART 6 - CONFIDENTIALITY**

### **24 CONFIDENTIALITY**

24.1 Subject to clause 24.2, each Party agrees to hold in confidence any Information that it acquires directly or indirectly from the other Party (or the Affiliates of the other Party) and agrees:

- (a) to protect the Information with the same degree of care used to protect its own Information (which will never be less than a reasonable degree of care);
- (b) not to use the Information other than for the purposes of this Agreement and any Contract;
- (c) not to disclose the Information at any time or to any third party without the written approval of the other Party; and
- (d) not to remove, alter or deface any proprietary, confidentiality or security designations denoted on the Information.

24.2 The provisions of clause 24.1:

- (a) do not apply to Information which is:
  - (i) already in the public domain;
  - (ii) received from a third party who is without an obligation of non-disclosure;
  - (iii) subject to compliance with clause 24.4 below, required to be produced by a legitimate legal authority; or
  - (iv) already known by the receiving Party at the time of receipt;
- (b) will not prevent either Party from disclosing this Agreement and any Contract and financial information concerning the business between the Parties to appointed auditors, legal advisers, insurers and accountants;
- (c) will not prevent either Party from disclosing Information to Suppliers and Subcontractors solely to the extent necessary for the purposes of supplying the Deliverables and/or performance of the Services; and
- (d) will not prevent Rolls-Royce disclosing Information to its Affiliates.

24.3 Each Party will be responsible for the observance of the provisions of this clause 24 (Confidentiality) by its employees or any other third parties to whom Information is disclosed in accordance with this clause 24 (Confidentiality).

24.4 If the Party receiving the Information (the "Receiving Party") believes it is required by Law to disclose any Information to any third party:

- (a) such Party will provide the Party disclosing the Information (the "Disclosing Party") with immediate written notice of such requirement or obligation (together with a copy of any relevant access request, court order, or other evidence giving rise to such belief or obligation) to enable the Disclosing Party to seek appropriate protective relief and/or to take steps to resist or narrow the scope of any required disclosure; and
- (b) the Receiving Party must co-operate with the Disclosing Party with respect to such matters and will in any event disclose only such Information as it has ascertained, after taking legal advice, it is compelled by Law to disclose, and will use all reasonable endeavours to ensure that all Information so disclosed is accorded confidential treatment in the terms of this Contract. The Receiving Party will always notify the Disclosing Party in writing of the means, content and timing of such a disclosure before such a disclosure is made.

24.5 Rolls-Royce may release to the Authority any of those parts of this Agreement and any Contract documentation as is necessary to demonstrate Rolls-Royce's and the Supplier's compliance with the provisions of this Agreement and any Contract. Any such release shall not amount to a breach of any provision of confidentiality contained within this Agreement.

### **25 DATA PROTECTION**

25.1 In this clause 25 (Data Protection), the expressions "Data Controller" and "Personal Data" shall have the same meanings as in the Data Protection Laws.

25.2 In the performance of this Agreement and any Contract, both Parties shall comply with and discharge their obligations as a Data Controller under the Data Protection Laws and comply with and discharge all obligations relevant to this Contract under the Data Protection Laws.

25.3 To the extent the Supplier is Processing Personal Data on behalf of Rolls-Royce, the Supplier shall:

- (a) put in place technical and organisational measures to ensure that Personal Data is protected against loss, destruction and damage, and against unauthorised access, use, modification, disclosure or other misuse;

- (b) use any Personal Data obtained as a result of this Agreement and any Contract only for the purposes of fulfilling its obligations under this Agreement and any Contract;
- (c) comply with the instructions of Rolls-Royce from time to time in connection with the use of such Personal Data (including without limitation to the generality of the foregoing complying at the Supplier's own cost with such additional measures as Rolls-Royce may direct pursuant to the parties respective obligations under the GDPR;
- (d) not transfer Personal Data which has been obtained by or made available to the Supplier to any country outside the United Kingdom without obtaining the prior written consent of Rolls-Royce; and
- (e) upon termination of this Agreement, for whatever reason, cease Processing the Personal Data.

## **PART 7 – INTELLECTUAL PROPERTY**

### **26 INTELLECTUAL PROPERTY RIGHTS**

- 26.1 Where any Foreground Intellectual Property Rights are created as a result of the work undertaken by the Supplier, its agents or Subcontractors pursuant to a Contract, the Supplier agrees that such Intellectual Property Rights shall vest in and be the absolute property of Rolls-Royce. Consequently, the Supplier assigns or shall procure the assignment to Rolls-Royce, with full title guarantee and free from all third party rights, the Foreground Intellectual Property Rights and all other rights created as a result of each Order and the Supplier shall (at its own cost) do all necessary acts to vest such Foreground Intellectual Property Rights in the name of Rolls-Royce or its nominee, such acts to include (without limitation) the execution of documents in respect of any invention arising from the performance of the work under this Contract.
- 26.2 Any Background Intellectual Property Rights created by the Supplier prior to the commencement of work under a Contract and/or outside of the Deliverables or Services provided to Rolls-Royce under a Contract shall remain vested in and be the absolute property of the Supplier provided that if they are included in any Deliverables they must be clearly and legibly marked by the Supplier and the Supplier hereby grants to Rolls-Royce for use as necessary with the Foreground Intellectual Property Rights an irrevocable, perpetual, non-exclusive, worldwide, royalty-free licence (with the ability to sub-licence) in respect of them.
- 26.3 Where the Supplier is the owner or licensee of any Intellectual Property Rights which are necessary or desirable in connection with this Agreement and any Contract, it will make use of those Intellectual Property Rights at no additional cost to Rolls-Royce.
- 26.4 The Supplier shall indemnify Rolls-Royce against any and all liability, loss, claims, costs, expenses or damages, payments and royalties of any kind whatsoever incurred by Rolls-Royce as a result of or in connection with the infringement or alleged infringement of any Intellectual Property Rights owned or controlled by a third party in respect of the Deliverables, and shall promptly notify Rolls-Royce if any claim or demand is made or action brought against the Supplier for infringement or alleged infringement of any Intellectual Property Rights in the delivery of any Deliverables under this Agreement and any Contract.
- 26.5 The Supplier shall promptly provide Rolls-Royce with written details regarding the Deliverables which Rolls-Royce may request from time to time for inclusion in operating instructions and hereby grants Rolls-Royce a non-exclusive royalty free licence in perpetuity to use any copyright which the Supplier owns or contracts in respect of such information. Rolls-Royce undertakes that such information shall be used solely for such purpose.

## **PART 8 – MISCELLANEOUS**

### **27 COMPLIANCE WITH LAW**

- 27.1 The Supplier will, at all times:
- (a) obtain, maintain and observe all regulatory approvals applicable in connection with the supply of the Deliverables and/ or performance of the Services;
  - (b) comply with and observe all applicable Laws, including any export control Laws (including in particular the United States International Traffic in Arms Regulations ("ITAR") and the Export Administration Regulations ("EAR")), health and safety Laws, environmental protection Laws, Laws governing the disposal of any waste, employment Laws, Laws governing any materials, chemicals or processes used in connection with the supply of the Deliverables and/or performance of Services (including in particular Regulation (EC) No. 1907/2006 of the European Parliament concerning the registration, evaluation, authorisation and restriction of chemicals ("REACH")), Data Protection Laws and the Ethical Legislation;
  - (c) notify Rolls-Royce of any restrictions or provisos:
    - (i) that exist in respect of any regulatory approvals granted in connection with the supply of the Deliverables and/or performance of the Services; or
    - (ii) that exist under any Law,
    - (iii) or confirm in writing that no such restrictions apply; and
  - (d) provide Rolls-Royce with any Information reasonably requested by Rolls-Royce and any Information which it knows or should know that Rolls-Royce will or may need in order to comply with or manage its obligations under any Laws.

27.2 If a Deliverable, Service or any Information provided, or to be provided, by the Supplier to Rolls-Royce under this Agreement or any Contract is subject to export control, including in particular, ITAR or EAR, the Supplier must clearly mark such Deliverable or Information as being restricted and must, as soon as possible after the Effective Date, provide Rolls-Royce with all relevant details, including: whether the Deliverable is of a military or dual-use, which export control regime(s) the Deliverable is restricted under, full details of the Deliverable or Information concerned, full details of any applicable export licence or technical assistance agreement, details of any authorised end-users and full details of any applicable restriction or proviso and any other information requested by Rolls-Royce.

27.3 The Supplier agrees that Rolls-Royce will be under no duty to reimburse or compensate the Supplier for any increased costs incurred by the Supplier as a result of any changes in Law that occur.

## **28 REACH**

28.1 The Supplier warrants that where it sells, delivers or transfers Deliverables to Rolls-Royce in Europe, it has complied with Regulation (EC) No. 1907/2006 of the European Parliament concerning the registration, evaluation, authorisation and restriction of chemicals (“REACH”). The Supplier will ensure that each chemical substance contained in or used in the manufacture of deliverables sold, supplied or transferred to Rolls-Royce is, where required, registered; registered for Rolls-Royce’s particular use; supplied with a safety data sheet, and is not restricted under Annex XIV of REACH. In any circumstance where the chemical does appear on Annex XIV of REACH, the Supplier must ensure that it is authorised for Rolls-Royce’s use.

28.2 The Supplier confirms that if a chemical substance used in the provision of the Services appears under Annex XIV of REACH and:

- (a) the Services are being provided at a location in the European Economic Area; or
- (b) either Party is an entity incorporated in a European Economic Area member state,

then such chemical substance is authorised for Rolls-Royce’s particular use in accordance with the provisions of REACH.

28.3 Regardless of REACH, the Supplier will immediately notify Rolls-Royce if any Deliverable sold, supplied or transferred to Rolls-Royce is manufactured using or contains a substance listed on “*the Candidate List of Substances of Very High Concern for Authorisation*”, published by the European Chemical Agency. This clause 28 applies to all deliverables sold, supplied or transferred to Rolls-Royce inside or outside of Europe.

28.4 Whether or not REACH applies to any Deliverables sold, supplied or transferred to Rolls-Royce, on request by Rolls-Royce, the Supplier will answer all reasonable questions raised by Rolls-Royce, and provide all data sheets and other information required to enable Rolls-Royce to fulfil its own obligations under REACH, its own quality processes, or its contractual obligations under the Head Contract. This clause 28.4 applies to all Deliverables sold, supplied or transferred to Rolls-Royce inside or outside of Europe.

28.5 Clause 20 (Termination for Default) will apply if Deliverables do not conform to the requirements set out in clause 28 (REACH). The Supplier will indemnify Rolls-Royce against any and all damages, losses, costs, actions, claims, liabilities or expenses suffered or incurred by Rolls-Royce whether in contract, tort (including negligence) breach of statutory duty or otherwise, arising out of or in connection with any breach by the Supplier relating to this clause 28 (REACH).

## **29 CHANGES IN LAW**

29.1 The Supplier shall be responsible at his own cost and risk for managing the effects of any general change in Law and/or Regulatory Requirements applying to any part of this Agreement and any Contract.

## **30 OFFSET**

30.1 If appropriate and at Rolls-Royce’s written request, the Supplier will use its best endeavours to help Rolls-Royce:

- (a) meet any Offset commitments that Rolls-Royce or any Affiliate of Rolls-Royce may have; and
- (b) realise any Offset benefits that may be available to Rolls-Royce or any Affiliate of Rolls-Royce in connection with this Contract (or any Subcontracts resulting from this Contract).

30.2 The Supplier will seek Rolls-Royce’s written permission before claiming any Offset credits for itself or for any third party, arising in connection with any Subcontracts agreed by the Supplier in connection with this Agreement and any Contract.

## **31 ETHICS & EQUALITY**

31.1 The Supplier undertakes that neither it nor any person acting on its behalf will give, agree or promise any financial or other advantage to or for the benefit of any person for the purpose of influencing or rewarding any act or decision of any representatives of Rolls-Royce in relation to the award or negotiation of this Agreement and any Contract.

31.2 The Supplier will comply in full with and acknowledges receipt of the ‘Rolls-Royce Supplier Code of Conduct’ as set out at Rolls-Royce’s website for suppliers (<https://suppliers.rolls-royce.com>), as amended or replaced from time to time by Rolls-Royce and any other policy specified in an Order as being applicable.

31.3 The Supplier represents, warrants and undertakes that it has not, and none of its Affiliates, directors, officers, employees or Associated Persons or, to the extent it is aware, its former Affiliates, directors, officers, employees or Associated Persons, have:

- (a) authorised, offered, promised paid or otherwise given any financial or other advantage (including, without limitation any payment, loan, gift or transfer of anything of value), directly or indirectly, to or for the use or benefit of any Government Official (or to another person at the request or with the assent or acquiescence of such Government Official), or any other natural or legal person, in order to influence or assist any member of its group in improperly obtaining or retaining business for or with any person, in improperly directing business to any person, or in securing any improper advantage, or obtaining

any licence, permit, approval, certificate or clearance; or

(b) engaged in any other conduct which would constitute an offence under the Ethical Legislation,

and the Supplier undertakes that for the duration of this Agreement and any Contract it will not, and will, to the extent it is legally able, procure that none of its Associated Persons will, engage in any of the conduct described in clauses 31.3(a) and 31.3(b) above.

31.4 The Supplier warrants and undertakes to Rolls-Royce that:

- (a) it has in place, and for the duration of the term of this Agreement and any Contract will maintain, adequate policies, systems, controls and procedures:
  - (i) to prevent it and its Associated Persons from violating the Ethical Legislation; and
  - (ii) for reporting a violation or suspected violation of the Ethical Legislation and/or generally accepted standards of business ethics and conduct, and for ensuring that all such reports are fully investigated and acted upon appropriately;
- (b) it will promptly report to Rolls-Royce any request or demand for any undue financial or other advantage of any kind received by the Supplier in connection with the performance of this Agreement and any Contract;
- (c) upon receipt of a written request from Rolls-Royce, it will provide Rolls-Royce with any reasonable assistance to enable Rolls-Royce to perform any activity required by any relevant Governmental Authority for the purpose of compliance with the Ethical Legislation;
- (d) it will keep at its normal place of business detailed, accurate and up to date records and books of account showing all payments made by the Supplier in connection with this Agreement and any Contract and the steps taken by the Supplier to comply with the Ethical Legislation. The Supplier will ensure that such records and books of accounts are sufficient to enable Rolls-Royce to verify the Supplier's compliance with its obligations under this clause 31 (Ethics & Equality).

31.5 The Supplier warrants to Rolls-Royce that each of its Associated Persons that is a legal person has in place adequate policies, systems, controls and procedures to prevent it from violating the Ethical Legislation, and the Supplier undertakes that for the duration of the term of this Agreement and any Contract it will, to the extent it is legally able, procure that its Associated Persons that are legal persons will maintain such policies, systems, controls and procedures and will operate a programme of regular assessments to verify that they are complying with their obligations as set out in clause 31 (Ethics & Equality).

31.6 The Supplier will keep, and will ensure that each of its Associated Persons will keep, accurate and up to date records and accounts sufficient to demonstrate its full compliance with this clause 31 (Ethics & Equality) and will permit Rolls-Royce, or any independent third party nominated by Rolls-Royce, to inspect and take copies of such records and accounts and to meet with the Supplier's or the Associated Persons' personnel, in order to audit the Supplier's and Associated Persons' compliance with this clause 31 (Ethics & Equality). Such rights of inspection and audit shall continue for three years after the expiry or termination of this Agreement and any Contract. The Supplier will fully co-operate and assist in any audit carried out under this clause 31 (Ethics & Equality).

31.7 Notwithstanding any other provision of this Agreement and any Contract, any money due from Rolls-Royce to the Supplier under this Contract, or in relation to its subject matter, will not be payable if the Supplier has committed any actual or alleged breach of clause 31 (Ethics & Equality). In the event of an alleged breach, payment will only be payable once Rolls-Royce has concluded that there has been no actual breach of clause 31 (Ethics & Equality).

31.8 The Supplier shall not unlawfully discriminate either directly or indirectly on the grounds of age, disability, gender (including re-assignment), sex or sexual orientation, marital status (including civil partnerships), pregnancy and maternity, race, or religion or belief.

31.9 Without prejudice to the generality of the obligation in clause 31.8 above, the Supplier shall not unlawfully discriminate within the meaning and scope of the Equality Act 2010 (or any statutory modification or re-enactment thereof) or other relevant or equivalent legislation in the country where this Contract is being performed.

31.10 The Supplier agrees to take reasonable efforts to secure the observance of the provisions of clauses 31.8 to 31.11 by any of its employees, agents or other persons acting under its direction or control who are engaged in the performance of this Contract.

31.11 The Supplier agrees to take reasonable efforts to reflect this Condition in any Sub-Contract that it enters into to satisfy the requirements of this Agreement and any Contract and to require its Sub-Contractors to reflect this Condition in their Sub-Contracts that they enter into to satisfy the requirements of this Agreement and any Contract.

## **32 COMMUNICATIONS**

32.1 All communications under this Agreement must be in writing and in English.

32.2 All notices under this Agreement must be delivered by hand, by commercial courier or by registered or certified post to the address of the relevant Party listed in an Order for the attention of the person or office specified in an Order or, in the absence of any person or office being specified in an Order, for the attention of the company secretary or equivalent person in charge of legal compliance.

Notices may be delivered by e-mail or fax where agreed between Rolls-Royce and the Supplier and recorded in an Order.

32.3 Any notice will be deemed received:

- (a) if delivered by hand, at the time of delivery;
- (b) if delivered by commercial courier or registered or certified post, at the date and time of signature provided that if delivery occurs after 6 p.m. or on a day which is not a business day at the recipient's location, the notice will be deemed received at 9

a.m. on the following business day; or,

(c) If sent by fax or e-mail:

(i) If transmitted between 09:00 and 16:00 hours on a Business Day (recipient's time) on completion of receipt by the sender of verification of the transmission from the receiving instrument; or

(ii) If transmitted at any other time, at 09:00 on the first Business Day (recipient's time) following the completion of receipt by the sender of verification of the transmission from the receiving instrument.

32.4 Either Party may change its notice details by giving at least seven (7) days' notice to the other Party.

### **33 MISCELLANEOUS**

33.1 Each Party agrees from time to time to promptly do and perform such other and further acts and execute and deliver any and all such other instruments as may be required by Law to carry out and effect the intent and purpose of this Agreement and any Contract.

33.2 The rights of each Party may be exercised as often as needed, are cumulative and apply in addition to its rights under Law and may be waived only in writing and specifically. Not exercising, or a delay in exercising, any right that is not (and will not be deemed to be) a waiver of that right.

33.3 If any provision of this Agreement or any Contract is or becomes illegal, invalid or unenforceable in any jurisdiction in relation to any Party, that will not invalidate the remaining provisions or affect the legality, validity or enforceability of that or any other provision in any other jurisdiction.

33.4 The provisions of this Agreement may only be varied in accordance with clauses 5.1 to 5.9 of this Contract.

33.5 Each Affiliate of Rolls-Royce and Permitted User of Rolls-Royce shall have the benefit of all rights provided for in this Agreement and any Contract and shall be entitled to enforce this Contract subject to and in accordance with its terms.

33.6 Nothing in this Agreement or any Contract will: constitute a partnership or joint venture between the Parties or either of the Parties and the Authority; constitute any Party the agent of any other Party or of the Authority; or create any fiduciary obligations between the Parties or either of the Parties and the Authority and neither Party will: represent itself as the agent or partner of the other Party or of the Authority; or do anything (or omit to do anything) which might result in any person believing that such Party has the authority to contract or enter into commitments on behalf of, or in the name of, the other Party or of the Authority.

33.7 The Parties each irrevocably and generally consent to the issue of any process or the giving of any relief in connection with any claim brought against it, including the making, enforcement or execution of any order or judgment against any of its property or assets (regardless of their use or intended use).

33.8 If a Party or any of its property or assets is or are entitled in any jurisdiction to any immunity from service of process or of other documents relating to any proceedings or to immunity from jurisdiction, suit, judgment, execution, attachment (whether before judgment, in aid of enforcement, or otherwise) or other legal process, that Party irrevocably waives such immunity to the fullest extent permissible under the law of that jurisdiction. Each Party also irrevocably agrees not to claim any such immunity for itself or its property or assets.

33.9 This Agreement and any Contract made under this Agreement constitutes the entire agreement between the Parties with respect to the Deliverables and/or Services. Neither Party has placed any reliance on any representations made before the signature of this Agreement, whether orally or in writing, relating to the provision of the Deliverables and/or performance of the Services other than those expressly incorporated or set out in this Agreement and any Contract, which has been negotiated on the basis that its provisions represent their entire agreement relating to the Deliverables and/or Services and supersede all such representations. This clause does not apply to any representation made fraudulently.

33.10 The Supplier will not assign, delegate responsibility for or otherwise transfer its rights or obligations under this Agreement or any Contract.

33.11 All rights and remedies exercisable by Rolls-Royce in accordance with this Agreement and any Contract will, unless otherwise expressly specified in this Agreement and the relevant Contract, be without prejudice to any other rights and remedies of Rolls-Royce, whether contained in, or deriving from, this Agreement and any Contract or not.

33.12 The rights and remedies of either Party in respect of this Agreement and any Contract shall not be diminished, waived or extinguished by the granting of any indulgence, forbearance or extension of time granted by such Party to the other or by any failure of, or delay by the said Party in ascertaining or exercising any such rights or remedies. Any waiver of any breach of this Agreement or any Contract shall be by Notice in writing. The waiver by either Party of any breach of this Agreement or any Contract shall not prevent the subsequent enforcement of that provision and shall not be deemed to be a waiver of any subsequent breach of that or any other provision.

33.13 This Agreement may be entered into in the form of counterparts each executed by one or both of the Parties but, taken together and, provided that each Party duly executes such a counterpart, each of the executed counterparts, when duly exchanged or delivered, shall be deemed to be an original, and taken together, they shall constitute one instrument.

33.14 All property of the Supplier and its Representatives shall be at the risk of the Supplier whilst it is on any Government Establishment or the premises of Rolls-Royce or Other Industry Parties, and neither the Authority nor Rolls-Royce or Other Industry Parties shall accept any liability for any loss or damage howsoever occurring thereto or caused thereby, except as follows:

(a) where any such loss or damage was caused or contributed to by any act, neglect or default of any Government Servant, Rolls-Royce employee or agent or contractor of any of them then the Authority or Rolls-Royce as the case may be shall

accept liability therefor to the extent to which such loss or damage is so caused or contributed to as aforesaid; and

- (b) where any property of the Supplier has been taken on charge by the Officer in Charge, and a proper receipt has been given therefor, then the Authority or Rolls-Royce as the case may be shall be liable for any loss or damage occurring to that property while held on such charge as aforesaid.

33.15 The Supplier shall report any injury, disease or dangerous occurrence at any Government Establishment or premises of Rolls-Royce or Other Industry Parties arising out of the performance of this Contract, which is required to be reported under the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995 (RIDDOR) to, in the former case the Officer in Charge of the relevant Government Establishment and in the latter case to the Head of Site Security. This would be in addition to any report, which the Supplier may be required to submit under RIDDOR to the relevant enforcing authority (e.g. Health and Safety Executive or Local Authority).

33.16 Each Party shall at all times take all reasonable steps to minimise and mitigate any Loss or Losses for which it is entitled to bring a Claim against the other Party pursuant to this Agreement and any Contract.

33.17 If the Supplier is entitled under this Agreement and any Contract to recover any Loss, Losses, costs and/or compensation from Rolls-Royce as a result of any act or omission of Rolls-Royce, the Supplier shall take all reasonable steps and act in accordance with Good Industry Practice to minimise and mitigate such Loss, Losses and/or compensation including by procuring (where applicable) that each Subcontractor and all Supplier personnel take all reasonable steps to mitigate and minimise such Loss, Losses and/or compensation.

33.18 If Rolls-Royce is entitled under this Agreement and any Contract to recover any Loss, Losses or additional costs and expenses from the Supplier as a result of any act or omission of the Supplier and/or any Subcontractor, Rolls-Royce shall take all reasonable steps to minimise and mitigate such Loss, Losses or additional costs and expenses.

#### **34 ONGOING OBLIGATIONS**

Clauses 1, 2, 3, 4.7, 7.8, 8.2, 9.1 (in relation to record-keeping and traceability requirements), 10, 11, 12, 13, 14, 24, 25, 26, 28, 29, 31, 32, 33, 34, 35 and 36 of this Agreement (along with such of the Mandatory Step Down Clauses and other provisions as context may require) will survive the termination of this Agreement and any Contract and such provisions will continue in full force and effect.

#### **35 PUBLICITY**

Neither Party will use the other Party's name or trademarks in any publicity without the other Party's written permission.

#### **36 LAW AND JURISDICTION**

36.1 This Agreement and any Contract and any non-contractual obligations arising out of or in relation to this Agreement and any Contract, will be governed by and construed in accordance with English Law.

36.2 The English courts have jurisdiction to settle any dispute arising out of or in connection with this Agreement and any Contract, the legal relationships created by them, and any non-contractual obligations arising out of or in relation to them, and the Supplier submits to the exclusive jurisdiction of the English courts with respect to such disputes.

36.3 If the Supplier is not incorporated in the United Kingdom, the Supplier will provide the name and contact details of its process agent under this Agreement for service of process in any proceedings before the English courts. If any person appointed as process agent is unable for any reason to act as agent for service of process, the Supplier will immediately appoint another agent on terms acceptable to Rolls-Royce. Failing this, Rolls-Royce may appoint another agent for this purpose. The Supplier agrees that failure by a process agent to notify it of any process will not invalidate the relevant proceedings. This clause 36.3 does not affect any other method of service allowed by Law.

36.4 Nothing in this clause 36 (Law and Jurisdiction) limits the right of Rolls-Royce to take legal action under this Agreement or any Contract in any other courts with jurisdiction. To the extent allowed by Law, Rolls-Royce may take:

- (a) proceedings in any other court; and
- (b) concurrent proceedings in any number of jurisdictions.

36.5 Each Party:

- (a) waives any objection to the courts of England on grounds of inconvenient forum or otherwise as regards proceedings in connection with this Agreement and any Contract; and
- (b) agrees that a judgment or order of a court of England in connection with this Agreement or any Contract will be binding on it and may be enforced against it in the courts of any other jurisdiction.

#### **37 THIRD PARTY RIGHTS**

37.1 No person who is not a Party to this Agreement (including any employee, officer, agent, representative of either Party) shall have any right under the Contracts (Rights of Third Parties) Act 1999 or otherwise to enforce any term of this Agreement or any Contract, except as follows:

- (a) any person with the express prior written agreement of the Parties which agreement must refer to this clause 37 (Third Party Rights);
- (b) the Authority;
  - (i) In the event of Intervention, during which the Authority may instruct the Supplier to take such steps and/or actions

and/or to stop taking certain steps and/or actions as the Authority may direct including without limitation:

- (A) accelerating to early completion or suspending the provision of any Deliverable or Service;
- (B) providing instructions to the Supplier and any Subcontractor and its Staff in accordance with the Authority's directions in relation to the performance of the obligations of the Supplier or any Subcontractor under this Agreement and any Contract or its Subcontract and any amendment to this Agreement and any Contract or any Subcontract required by the Authority;
- (C) requiring the Supplier to terminate any Subcontract;
- (D) and, the Supplier shall promptly comply, and procure compliance by all relevant Subcontractors with, any instruction issued by the Authority pursuant to this clause 37.1 (b).

(ii) to the extent required and referred to in Schedule 3 of this Agreement (Mandatory Step Down clauses).

37.2 The Parties' rights to alter the terms of this Agreement and any Contract are not subject to the consent of any person who is not a Party to this Agreement.

37.3 Where, and only where, this Agreement or any Contract expressly states that a third party shall be entitled to enforce a term of this Agreement or any Contract:

- (a) The Supplier shall inform the said third party as soon as is reasonably practicable of the existence of the relevant right together with any other terms (including the terms of this clause 37 (Third Party Rights)) relevant to the exercise of that right; and,
- (b) the third party's rights shall be subject to any provision in this Agreement and any Contract:
  - (i) that provides for the submission of disputes under this Contract generally; and
  - (ii) that stipulates the law and jurisdiction that will govern this Contract (clause 36 (Law and Jurisdiction)).

## **SCHEDULE 1: INTERPRETATION**

### **1. INTERPRETATION**

#### **1.1 Definitions**

“**1958 UK/US Agreement**” means the agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the United States of America for cooperation on the uses of atomic energy for mutual defence purposes, dated 3 July 1958, as amended from time to time;

“**Affiliates**” means as to any person, any other person that is in Control of, is Controlled by, or is under common Control with, such person;

“**Agreement**” means these terms and conditions, which are intended to be incorporated into Contracts;

“**Allowable Costs**” has the meaning given in the Mandatory Step Down Clauses;

“**Associated Person**” means in relation to a company, a person (including any director, officer, employee, agent or other intermediary) who performs services for or on behalf of that company (in each case when performing such services or acting in such capacity);

“**the Authority**” means the Secretary of State for Defence;

“**Background IPR**” means IPR brought by either Party for use under this Contract which is owned by or licensed to a Party before the Effective Date, or later developed or otherwise acquired by a Party other than through participation in this Contract, and the term ‘Background Intellectual Property’ shall be construed accordingly;

“**Base Rate**” means for the period 1<sup>st</sup> January to 30<sup>th</sup> June, the Bank of England base rate at the close of business on 31<sup>st</sup> December of the previous year and, for the period 1<sup>st</sup> July to 31<sup>st</sup> December, the Bank of England base rate at the close of business on 30<sup>th</sup> June the same year;

“**Buyer Property**” means any property of Rolls-Royce or the Authority that Rolls-Royce or the Authority has loaned, bailed, consigned or supplied to the Supplier in connection with this Contract, to be utilized in the manufacture or incorporated into the Deliverables;

“**CAAS**” means the Authority’s Cost Accountancy and Analysis Service;

“**Competitor**” means any entity, or any Affiliate of an entity, that offers deliverables, goods or services in competition with any deliverables, goods or services offered or supplied by Rolls-Royce or any Affiliate of Rolls-Royce;

“**Contract**” means the binding contract which comes into force upon Rolls-Royce issuing an Order, and which incorporates the terms of this Agreement, the Mandatory Step Down Clauses and any Order-Specific Clauses as set out in clause 1 (Interpretation and Applicability of Contract Terms);

“**Control**” means the power, directly or indirectly, either to: (a) vote 50% or more of the securities having ordinary voting power for the election of directors (or persons performing similar functions) of such person; or, (b) direct or cause the direction of the management and policies of such person, whether by contract or otherwise;

“**Cyber Essentials Accreditation**” means the possession of either a Cyber Essentials Certificate or Cyber Essentials Certificate Plus issued by an Accreditation Body as set out in the Cyber Essentials Scheme;

“**Cyber Essentials Scheme**” means the assurance framework dated January 2015, which can be found at the following address:- <https://www.cyberaware.gov.uk/cyberessentials/files/assurance-framework.pdf>;

“**Data**” has the meaning given to that term in the Data Protection Laws;

“**Data Processor**” has the meaning given to that term in the Data Protection Laws;

“**Data Protection Laws**” means the Data Protection Act 1998 (the “DPA”), the General Data Protection Regulation (“GDPR”), any regulations made under the foregoing, and/or any successor legislation dealing with the control and processing of personal data and any regulations made thereunder;

“**Defect**” means a Deliverable that does not conform to the warranties and representations in clause 3.2;

“**Deliverables**” means those products or goods that the Supplier has agreed to supply to Rolls-Royce as specified in an Order, and shall include without limitation any report or drawings which are required to be delivered upon completion of any Services;

“**Delivery**” means the delivery of a Deliverable to Rolls-Royce or the performance of the Services pursuant to clause 6.1 and “Deliver” shall be construed accordingly;

“**Disallowed Cost**” has the meaning given in the Mandatory Step Down Clauses;

“**Effective Date**” means the date this Contract was entered into by the Parties;

“**End Date**” has the meaning given in clause 19.1;

“**Ethical Legislation**” means (a) any legislation enacted in Rolls-Royce or Supplier’s jurisdiction of incorporation, or in any other jurisdiction where the Deliverable is delivered or Services performed, to enforce or implement either the United Nations Convention against Corruption (being the subject of General Resolution 58/4 of 31 October 2003 of the General Assembly of the United Nations)



or the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions adopted on 21 November 1997; and (b) the United Kingdom Anti-Terrorism, Crime and Security Act 2001, the United Kingdom Proceeds of Crime Act 2002, the United Kingdom Bribery Act 2010 and the United States Foreign Corrupt Practices Act (15 U.S.C. Section 78dd-1, et. seq.) (c) any other laws relating to anti-bribery and corruption matters applicable to the subject matter of the Contract (d) any of the above as amended from time to time;

**"Force Majeure Event"** means, subject to such events being (a) unforeseeable at the time the Parties entered into this Contract and; (b) beyond the reasonable control of the Supplier: acts of God; the refusal of any government to grant a necessary export licence or the withdrawal or suspension of such licence; any other government or other legal or regulatory authority action or inaction; fires; floods; wars or threats of war; riots; national labour disputes; acts of terrorism; disruption to essential services such as electrical power; extreme weather; quarantine or any government or regulatory authority mandated precautions against contagious disease epidemics or pandemics, other than those in each case caused directly or indirectly by the Supplier;

**"Foreground IPR"** means any IPR other than a Background IPR, and the term 'Foreground Intellectual Property' shall be construed accordingly;

**"Governmental Authority"** means:

- a) the government of any jurisdiction (or any political or administrative subdivision thereof) and any department, ministry, agency, instrumentality, court, central bank or other authority thereof, including without limitation any entity directly or indirectly owned or controlled thereby;
- b) any public international organisation or supranational body (including without limitation the European Union) and its institutions, departments, agencies and instrumentalities; or
- c) any quasi-governmental or private body or agency lawfully exercising, or entitled to exercise, any administrative, executive, judicial, legislative, regulatory, licensing, competition, tax or other governmental or quasi-governmental authority.

**"Government Official"** means any person who would constitute either:

- a) a "foreign public official" as defined in the UK Bribery Act 2010; or
- b) a "foreign official" as defined in the United States Foreign Corrupt Practices Act, including, but not limited to:
  - (i) an individual who holds a legislative, administrative or judicial position, including a government minister, elected representative of a national or regional assembly, official of a political party, civil servant, magistrate or judge; or
  - (ii) an employee, officer, agent or other person acting in an official capacity for a Governmental Authority.

**"Head Contract"** – the contract which Rolls-Royce has entered into with the respective customer, Governmental Authority or other end-user or beneficiary of the Deliverables or Services;

**"Information"** means any commercial, financial, technical or operational information, know-how, trade secrets or other information of or in the possession of a Party in any form or medium (including all data, know-how, calculations, designs, drawings, methods, processes, systems, explanations and demonstrations) which has been or may be disclosed or otherwise made available to the other Party, whether orally or in written, electronic or other form, including any copies or reproductions of such information in any form or medium, and any part or parts of the same, including the provisions and subject matter of this Contract and any other agreements or documents executed by the Parties in connection with this Contract;

**"Insolvency Event"** means an event where a person (a) is deemed to be or states in writing that it is insolvent, (b) is subject to any types of insolvency or collective judicial or administrative proceedings, including interim proceedings, in which its assets are subject to control or supervision by any court or other governmental entity for purposes of dissolving, liquidating or reorganising that person or its assets, (c) proposes to enter or enters into any composition or arrangement with its creditors generally or any class of creditors, (d) suspends or declares in writing its intention to suspend payments to creditors generally or any class thereof, or suspends or ceases all or substantially all of its business, (e) any other steps are taken to enforce any encumbrance over all or part of that persons assets and/or undertaking, or (f) takes steps, or is subject to actions, analogous to the items specified in (a) to (e) above;

**"Intervention"** means the period between issue by the Authority to Rolls-Royce of an Intervention Notice stating that the Authority intends to exercise its rights of intervention and the serving by the Authority to Rolls-Royce of the relevant Intervention Termination Notice;

**"IPR"** means patents, registered designs, trademarks, service marks (in each case, whether registered or not), domain names, copyright, design rights, database rights, moral rights, trade secrets, know-how, metatags, petty patents, utility models and all similar or equivalent property rights including those subsisting in any part of the world in inventions, designs, drawings, computer programs, semiconductor topographies, business names, IP addresses, goodwill, 'get-up' and the style and presentation of goods or services and in applications for protection of the same and any continuations, re-issues or divisions relating to them in any part of the world;

**"Law"** means all applicable statutes, regulations, Regulatory Requirements, by laws, ordinances, subordinate legislation and other laws or instrument (regardless of their source), including any judicial or administrative interpretation of them, in force from time to time (including any directive or order promulgated by any competent national or supra national body);

**"Losses"** means all losses, liabilities, damages, costs, claims, suits, judgments, orders, taxes and expenses (including legal fees on a full indemnity basis and other professional advisers' fees, and disbursements and costs of investigation, litigation, settlement, judgment, interest, penalties and remedial actions) (however described, characterised or classified and whether direct or indirect), including loss of profits or revenues, costs of unwinding funding arrangements, liability for professional fees and expenses;

**"Mandatory Step-Down Clauses"** means the clauses which the Authority has mandated (i) are to be included within this Contract and (ii) to the extent specified and subject to any limitation specified are to be included in all subcontracts placed by the Supplier or its Subcontractors pursuant to this Contract;

**"NNPP"** means the UK Naval Nuclear Propulsion Programme;

**"Non-Conformance"** means an apparent or discovered failure, defect or shortcoming in Services, by which they do not conform to (or do not continue to conform to) the requirements set out in the Contract;

**"Offset"** means the trade practice by which a Government or a Government entity buying goods and/or services requires an investment to be made in that Government's jurisdiction in return for agreeing to buy such goods and/or services;

**"Open Literature"** means publicly available literature (including where access is via a fee or subscription), access to which is outside the control of the Supplier or Rolls-Royce. This may include but is not limited to media articles, journal articles, scientific papers, conference papers, dissertations and theses;

**"Order"** means a purchase order, scheduling agreement or any other form of purchase document issued by Rolls-Royce that incorporates these General Conditions by reference;

**"Order-Specific Clauses"** any additional or amended clauses set out on the face of an Order;

**"Other Industrial Parties" or "Other IPs"** means BAE Systems Marine Limited, registered with company number 00229770, Devonport Royal Dockyard Limited, registered with company number 02077752 or Babcock Marine (Clyde) Limited registered with company number SC220243;

**"Parties"** means Rolls-Royce and the Supplier; and a **"Party"** means one of them;

**"Permitted User"** means any Affiliate or customer of Rolls-Royce, notified to the Supplier from time to time as being authorised by Rolls-Royce to receive the benefit of the Services under this Contract;

**"Personal Data"** has the meaning given to that term in the Data Protection Laws;

**"Processing"** has the meaning given to that term in the Data Protection Laws, the terms "Process" and "Processed" shall be construed accordingly;

**"Rectification Notice"** has the meaning given in clause 7.3(a);

**"Regulatory Bodies"** means those Government departments and regulatory, statutory and other entities, committees, ombudsmen and bodies which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to regulate, investigate, or influence the matters dealt with in this Contract and "Regulatory Body" shall be construed accordingly;

**"Regulatory Requirement"** means any legally enforceable requirement of a Regulatory Body;

**"Rejection Notice"** has the meaning given in clause 7.3(c);

**"Relevant Person"** means any person who was previously involved to any extent in the Services or who is engaged from time to time in the provision of such Services (whether employees, workers, agency workers or consultants of Supplier or any sub-contractor or agent of Supplier) and who transfers, or is alleged to have transferred, to Rolls-Royce, a Successor Supplier or any other new provider of any service equivalent to, or substantially the same as, or which replaces, the Services (or any part thereof) as a result of TUPE;

**"Secret Matter"** means any matter connected with this Contract, or its performance which Rolls-Royce informs the Supplier in writing has been designated by the Authority as 'Top Secret', 'Secret' or 'Confidential', and shall include any information concerning the content of such matter and anything which contains or may reveal that matter;

**"Service Commencement Date"** has the meaning given in clause 6.3(a);

**"Services"** means those services that the Supplier has agreed to provide to Rolls-Royce as specified in an Order;

**"Specified Service Levels"** means those service levels set out in an Order, to include any reporting obligations of the Supplier in respect of those service levels;

**"Specified Timescales"** means any timescales for the provision of the Services specified in an Order or, if no timescales are specified in an Order, any reasonable timescales notified by Rolls-Royce to the Supplier from time to time;

**"Staff"** means any employees, officers and individuals contracted to the Supplier and involved to any extent in the performance of the Services and/or the performance of this Contract;

**"Scheduled Delivery Date"** means the date or dates for Delivery of each Deliverable or the whole of the Deliverables as specified in an Order;

**"Single Source Regulations Office (SSRO)"** has the meaning given to it in the Defence Reform Act 2014;

**"Statutory Guidance on Allowable Costs"** means the guidance issued by the SSRO from time to time pursuant to section 20(1) of the Defence Reform Act 2014 about determining whether costs are Allowable Costs;

**"Subcontract"** means:

- (a) any contract or arrangement (whether or not reduced to writing) between the Supplier and any person for the performance by such third party of any part of the Suppliers obligations under this Contract or for the provision by such third party of any goods,

equipment or services required for or in relation to the performance by the Supplier of any of its obligations under this Contract;  
or

- (b) any other contract or arrangement (whether or not in writing) for the performance by any person, other than the Supplier, of any part of the Supplier's obligations under this Contract or for the provision by any such person of any goods, equipment or services supplied for or in relation to the performance by the Supplier of any of its obligations under this Contract;

**"Subcontractor"** means any subcontractor of any tier to the Supplier and the word "Subcontractors" shall be construed accordingly;

**"Successor Supplier"** means each and any supplier who Rolls-Royce, or any of its Affiliates, or any Permitted User, appoints to provide any service equivalent to, or substantially the same as, or which replaces, the Services (or any part thereof) immediately after the termination or expiry of the Contract (whether in whole or in part);

**"Supplier"** means the entity accepting an Order;

**"Technical Information"** means information concerning the design, arrangement, development, manufacture, testing, operation, administration, training, maintenance, and repair of the propulsion plants of UK naval nuclear powered submarines and prototypes, including the associated onboard and shore based nuclear support facilities;

**"Total Order Value"** means the price for the Services and/ or Deliverables and the basis upon which it is calculated as set out in an Order or (where relevant) Orders, and as amended from time to time which has the same or similar effect;

**"Termination Notice"** has the meaning given in clause 19 (Termination for Convenience);

**"TUPE"** means the Transfer of Undertakings (Protection of Employment) Regulations 2006, as amended, consolidated or replaced from time to time;

**"Working Day"** means Monday to Friday from 9am to 5pm excluding any public holidays.

## 1.2 Construction

(a) In these General Conditions unless the context otherwise requires any reference to:

- (i) an "amendment" includes an amendment, supplement, novation, re-enactment, replacement, restatement or variation and "amend" will be construed accordingly;
- (ii) a "clause", "sub-clause" or a "schedule" is a reference to a clause or sub-clause of these General Conditions;
- (iii) a "paragraph" or "sub-paragraph" is a reference to a paragraph or sub-paragraph of a schedule to these General Conditions;
- (iv) a currency is a reference to the lawful currency for the time being of the relevant country;
- (v) "include", "includes", "including" or similar terms will not be construed as exclusive or limiting examples of the matters in question and will mean "including, without limitation";
- (vi) a "person" includes any individual, partnership, consortium, joint venture, trust, company, corporation, government, state, agency, committee, department, authority and other bodies, corporate or unincorporated whether having distinct legal personality or not;
- (vii) a "regulation" includes any regulation, rule, official directive, request or guideline in each case whether or not having the force of law but, if not having the force of law, being of a type the compliance with which is in accordance with the general practice of the persons to whom it is addressed of any governmental, intergovernmental or supranational body, agency, department or regulatory, self regulatory or other authority or organisation;
- (viii) a provision of any Law is a reference to that provision as extended, applied or amended and includes any subordinate legislation;
- (ix) words imparting the singular include the plural and vice versa;
- (x) unless the context otherwise requires, a reference to one gender will include a reference to the other genders; and
- (xi) "days" is a reference to calendar days.

(b) The headings in the General Conditions do not affect its interpretation.

## **SCHEDULE 2: AUTHORITY MANDATORY STEP DOWN CLAUSES – CPC CONTRACT**

The following terms apply to and are incorporated into this Contract pursuant to clause 1.3 of the General Conditions and subject to the following applicability requirements and constraints. They are also required to be flowed-down mutatis mutandis to the Supplier's subcontractors pursuant to clause 13.2 of the General Conditions.

### **Applicability Constraint – All Orders**

Paragraph 1 (Prohibition of Publication and Disclosure) of this Schedule 2 shall apply to all Orders.

### **Applicability Constraint – Order Value**

Paragraphs 2 (Security) to 18 (Quality and Technical Requirements) of this Schedule 2 shall apply in full in all cases where the Total Order Value is equal to or greater than £500,000 (five hundred thousand pounds sterling).

Rolls-Royce reserves the right to specify at its sole discretion that the clauses in this Schedule 2 apply in whole or in part to an Order with a lower Total Order Value.

Without limitation to the foregoing, where any Variation increases the Total Order Value above £500,000 (five hundred thousand pounds sterling), the provisions of this Schedule 2 shall thereafter apply to the whole of the Order from the effective date of such Variation. The price and programme implications of compliance with such requirements shall be included in the Variation. For the avoidance of doubt, in such case the provisions of Schedule 2 shall not be deemed to have retrospective effect.

### **Applicability Constraint - Relevance**

Paragraph 11 of this Schedule 2 is stated to apply only to the extent that it is relevant to the Deliverables or Services. Any ambiguity or dispute about the relevance of such provision shall be determined by Rolls-Royce acting reasonably.

## **1 PROHIBITION OF PUBLICATION AND DISCLOSURE**

1.1 Subject to the provisions of DEFCON 531, this Contract shall be subject to a prohibition on:

- (a) the publication in Open Literature of Technical Information with a classification of higher than Official about work performed for the UK Naval Nuclear Propulsion Programme; and
- (b) disclosure to foreign nationals (including dual nationals) of any Technical Information with a classification of NNPP.

1.2 The Supplier shall procure that every Subcontract placed for the purpose of work under or in pursuance of this Agreement which will or may involve the Subcontractor receiving Technical Information with a classification higher than OFFICIAL and/or with the descriptor "NNPP" shall be made subject to the provisions of this paragraph 1 (Prohibition of Publication and Disclosure) and that every such Subcontractor shall, on or prior to entering into the relevant Subcontract, enter into written undertakings with Rolls-Royce that it will comply therewith.

1.3 The provisions of paragraph 1.1 may be waived in writing in whole or in part by the Authority when, in the reasonable opinion of the Authority:

- (a) the exceptional nature of the circumstances requires a waiver; and,
- (b) to do so would be in the interest of the NNPP provided that the Authority is satisfied with the restrictions and controls being applied by Rolls-Royce to the disclosure.

1.4 Waivers under paragraph 1.3 shall be limited in effect to the matters in respect of which they are expressly given and, save as expressly so waived by the Authority, the provisions of paragraphs 1.1 to 1.6 shall continue in full force and effect.

1.5 Notwithstanding any other provisions in this Contract, any invention or discovery employing classified information that has been communicated or exchanged pursuant to the 1958 UK/US Agreement or derived from the submarine propulsion plant, material or equipment transferred under the said agreement shall be dealt with in accordance with the terms of the said agreement as amended or supplemented by any subsequent amendments

1.6 The provisions of paragraphs 1.1 to 1.4 shall prevail in the event of inconsistency or conflict with any other provisions within this Contract.

## **2 SECURITY**

2.1 The Supplier shall:

- (a) take all reasonable steps to ensure that all Employees engaged in any work in connection with this Contract have notice of the Official Secrets Acts 1911/ 1989 apply to them and will continue so to apply after the completion or termination of this Contract; and
- (b) if directed by Roll-Royce or the Authority, ensure that any Employee sign a statement acknowledging that, both during the term of this Contract and after its completion or termination, he is bound by the Official Secrets Acts 1911/ 1989 (and where applicable by any other Legislation).

2.2 Unless he has written authorisation of the Authority to do otherwise neither the Supplier nor any of his Employees shall, either before or after completion or termination of this Contract, do or permit to be done anything which they know or ought reasonably to know may result in any Secret Matter being disclosed to or acquired by a person in any of the following categories:

- (a) who is not a British citizen;
- (b) who does not hold the appropriate authority for access to the protected matter;
- (c) in respect of whom the Rolls-Royce has notified the Supplier in writing that the Secret Matter shall not be disclosed to or acquired by the person;

- (d) who is not an Employee of the Supplier;
  - (e) who is an Employee of the Supplier and has no need to know the information for the proper performance of this Contract.
- 2.3 Unless he has the written permission of the Rolls-Royce to do otherwise, the Supplier and all parties under his control shall, both before and after the completion and termination of this Contract, take all reasonable steps to ensure that:
- (a) no photograph of, or pertaining to, any Secret Matter shall be taken and no copy of or extract from any Secret Matter shall be made except to the extent necessary for the proper performance of this Contract; and,
  - (b) any Secret Matter is at all times strictly safeguarded in accordance with the Manual of Protective Security and, upon request, is delivered up to Rolls-Royce who shall be entitled to retain it.
- 2.4 A decision of the Authority on the question of whether the Supplier has taken or is taking reasonable steps as required by this paragraph, shall be final and conclusive.
- 2.5 The Supplier shall:
- (a) provide to Rolls-Royce:
    - (i) upon request, such records giving particulars of those Employees who have had at any time, access to any Secret Matter that is required to be kept in accordance with paragraph 2.3(b);
    - (ii) upon request, such information as the Authority may from time to time require so as to be satisfied that the Supplier and his Employees are complying with his obligations under this clause, including the measures taken or proposed by the Supplier so as to comply with his obligations and to prevent any breach of them;
    - (iii) full particulars of any failure by the Supplier and his Employees to comply with any obligations relating to any Secret Matter arising under this clause immediately upon such failure becoming apparent;
  - (b) ensure that, for the purposes of checking the Supplier's compliance with the obligation in paragraph 2.3(b), a representative of Rolls-Royce or the Authority shall be entitled at any time to enter and inspect the premises used by the Supplier which are in any way connected with this contract and inspect any document or thing in any such premises, which is being used or made for the purposes of this Contract. Such representative shall be entitled to all such information as he may reasonably require.
- 2.6 If at any time either before or after the completion or termination of this Contract, the Supplier or any of his Employees discovers or suspects that an unauthorised person is seeking or has sought to obtain information directly or indirectly concerning and Secret Matter, the Supplier shall forthwith inform Rolls-Royce of the matter with full particulars thereof.
- 2.7 If the Supplier proposes to enter into a subcontract which will involve the disclosure of a Secret Matter to the subcontractor, the Supplier shall:
- (a) submit for approval of Rolls-Royce the name of the proposed subcontractor, a statement of the work to be carried out and any other details known to the Supplier which Rolls-Royce shall reasonably require;
  - (b) incorporate into the subcontract the terms of this clause and such secrecy and security obligations as Rolls-Royce shall direct;
  - (c) inform the Authority immediately he becomes aware of any breach by the subcontractor of any secrecy or security obligation and, if requested to do so by Rolls-Royce, terminate the agreement.
- 2.8 Rolls-Royce shall be entitled to terminate this Contract immediately if:
- (a) the Supplier is in breach of any obligation under this paragraph 2 (Security);
  - (b) the Supplier is in breach of any secrecy or security obligation imposed by any other contract with the Crown;
- where the Authority considers the circumstances of the breach jeopardise the secrecy and security of the Secret Matter and notifies Rolls-Royce accordingly.
- 2.9 The Supplier shall protect all Information relating to the aspects designated OFFICIAL-SENSITIVE as identified in the security aspects letter annexed to the Contract, in accordance with the official security conditions contained in the Contract or annexed to the Security Aspects Letter and shall procure that any Subcontract (of any tier at which any OFFICIAL-SENSITIVE Information is handled) which requires disclosure of OFFICIAL-SENSITIVE Information to the Subcontractor or under which any Information relating to aspects designated as OFFICIAL-SENSITIVE is created by the Subcontractor contains a provision in like terms to this paragraph 2 (Security) to so protect such Information.
- 3 MONITORING AND REPORTING**
- 3.1 The Supplier shall as soon as reasonably practicable provide, or procure the provision of, such information relating to the services and the performance by the Supplier of its obligations under this Contract and the performance by the Subcontractors of their obligations under the Subcontracts as Rolls-Royce or the Authority may require from time to time.
- 3.2 Rolls-Royce and the Authority shall monitor the performance of the Supplier and its Subcontractors of any tier under this Contract and their respective Subcontracts, in each case in accordance with the provisions of this Contract

#### **4 PUBLIC CONTRACT REGULATIONS 2006**

##### **4.1 The Supplier:**

- (a) warrants that neither it, any of its directors nor any person with powers of representation, decision or control of the Supplier:
  - (i) has been convicted of any of the offences specified in Regulation 23(1) (a) to 23 (1)(f) inclusive of the Public Contract Regulations 2006; or
  - (ii) falls within any of the grounds specified in Regulation 23(4) (a) to 23(4) (j) inclusive of the Public Contract Regulations 2006 in line with relevant government guidance or recommendations at the date of this Contract; and
- (b) shall not enter into a Subcontract if the Supplier has actual knowledge that a proposed Subcontractor or its directors or any other person who has powers of representation, decision or control of the proposed Sub-contractor:
  - (i) has been convicted of any of the offences specified in Regulation 23(1) (a) to 23(1) (f) inclusive of the Public Contract Regulations 2006; or
  - (ii) falls within any of the grounds specified in Regulation 23(4) (a) to 23(4) (j) inclusive of the Public Contract Regulations 2006;
- (c) In each case above, in line with relevant government guidance or recommendations at the time of entering into the Subcontract.

#### **5 WARRANTY PERIOD AND COLLATERAL WARRANTY**

5.1 The Warranty Period for the purposes of this paragraph 5 (Warranty Period and Collateral Warranty) shall be six (6) years from Delivery.

5.2 The Supplier shall provide or shall procure the provision from any Subcontractor to whom it Subcontracts any of its obligations of, a Collateral Warranty in favour of the Authority as soon as is reasonably practicable after their appointment or engagement including the terms set out at Appendix 1 (Collateral Warranty Terms) to this Contract.

#### **6 INTELLECTUAL PROPERTY**

##### **6.1 The Supplier undertakes:**

- (a) to notify Rolls-Royce in writing full details of any Inventions promptly on their creation;
- (b) to keep confidential all Inventions;
- (c) whenever requested to do so by Rolls-Royce, and in any event on expiry or termination, promptly to deliver to Rolls-Royce all correspondence, documents, papers and records on all media (and all copies or abstracts of them), recording or relating to any part of the Services and/ or Deliverables and the process of their creation which are in his possession, custody or power;
- (d) not to register nor attempt to register any of the IPR in the Deliverables and/ or Services or in any of the Inventions, unless requested to do so by Rolls-Royce; and
- (e) to do all acts necessary to confirm that absolute title in all IPR in the Inventions has passed or will pass to Rolls-Royce.

6.2 The Supplier acknowledges the commercial importance and high repute of the Rolls-Royce trademarks and consequently, will not without the prior written permission of Rolls-Royce's Intellectual Property department use any Rolls-Royce trade mark(s) on products or services or use the Rolls-Royce trademarks or business name in any manner including on its websites or otherwise. All title and rights in the Rolls-Royce owned trademarks will remain exclusively vested in Rolls Royce. Any goodwill derived hereunder from using any of the Rolls-Royce trademarks will automatically accrue to Rolls-Royce whether arising at common law or otherwise and Rolls-Royce and its successors in title can call for assignment of the goodwill at any time.

##### **6.3 The Supplier represents and warrants to Rolls-Royce that:**

- (a) it has not given and will not give permission to any third party to use any of the Works or the Inventions, nor any of the Intellectual Property rights in the Works;
- (b) it is unaware of any use by any third party of any of the Works or Intellectual Property rights in the Works;
- (c) the use of the Works or the Intellectual Property rights in the Works by Rolls-Royce will not infringe the rights of any third party;
- (d) the Supplier waives any moral rights in the Works to which it or its employees is now or may at any future time be entitled under Chapter IV of the UK Copyright Designs and Patents Act 1988 or any similar provisions of law in any jurisdiction;
- (e) the Supplier acknowledges that no further remuneration or compensation other than that provided for in this Contract is or may become due to it in respect of the performance of the obligations under this Contract;
- (f) the Supplier will not use any Works, Inventions or any other IP generated under this contract for any purpose other than for the provision of the Articles to Rolls-Royce without the prior written permission of Rolls-Royce.
- (g) the Supplier will not, nor directly or indirectly assist any other person to do or omit to do anything to diminish the IP belonging to, or provided to the Supplier by, Rolls-Royce, or impair any registration of such IP.

## **7 IMPORT DUTIES**

7.1 In the event that the Supplier or any subcontractor needs to import any articles from outside the European Union for or in connection with the performance of the Supplier's obligations under this Contract, then the Supplier shall use all reasonable endeavours to procure that any import duty on such articles will be waived by registering with HM Revenue and Customs for end user authorisation and then requesting an import duty waiver from Rolls-Royce. Rolls-Royce shall use all reasonable endeavours to procure a waiver on request by the Supplier.

## **8 INFORMATION, COOPERATION & RETENTION OF RECORDS**

8.1 The Supplier shall not make any public announcement, comment or other disclosure with respect to the existence or terms of this Contract or any subcontract, or any contracts, agreements or other similar arrangements put in place by the Supplier or subcontractors for the purposes of this Contract.

8.2 The Supplier shall during the term of this Contract use all reasonable endeavours to co-operate with Rolls-Royce, and any other party engaged by Rolls-Royce to provide services, materials or equipment to it, so as to facilitate the integration of other services, materials or equipment supplied to Rolls-Royce with the Services and/ or Deliverables. Such co-operation may include, where appropriate the provision of information and the provision of access to the Supplier's operations provided that:

- (a) such co-operation does not amount to a Variation in which case clause 5 (Variations) of the General Conditions hereof shall apply; and
- (b) all consents necessary for the provision of such information and/or access are identified and obtained.

8.3 The Supplier shall:

- (a) at all times during the term of this Contract and not for less than two (2) years from delivery and acceptance of the Deliverables or completion of the Services keep, or cause or procure to be kept an retained, accurate accounts and full supporting documentation containing all data reasonably required for the computation and verification of the provision of the Deliverables and/ or Services and the proper performance of its other obligations under this Contract and all monies payable or paid to it under this Contract by Rolls-Royce; and,
- (b) give Rolls-Royce and its agents and representatives every reasonable facility required from time to time, Rolls-Royce having given reasonable notice in writing to the Supplier of its requirements, during normal business hours to inspect the said accounts, records and supporting documentation and to make copies of or to take extracts from them; and,
- (c) at two (2) years from the date of completion of the Services or delivery and acceptance of the Deliverables, collate and transfer to Rolls-Royce within three (3) months the accurate accounts and full supporting documentation referred to in paragraph 8.3(a) above.

## **9 INSURANCE**

9.1 The Supplier will take out and maintain in full force and effect adequate and sufficient insurance to cover its obligations and liabilities in relation to the provision of Articles in respect of:

employer's liability insurance in an amount not less than GBP£5,000,000 (Five Million Pounds Sterling); and

public liability insurance in an amount not less than GBP£10,000,000 (Ten Million Pounds Sterling); and

comprehensive professional indemnity insurance in an amount of not less than GBP£10,000,000 (Ten Million Pounds Sterling).

9.2 All insurances required will be placed with an insurer of good repute, cover any one event and be unlimited in the annual aggregate. The Supplier will at the request of Rolls-Royce produce for inspection documentary evidence that such insurances have been taken out and are being maintained. The Supplier will promptly notify Rolls-Royce of any alteration to the terms of the insurance policies or in the amounts for which insurance is provided.

9.3 The Supplier will ensure Rolls-Royce is noted on its policies as an additional insured and on the written request of Rolls-Royce, provide Rolls-Royce with a certificate of each insurance policy.

9.4 The Supplier will, during the term of this contract, and for a period of six (6) years thereafter:

- (a) administer the insurance policies and the Supplier's relationship with its insurers at all times to preserve the benefits for Rolls-Royce set out in this Contract;
- (b) do nothing to invalidate any insurance policy or to prejudice Rolls-Royce's entitlement thereunder; and
- (c) procure that the terms of such policies are not altered in such a way as to diminish the benefit of the policies for Rolls-Royce which are provided as at the date of this Contract.

9.5 Rolls-Royce may obtain such remedies as may be available to it, either under this Contract or otherwise at law or in equity, including the right to procure the insurances if the Supplier has not done so.

## **10 GENERAL INDEMNITY**

10.1 The Supplier shall be liable for and shall indemnify and hold Rolls-Royce harmless against any expense, liability, loss, claim or proceedings:

- (a) whatsoever arising under any statute or at common law in respect of personal injury to or the death of any person whomsoever arising out of or in the course of or caused by the delivery of the Articles;
- (b) in respect of any loss, injury or damage whatsoever to any property real or personal in so far as such loss, injury or damage arises out of or in the course of or is caused by the delivery of the Articles,

except to the extent that the same is due to any act or neglect of Rolls-Royce or of any person for whom Rolls-Royce is responsible.

## **11 SUPPLIERS OBLIGATIONS**

11.1 In performing the Services and its other obligations under this Contract, the Supplier shall:

- (a) procure the provision of all materials, plant, equipment and consumables which (together with any GFA provided by the Authority in accordance with this Agreement) are necessary to carry out the Services and the other obligations of the Contractor under this Agreement and ensure that all such materials, plant, equipment and consumables procured or supplied by the Contractor conform with or satisfy all relevant descriptions, requirements and specifications set out in this Agreement; and,
- (b) comply with all Legislation and Regulatory Requirements.

11.2 The Supplier or any Material Subcontractor shall insert a clause in any Subcontract from either of them incorporating the provisions of clause 19 (Termination for Convenience) of the General Conditions of this Contract amended to substitute the Supplier or Material Subcontractor (as the case may be) for "Rolls-Royce" and their Subcontractor for the "Supplier".

## **12 REPAIRS & RECTIFICATIONS OF DEFECTS**

12.1 The Supplier or any Subcontractor shall be liable to Rolls-Royce, the Supplier or the Subcontractor of a higher tier (as the case may be) for any defects in performance or goods of the type referred to in paragraph 12.2 for a minimum period of six (6) years from the date of Delivery.

12.2 To the extent that the Supplier has any right against any Subcontractor under any Subcontract or otherwise in respect of any failure in performance or breach of any services or any failure in performance or breach in respect of any Equipment or other goods provided, the Supplier shall pursue such rights as it may have against the Subcontractor as the Supplier, acting reasonably, deems appropriate in the circumstances or, if required by Rolls-Royce or the Authority, as Rolls-Royce or the Authority may otherwise direct, such rights to include, but not be limited to, rights to reject and require re-performance of services at the Subcontractor's cost or replacement of goods at the Subcontractor's cost, rights to repair or rectify any Defect at the Subcontractor's cost and rights to damages for breach of the contract with the Subcontractor.

12.3 The Supplier shall not, unless otherwise required by Rolls-Royce or the Authority, repair any Defect or rectify any failure or breach by a Subcontractor, without complying with the requirements of paragraph 12.2. The Supplier shall, unless or to the extent otherwise instructed by Notice from Rolls-Royce or the Authority, use all reasonable endeavours to recover the cost of rectifying any Defects or other failure in performance from any Subcontractor who, in the Supplier's reasonable opinion, may be liable for such costs. To the extent that damages are recovered from any Subcontractor, the Supplier shall ensure that such sums are applied in the reduction of the Ascertained Costs claimed in connection with the performance of the Supplier's obligations under this Agreement. For the avoidance of doubt, the Supplier shall not be entitled to recover any costs from Rolls-Royce or the Authority which it has recovered from any Subcontractor or, where relevant, any Subcontractor's insurers.

## **13 NO LIEN**

13.1 The Supplier shall procure that no Subcontractor has or will at any time assert, a right of lien, general or otherwise, over any part, Deliverable or GFA that is in its possession or in the possession of any of the Subcontractors.

## **14 EXPORT & IMPORT REGULATION**

14.1 In the event that the Supplier or any Subcontractor needs to import any articles from outside the European Union for or in connection with the performance of the Supplier's obligations under this Contract, then the Supplier shall use all reasonable endeavours to procure that any import duty on such articles will be waived by registering with HM Revenue and Customs for end user authorisation and then requesting an import duty waiver certificate from the Authority. The Authority shall use reasonable endeavours to procure a waiver upon request by the Supplier, provided that the Parties shall, from time to time, discuss and agree the most mutually convenient procedure for the provision of such waivers.

14.2 The Supplier shall identify to the Authority which articles supplied under this Agreement are defence equipment in respect of which the United Kingdom will waive the application of import duty and in each case shall use reasonable endeavours to ensure that they are detailed on all relevant documentation such as invoices for articles being supplied from overseas so that these items may be readily identified by the Supplier's agents. Invoices for supplies from overseas shall be endorsed to certify that the articles are supplied for or in connection with performance with the Supplier's obligations under this Contract and quote the number of this Contract.

14.3 In the event that the Supplier having followed the process set out in paragraphs 14.1 and 14.2 above or if, the Supplier having followed such process, the Authority fails to issue the certificate referred to in paragraph 14.1, the Supplier nevertheless has to pay any import duty on articles imported from outside the European Union for or in connection with performance with the Supplier's obligations under this Contract, the Supplier shall be entitled to recover the same in accordance with clause 5 (Variations) of the General Conditions.



**15 RELATIONSHIP OF THE PARTIES**

- 15.1 Neither Party shall pledge the credit of the other Party or represent itself as being the other Party, or an agent, partner, employee or representative of the other Party and neither Party shall hold itself out as such or as having any power or authority to incur any obligation of any nature, express or implied, on behalf of the other Party.
- 15.2 Nothing in this Agreement shall be construed as creating a partnership or a contract of employment between Rolls-Royce and the Supplier or any Subcontractor.
- 15.3 Neither the Supplier, nor any Subcontractor shall be, or be deemed to be; an agent of Rolls-Royce and the Supplier shall not, and shall procure that no Subcontractor shall, hold itself out as having the authority or power to bind Rolls-Royce in any way.
- 15.4 The Supplier shall not place or cause to be placed, and shall procure that no Subcontractor shall place or cause to be placed, any order with any supplier, or otherwise incur liabilities, in the name of Rolls-Royce or any of its representatives.

**16 LAW & JURISDICTION**

- 16.1 This Contract and any Dispute arising out of or in connection with it, whether such Dispute is contractual or non-contractual in nature, such as claims in tort, for breach of statute or regulation, or otherwise, shall be governed by, and construed in accordance with, the laws of England.
- 16.2 Subject to the Dispute Resolution Procedures under this Contract the Parties hereby submit to the exclusive jurisdiction of the English courts.

**17 DEFENCE DOCUMENTS**

- 17.1 Without prejudice to the express incorporation of or reference to any DEFCON in any other part of this Contract, the following DEFCONs shall apply to and form part of this Contract save to the extent of any amendment, clarification or qualification below or elsewhere in this Contract.

DEFCON	Edition	Title
5J	07/08	Unique Identifiers
68	05/11	Supply Of Data For Hazardous Articles, Materials And Substances
126	11/06	International Collaboration For the purposes of DEFCON 126, sub-clauses 2 and 3 the period prescribed shall the duration of the Agreement and 15 years thereafter.
129J	07/08	The Use of Electronic Business Delivery Form
509	09/97	Recovery Of Sums Due
513	06/10	Value Added Tax
516	04/12	Equality
520	07/11	Corrupt Gifts And Payments Of Commission
521	04/12	Subcontracting To Supported Employment Enterprises
522	07/99	Payment
522J	05/03	Payment Under P2P
523	03/99	Payment Of Bills Using The Bankers Automated Clearing Service (BACS) System
528	10/04	Overseas Expenditure And Import Licences
531	05/05	Disclosure Of Information
532A	06/10	Protection of Personal Data (Where Personal Data is not being processed on behalf of the Authority)
534	06/97	Prompt Payment (Subcontracts)
550	02/14	Child Labour and Employment Law
566	02/11	Change of Control
602A	12/06	Deliverable Quality Plan
608	10/98	Access And Facilities To be Provided By the Contractor (excluding clause 1 and 3)
611	07/10	Issued Property (applicable to Clause 21 only)
624	04/10	Use Of Asbestos In Arms, Munitions Or War Materials
627	12/10	Quality Assurance – Requirement for a Certificate of Conformity

DEFCON	Edition	Title
632	02/07	Third Party Intellectual Property - Rights and Restrictions
637	08/99	Defect Investigation And Liability
646	10/98	Law and Jurisdiction (Foreign Suppliers)
647	09/13	Financial Management Information
653	10/04	Pricing On Ascertained Costs
653A	12/08	Costed Contracts - Contractor's Certified Cost Statements
659A	11/14	Security Measures
660	11/14	Reportable Official and Official-Sensitive Security Requirements
670		Tax Compliance
694	12/11	Accounting For Property Of The Authority (excluding paragraph 3)

17.2 Reference to a DEFCON in this Agreement shall be to that edition of such DEFCON as specified in the table in paragraph 17.1 above.

17.3 For the purposes of the DEFCONS, the following word and expressions used in the DEFCONS shall have the meanings given to them in Schedule 1 (Definitions and Interpretation) or if not defined in either of those Parts, as set out in this paragraph 17.3, except where the context requires a different meaning:

- (a) "Articles" means all Deliverables (excluding any other part of the Services) which the Contractor is required under this Agreement to supply;
- (b) "Contract" shall have the same meaning as defined in Part 2 of this Schedule 1 (Definitions and Interpretation);
- (c) "Issued Property" has the same meaning as "GFA" as defined in Part 2 of this Schedule 1 (Definitions and Interpretation);
- (d) "materiel" is a generic term meaning equipment (including fixed assets), stores, supplies and spares;
- (e) "Schedule of Requirements" means Schedule 2 (Services) of the Head Contract and any other part of this Agreement which identifies, either directly or by reference, the Articles or Services to be supplied or carried out, the quantities involved and the price or pricing terms relating to the Articles and Services;
- (f) In DEFCON 659 (Security Measures) the references in it to "First Party" and "Second Party" should be stated to be construed to mean the Authority and the Supplier, respectively.

**DEFFORMs**

17.4 Without prejudice to the express incorporation of or reference to any DEFFORM in any other part of this Agreement, the following DEFFORMs shall apply to and form part of this Contract save to the extent of any amendment, clarification or qualification below or elsewhere in this Contract.

DEFFORM	Edition	Title
653A	03/06	Costed Contracts – Contractor's Certified Cost Statements

17.5 Reference to a DEFFORM in this Contract shall be to that edition of such DEFFORM as specified in the table in paragraph 17.4 above.

**DEFSTANS**

17.6 Without prejudice to the express incorporation of or reference to any DEFSTAN in any other part of this Contract, the following DEFSTANS shall apply to and form part of this Contract save to the extent of any amendment, clarification or qualification below or elsewhere in this Contract.

DEFSTAN	Edition	Title
DEFSTAN 05-57	Issue 6	Configuration Management of Defence Materiel.
DEFSTAN 05-61 Part 1	Issue 6	Quality Assurance Procedural Requirements – Concessions
DEFSTAN 05-61 Part 9	Issue 5	Quality Assurance Procedural Requirements – Independent Inspection Requirements for Safety Critical Items
DEFSTAN 05-99	Issue 4, Amendment 2	Managing Government Furnished Assets in Industry

DEFSTAN	Edition	Title
DEFSTAN 05-135	Issue 1	Avoidance of Counterfeit Materiel
For Power Module Services only:		
DEFSTAN 02-207	Issue 2	Quality Management Framework and Requirements for Materiel Safety in Submarines  Parts 1 and 2

17.7 Reference to a DEFSTAN in this Contract shall be to that edition of such DEFSTAN as specified in the table in paragraph 17.6 above.

**AQAPs**

17.8 Without prejudice to the express incorporation of or reference to any AQAP in any other part of this Agreement, the following AQAPs shall apply to and form part of this Contract save to the extent of any amendment, clarification or qualification below or elsewhere in this Contract.

AQAP	Edition	Title
AQAP 2070	Edition B, Version 3	NATO Mutual Government Quality Assurance (GQA) Process
AQAP 2110	Edition 3	NATO Quality Assurance Requirements for Design, Development & Production
AQAP 2110	Edition D, Version 1	NATO Quality Assurance Requirements for Design, Development & Production
AQAP-2105	Edition 2	NATO requirements for deliverable quality plans.
AQAP-2210	Edition 1	NATO Supplementary Software Quality Assurance Requirement.

17.9 Subject to paragraph 17.8, reference to an AQAP in this Contract shall be to that edition of such AQAP as specified in the table in paragraph 17.8 above.

17.10 Notwithstanding paragraph 17.9, the Supplier shall comply with the requirements of AQAP 2110 Edition 3 where their QMS meets the requirements of ISO 9001:2008. Upon the transition of the Supplier’s QMS to ISO 9001:2015, AQAP 2110 Edition 3 shall be superseded by AQAP 2110 Edition D for the purposes of this contract. The Supplier shall inform the Authority’s Quality Representative, as detailed in DEFFORM 111, upon achievement of QMS transition to ISO 9001:2015.

**SEA SYSTEM PUBLICATIONS (SSP)**

17.11 Without prejudice to the express incorporation of or reference to any SSP in any other part of this Contract, the following SSP shall apply to and form part of this Contract save to the extent of any amendment, clarification or qualification below or elsewhere in this Contract.

SSP	Edition	Title
SSP 25	Issue 3, Amendment 1	Sea System Publication (SSP) Quality Assurance For Safety In Submarines

17.12 Reference to a SSP in this Contract shall be to that edition of such SSP as specified in the table in paragraph 17.11 above.

**18 QUALITY AND TECHNICAL REQUIREMENTS**

The following provisions of paragraph 18 (Quality and Technical Requirements) shall apply to the extent relevant to the works being undertaken by the Supplier or Subcontractor as the case may be.

18.1 The DEFCONs, DEFFORMs, DEFSTANs and AQAPs set out in Schedule 1 (Definitions and Interpretation) shall apply to the Services and all other obligations of the Supplier under this Contract, save to the extent of any inconsistency or conflict with any express provisions of this Contract, in which event the provisions of Clause 1.5 of the General Conditions of this Contract shall apply.

18.2 The Supplier shall ensure that the Services and all of its other obligations under this Contract, comply with and satisfy the following requirements:

- (a) ADMP-01 (Edition A Version 1) – 14 August 2014 NATO Standard – Guidance for Developing Dependability Requirements;
- (b) BS 7000-1:2008 Design Management Systems - Part 1: Guide to Managing Innovation;
- (c) BS 7000 PART 2:2008 Design Management Systems Part 2: Guide to Managing the Design of Manufactured Products;
- (d) BS 7000-3:1994 Design Management Systems Part 3: Guide to Managing Service Design;
- (e) BS 7000 PART 4:1996 Design Management Systems Part 4: Guide to Managing Design in Construction (G);
- (f) BS EN 62402:2007 Obsolescence management — Application guide;
- (g) BS 7000-6:2005 Design management systems Part 6: Managing inclusive design Guide; and
- (h) BS 7000-10:2008 Design Management Systems Part 10: Vocabulary of Terms Used in Design Management.
- (i) IAEA GS-R-3 The Management System for Facilities and Activities: Safety Requirements 2006.

18.3 The Supplier shall ensure that the Services and all other obligations of the Supplier under this Contract:

- (a) shall be completed to a standard acceptable to the Office of Nuclear Regulation; and
- (b) to the extent that any aspect of the Services affects nuclear steam raising plant safety cases, shall satisfy the requirements of the following codes of practice:
  - (i) NRPA 3-1 Dec 2008 Edition NRP Safety Cases;
  - (ii) NRPA 4-1-1 Issue 01, Aug 07 Application of ALARP Principles;
  - (iii) NRPA 4-1-2 Issue 03, Jul 10 Naval Nuclear Safety Principles;
  - (iv) NRPA 4-1-3 Issue 01, May 10 Introduction, Hazard Identification and Presentation of the Safety Case;
  - (v) NRPA 4-1-4 Issue 01, May 10 Deterministic Safety;
  - (vi) NRPA 4-1-5 Issue 01, May 10 Substantiation;
  - (vii) NRPA 4-1-6 Issue 01, May 10 Probabilistic Safety Assessment;
  - (viii) NRPA 4-1-7 Issue 01, May 10 Safety Case Outputs for Through-Life Management;
  - (ix) NRPA 4-1-8 Issue 01, May 10 Design for Radiological Safety;
  - (x) NRPA 4-1-9 Issue 01, May 10 Guidance for Scientific and Engineering Data Generation and Management;
  - (xi) NRPA 4-1-10 Issue 01, May 10 Human Factors; and
  - (xii) NRPA 4-1-12 Issue 01, May 10 Periodic Review of Safety.

18.4 The Supplier shall at all times in the performance of the Services and its other obligations under this Contract maintain and comply with:

- (a) its accreditation under ISO 9001 or any equivalent accreditation approved by the Authority from time to time; and
- (b) the Quality Plan.

18.5 The Supplier shall, and shall procure that any Subcontractor shall, in complying with any terms and conditions of the Nuclear Site Licence or otherwise in its dealings with ONR, use all reasonable endeavours to comply with any obligation to reduce radiological risks to ALARP in a way which achieves, as far as possible, a balance of: the promotion; and the maintenance, of:

- (a) economy;
- (b) efficiency;
- (c) effectiveness;
- (d) reputation of the Parties and members of the Rolls-Royce Group; and
- (e) good relations with the ONR,

including (without limitation and without prejudice to such obligation to achieve ALARP), where there are any reasonably practicable alternatives to a plan or proposal suggested or supported by the ONR which is more consistent with the balance of the matters in (a) to (e) above, pursuing agreement with the ONR to implement such alternatives.

18.6 If any document referred to in paragraph 17.1 to paragraph 17.3, inclusive, or 17.7, is revoked, in whole or in part, or is otherwise no longer in force, and no similar document (or part thereof) with respect to the same subject matter is established in its place, the Supplier shall have no obligations in respect of such subject matter.

18.7 The Supplier shall comply with JSP 518, Regulation of the Naval Nuclear Propulsion Programme Issue 3.10 September 2010, in performing its transportation obligations related to the Power Module Services.

## Appendix 1 – Collateral Warranty Terms

The Collateral Warranty to be agreed between the Supplier and the Authority will contain substantially the following provisions:

### Warranty

1. The Supplier warrants that it has complied and will continue to comply with all its obligations under this Contract, including:
  - 1.1 Design:
    - (a) that it has exercised and will continue to exercise all the reasonable skill, care and diligence to be expected of a competent professional designer who is experienced in designing and carrying out work of a similar scope, nature and size to the Subcontract works;
  - 1.2 Workmanship:
    - (a) that the Subcontract works have been and will be carried out in a proper and workmanlike manner in accordance with Good Industry Practice and, when completed, comply with all applicable statutory requirements;
    - (b) that all workmanship shall be of the standards described (if described) in the Subcontract; and
  - 1.3 Materials:
    - (a) that all materials and goods supplied and to be supplied for incorporation into the Subcontract works will be and will remain of satisfactory quality and suitable for the purpose intended; and
    - (b) that it has not and shall not recommend or select for use in or incorporate into the Subcontract works any materials which are generally known at the time of use to be deleterious to health and safety or durability in the particular circumstances in which they are used.

### Copyright

2. The Supplier shall grant to the Authority an irrevocable, royalty free, and non-exclusive licence or licences to use any designs or IPR in respect of the Services and/ or Deliverables.

### Professional Indemnity Insurance

3. The Supplier shall maintain professional indemnity insurance in the amount of £10,000,000 (ten million pounds) each claim.

### Assignment

4. The Authority shall have the right to assign the benefit of this Collateral Warranty. The Supplier shall not assign this Collateral Warranty without the prior written consent of the Authority, not to be unreasonably withheld or delayed.

### Third Party Rights

5. Rights under the Contracts (Rights of Third Parties) Act 1999 shall be excluded.

### Governing Law

6. The governing law shall be English Law.

### **SCHEDULE 3: Pricing and Payment**

The clauses in this Schedule 3 shall apply as identified in the Order:-

#### **A. Cost Plus:-**

##### **A.1. Price on Cost Plus Basis:-**

- A.1.1. Subject to the provisions of Clause 4 (Price and Payment) and the following provisions of this Condition, Rolls-Royce shall pay all Allowable Costs plus Profit to the Supplier.
- A.1.2. Rolls-Royce shall pay the Suppliers Allowable Costs and Profit up to the maximum amount specified in the Order and shall have no liability to the Supplier to the extent that the Allowable Costs and Profit incurred by the Supplier exceed the limit of liability stated.
- A.1.3. The Supplier shall immediately inform Rolls-Royce in writing as soon as sums payable to the Supplier under this Order in respect of Costs and Profit (including all payments to, or commitments to pay, Subcontractors) reach an amount equal to x% of the limit of liability figure stated for the Deliverable or group of Deliverables or Services.
- A.1.4. If the Supplier considers that it will exceed such limit of liability, the Supplier shall write to Rolls-Royce' Representative requesting that the relevant limit of liability be raised. This letter will advise the reasons as to why the limit will be exceeded and the level to which the relevant limit of liability is required to be raised.

##### **A.2. Flow downs**

- A.2.1. The Appendix to DEFCON 653 (Edition 10/04) shall apply with the following amendment:
  - references to the "subcontractor" and the "subcontract" shall be read as references to the Supplier and this Order respectively;

##### **A.3. Invoicing**

- A.3.1. Costs shall be paid monthly in arrears, the Supplier shall be entitled to invoice Rolls-Royce in respect of those Allowable Costs [on the final day of each month], subject to paragraph A.1.2 above. All invoices shall contain a detailed breakdown of its Allowable Costs.
- A.3.2. Rolls-Royce shall be entitled to review the invoices to ensure costs identified are "Allowable" in accordance with Single Source Contract Regulations prior to their approval.
- A.3.3. Profit shall be paid at the completion of all Deliverables or Services under the Order upon the validation by Rolls-Royce of the Final Cost Certificate in accordance with paragraph A.5 (Cost Certificates) below.

##### **A.4. Cost verification and audit requirements**

- A.4.1. The Supplier shall provide Rolls-Royce, the Authority and its or their sub-contractors, agents and employees with free and unrestricted access to the following information throughout the Term and for three (3) years after the final delivery or completion of performance under this Order, whichever is the later, during normal working hours on any Working Day and on reasonable prior notice:
  - a) the number of man-hours actually recorded for the work performed on the Supplier's systems/records;
  - b) evidence confirming that the agreed overhead, labour and profit rates has been applied;
  - c) the invoices of all Subcontractors.
- A.4.2. The requirement to give prior notice shall not apply where Rolls-Royce or the Authority require to take access to enforce any rights.

##### **A.5. Cost certificates**

- A.5.1. The Supplier shall provide, to Rolls-Royce, an Annual Cost Certificate, in the form set out in DEFFORM 812 (Contractor Cost Statement) (Edition 12/14) by 31st March of each year during the Term for the previous Calendar Year. Upon receipt of each Annual Cost Certificate, Rolls-Royce and/or the Authority may audit the Allowable Costs referenced on such Annual Cost Certificate in accordance with the provisions of DEFCON 653 (Pricing on Ascertained Costs) (Edition 10/04) (save that references to 'the Authority' shall be interpreted as 'the Authority and/or Rolls-Royce').
- A.5.2. If applicable, following agreement and promulgation by the Authority's Cost Assurance and Analysis Service ("CAAS") of the Supplier's overhead and profit rates which apply to any Allowable Costs for which the Supplier has previously submitted a Cost Certificate, the Supplier shall submit, to Rolls-Royce, an updated Annual Cost Certificate which reflects the information agreed and promulgated by CAAS.

A.5.3. In addition to the Cost Certificates to be provided under paragraph A.5.1 above, the Supplier shall provide, to Rolls-Royce, a Final Cost Certificate, in the form set out in DEFFORM 812 (Contractor Cost Statement) (Edition 12/14) within six (6) months of the end of the Term, showing all Allowable Costs incurred between the last Annual Cost Certificate and the end of the Term. Upon receipt of the Supplier's Final Cost Certificate, Rolls-Royce and/or the Authority may audit the Allowable Costs referenced on such Cost Certificates in accordance with the provisions of DEFCON 653 (Pricing on Ascertained Costs) (Edition 10/04) (save that references to 'the Authority' shall be interpreted as 'the Authority and Rolls-Royce').

## **B. Fixed Price**

### **B.1. Pricing basis – Fixed Price**

B.1.1. Subject to the provisions of Clause 4 (Price and Payment) and the following provisions of this Condition, Rolls-Royce shall pay the Supplier the price as specified in the Order, which is a Fixed Price.

B.1.2. The Fixed Price shall be in respect of the Deliverables and/or Services defined in the Order:

### **B.2. Escalation**

B.2.1. The fixed prices as stated in the Order shall be reviewed on an annual basis (on the anniversary of the Order placement) and is subject to escalation in accordance with the following calculation.

**Escalation calculations and indexes to apply to be defined at the Order placement and identified in the Order.**

### **B.3. Flow downs**

B.3.1. Part II of the Appendix to DEFCON 643 (Edition 07/04) (Price Fixing) shall apply to this Contract but be amended so that:

“Articles” shall be amended to read “Deliverables”;

references to “the main contract” shall be read as referring to the Head Contract;

sub-contractor” shall mean “Supplier”;

references to the “subcontractor’s premises” shall be read as referring to the Supplier’s premises;

references to “this subcontract” shall be read as referring to this Contract; and

the word “estimating” in the first line shall be deleted and replaced by the word “determining”.

If the Firm Price is equal to or less than five million pounds sterling (£5,000,000) the following provisions shall apply:

the Appendix to DEFCON 648 (Edition 10/02) (Availability of Information), subject to the following amendments:

references to the “subcontractor” and the “subcontract” shall be read as references to the Supplier and this Contract respectively; and

references to “articles” shall be read as Deliverables.

B.3.2. The Appendix to DEFCON 651 (Edition 08/09) (Reference to the Review Board of Questions Arising In Relation To Relevant Subcontracts Including Those With A Subsidiary Company Or Firm), provided that references to the “Contractor”, the “subcontractor” and the “subcontract” shall be read as references to Rolls-Royce, the Supplier and this Contract respectively.

B.3.3. If the Firm Price is more than five million pounds sterling (£5,000,000) the following provisions shall apply:

a) the Appendix to DEFCON 648 (Edition 10/02) (Availability of Information), subject to the following amendments:

references to the “Contractor”, the “subcontractor” and the “subcontract” shall be read as references to Rolls-Royce, the Supplier and this Contract respectively; and

references to “articles” shall be read as Deliverables.

b) the Appendix to DEFCON 651 (Edition 08/09) (Reference to The review Board of Questions Arising in Relation To Relevant Subcontracts Including Those With A Subsidiary Company or Firm), subject to references to the “Contractor”, the “subcontractor” and the “subcontract” shall be read as references to Rolls-Royce, the Supplier and this Contract respectively.

### **B.4. Entitlement to invoice**

B.4.1. The Supplier shall be entitled to invoice Rolls-Royce:

a) following the achievement of the particular Milestone to which that invoice relates;

b) once the relevant evidence of achievement of the Milestone has been submitted to and countersigned by Rolls-Royce, this will be demonstrated via the provision of an SES number; and,

c) providing all previous Milestones (where relevant) have been achieved.

B.4.2. All invoices shall contain a summary of the amounts claimed supported by such documentation as Rolls-Royce shall reasonably require as a condition precedent to the Supplier’s entitlement to payment.

### **B.5. Milestone(s) and retention payment(s)**

B.5.1. The Milestones and their corresponding payment and retention amounts are set out in the Order



## **C. Firm Price**

### **C.1. Pricing basis – Firm Price**

C.1.1. Subject to the provisions of Clause 4 (Price and Payment) and the following provisions of this Condition, Rolls-Royce shall pay the Supplier a price as specified in the Order, which is a Firm Price.

C.1.2. The Firm Price shall be in respect of the Deliverables and/or Services defined in the Order.

### **C.2. Flow downs**

C.2.1. Part II of the Appendix to DEFCON 643 (Edition 07/04) (Price Fixing) shall apply to this Contract but be amended so that:

- “Articles” shall be amended to read “Deliverables”;
- references to “the main contract” shall be read as referring to the Head Contract;
- sub-contractor” shall mean “Supplier”;
- references to the “subcontractor’s premises” shall be read as referring to the Supplier’s premises;
- references to “this subcontract” shall be read as referring to this Contract; and
- the word “estimating” in the first line shall be deleted and replaced by the word “determining”.

C.2.2. If the Firm Price is equal to or less than five million pounds sterling (£5,000,000) the following provisions shall apply:

- (a) the Appendix to DEFCON 648 (Edition 10/02) (Availability of Information), subject to the following amendments:
  - (i) references to the “subcontractor” and the “subcontract” shall be read as references to the Supplier and this Contract respectively; and
  - (ii) references to “articles” shall be read as Deliverables.
- (b) the Appendix to DEFCON 651 (Edition 08/09) (Reference to the Review Board of Questions Arising In Relation To Relevant Subcontracts Including Those With A Subsidiary Company Or Firm), provided that references to the “Contractor”, the “subcontractor” and the “subcontract” shall be read as references to Rolls-Royce, the Supplier and this Contract respectively.

C.2.3. If the Firm Price is more than five million pounds sterling (£5,000,000) the following provisions shall apply:

- (a) the Appendix to DEFCON 648 (Edition 10/02) (Availability of Information), subject to the following amendments:
  - (i) references to the “Contractor”, the “subcontractor” and the “subcontract” shall be read as references to Rolls-Royce, the Supplier and this Contract respectively; and
  - (ii) references to “articles” shall be read as Deliverables.
- (b) the Appendix to DEFCON 651 (Edition 08/09) (Reference to The review Board of Questions Arising in Relation To Relevant Subcontracts Including Those With A Subsidiary Company or Firm), subject to references to the “Contractor”, the “subcontractor” and the “subcontract” shall be read as references to Rolls-Royce, the Supplier and this Contract respectively.

### **C.3. Entitlement to invoice**

C.3.1. The Supplier shall be entitled to invoice Rolls-Royce:

- (a) following the achievement of the particular Milestone to which that invoice relates;
- (b) once the relevant evidence of achievement of the Milestone has been submitted to and countersigned by Rolls-Royce, this will be demonstrated via the provision of an SES number; and
- (c) providing all previous Milestones (where relevant) have been achieved.

C.3.2. All invoices shall contain a summary of the amounts claimed supported by such documentation as Rolls-Royce shall reasonably require as a condition precedent to the Supplier’s entitlement to payment.

### **C.4. Milestone(s) and retention payment(s)**

C.4.1. The Milestones and their corresponding payment and retention amounts are defined in the Order.